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PROBLEMS RELATED TO PROSECUTOR PARTICIPATION IN CIVIL COURT PROCEEDINGS INVOLVING MINORS IN UZBEKISTAN

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Abstract

This thesis addresses issues of paramount contemporary relevance regarding prosecutor participation in civil court proceedings involving minors within the Republic of Uzbekistan and judicial practice. It analyzes existing legal and practical challenges and formulates prospective solutions. In particular, this study examines doctrinal and normative convergences and divergences, aiming to improve the procedural effectiveness of prosecutorial oversight in child-related civil cases through a comparative analysis of international legal instruments and foreign judicial practice.

Keywords: participation of the prosecutor in civil courts in cases involving minors, adversarial nature of civil proceedings, procedural equality of parties, "general restriction — specific exception" model, "other justifiable reasons."

Introduction

In the current era characterized by the rapid progression of the digital economy, the judicial architecture is undergoing continuous modernization. Although statutory mechanisms governing prosecutorial participation in civil matters concerning minors have historically evolved at a measured pace, systematic amendments and addenda have increasingly been incorporated into procedural legislation.

The procedural presence of the prosecutor in civil judicial proceedings is fundamentally directed at safeguarding legality across all court judgements, rulings, decrees, and orders, as well as verifying their strict conformity with the Constitution and applicable statutes of the Republic of Uzbekistan. Within this framework, the prosecutor performs the vital statutory function of assisting the administration of justice (odil sudlovga ko'maklashuvchi shaxs).

Research Results

An in-depth study of the national legislative framework governing prosecutorial participation in child-related civil litigation establishes a foundational basis for procedural optimization. Examining statutory provisions, doctrinal research, and directives of the Prosecutor General reveals several pressing structural and practical challenges:

Conceptual Conflict and the "General Restriction — Specific Exception" Model

A primary theoretical and practical dilemma stems from the enactment of Law No. ZRU-968, which reformed Article 50 of the Civil Procedure Code (CPC) by significantly curbing the prosecutor's purview in civil litigation. Under the amended Article 50, the prosecutor may intervene only within strict statutory boundaries, in delineated categories of cases involving state interests, or in proceedings initiated upon the prosecutor's own claim. The prosecutor is precluded from entering, on their own initiative, proceedings commenced upon petitions of private litigants.

This legislative paradigm rests on established constitutional and jurisprudential premises:

1. **Adversarial Nature and Procedural Equality:** The adversarial model demands parity between litigants. Discretionary prosecutorial intervention supporting one party risks destabilizing this procedural equilibrium.
2. **Judicial Independence:** Independent adjudication requires delimiting external supervisory presence inside ordinary civil disputes.
3. **Doctrinal Transition:** Broad, open-ended prosecutorial supervision is an institutional remnant of Soviet jurisprudence that requires harmonization with modern rule-of-law doctrines (as elaborated by V.M. Gadiyatova).

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However, unmitigated application of this restriction to child-related litigation generates substantial risks. Minors lack independent procedural capacity, frequently face irreconcilable conflicts of interest with their legal guardians, and constitute vulnerable subjects demanding proactive state protection. In such disputes, prosecutorial involvement does not infringe party autonomy; rather, it functions as an essential constitutional mechanism guaranteeing objective representation of the child's best interests under Article 78 of the Constitution.

To reconcile this tension, this study proposes the **"general restriction — specific exception" model**. While preserving the overarching policy of ZRU-968 (reinforcing adversarial trial dynamics and limiting generic prosecutorial intervention), statutory law must explicitly formulate a specialized exception for disputes implicating the rights and welfare of minors. This framework harmonizes constitutional primacy (Article 78) and international commitments (Articles 3, 9, and 12 of the UN Convention on the Rights of the Child) with the principle of procedural parity (Article 7 of the CPC). Comparable models exist abroad: the Polish Code of Civil Procedure (Kodeks postępowania cywilnego) restricts general prosecutorial intervention while carving out distinct procedural avenues for child-centric disputes, a standard echoed in European Court of Human Rights jurisprudence regarding positive state obligations (Bevacqua and S. v. Bulgaria).

Specific Identified Problems and Proposed Solutions

1. Ambiguity of the Term "Other Reasons" in Article 50 of the CPC

Under Part 2 of Article 50 of the CPC, the prosecutor is authorized to initiate civil claims if a citizen is unable to personally defend their rights "due to health conditions, age, or other reasons." The statutory scope of "other reasons" remains undefined in legislation, Supreme Court Plenum resolutions, and department orders. Consequently, situations involving acute poverty, lack of resources to pay state duty, or structural disadvantages remain in legal limbo. In practice, mothers seeking child support who lack litigation funds are frequently turned away by prosecutors toward private legal counsel due to this textual ambiguity—a condition described in procedural doctrine by S.A. Ivanov as "conceptual indeterminacy."

- **Proposed Solution:** The Supreme Court Plenum should issue explicit guidance qualifying severe financial distress, poverty, institutional dependency, guardian-child conflicts of interest, and unaccompanied minor status as valid "other reasons." In addition, Article 50 of the CPC and the Law "On the Prosecutor's Office" should be harmonized to articulate clear grounds for filing claims on behalf of legally unprotected individuals (as advocated by U.T. Shamshidinov).

2. Absence of an Exhaustive List of Child-Related Actions Available to Prosecutors

While Article 50 of the CPC establishes the general right of prosecutors to file claims, procedural law does not provide an itemized catalog of minor-related civil actions within their prosecutorial mandate. For instance, statutory law leaves unresolved whether a prosecutor may initiate marriage dissolution proceedings where minor interests are imperiled. The relevant Supreme Court Plenum Resolution No. 6 on divorce practice notes that guardians of legally incapacitated spouses may bring actions, but omits prosecutorial standing. Considering that civil courts adjudicate tens of thousands of marriage dissolutions annually (directly impacting custody, alimony, and residence), regulatory silence leaves children vulnerable.

- **Proposed Solution:** Introduce a dedicated chapter titled "Participation of the Prosecutor in Civil Proceedings" into both the Civil Procedure Code and the Law "On the Prosecutor's Office," incorporating an express statutory list of child-related actions open to prosecutors:
  - Recovery of child support (alimony);
  - Deprivation, restriction, or restoration of parental rights;
  - Establishment of paternity;
  - Marriage dissolutions involving minor children under exceptional welfare risks;
  - Disputes concerning property rights and housing guarantees of minors;
  - Minor emancipation proceedings;
  - Involuntary psychiatric hospitalization proceedings involving minors.

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3. Unchecked Prosecutorial Withdrawal from Claims Filed on Behalf of Minors

Under Article 51 of the CPC, a prosecutor who initiates an action exercises plaintiff procedural rights, excluding settlement rights and costs, yet retains the right to withdraw the claim in whole or in part. When a prosecutor withdraws a claim brought on behalf of a minor, the beneficiary—often lacking legal acumen or resources—is left entirely unprotected. While Article 51(4) and Article 122(1)(9) regulate claim dismissals following private plaintiff waivers, current mechanics fail to prevent sudden procedural abandonment where child rights are concerned (noted by Z.N. Esanova).

- **Proposed Solution:** Amend Article 51 of the CPC to mandate that prosecutorial withdrawal of claims filed in the interest of a minor is impermissible without verified proof that the minor's rights remain uncompromised, accompanied by a mandatory formal evaluation from the Guardianship and Wardship Authority (vasiylik va homiylik organi).

4. Discretionary Prosecutorial Protest Restrictions vs. Constitutional Mandate

Articles 383(2) and 407[1] of the CPC condition prosecutorial protest appeals on prior petitions filed by parties or litigation participants. This procedural prerequisite conflicts with Article 143 of the Constitution, which vests the Prosecutor General and subordinate prosecutors with independent oversight regarding the precise and uniform execution of laws. In matters involving minors, parents or guardians may fail to detect legal defects or lack resources to petition, leaving unlawful court acts unreviewed.

- **Proposed Solution:** Remove the requirement of a prior party petition from Articles 383(2) and 407[1] of the CPC for cases impacting minor welfare, reinstating independent prosecutorial discretion to lodge cassation and supervisory protests.

5. Absence of Mandatory Prosecutorial Participation in High-Conflict Family Disputes

Certain civil disputes—such as custody determinations, visitation schedules, extraction of children from unlawful possession, and intra-family alimony actions—harbor severe latent conflicts of interest between guardians and children. The ongoing challenge of protecting minors from intra-familial physical, economic, and emotional harm necessitates structural procedural safeguards.

- **Proposed Solution:** Amend the CPC and the Family Code to establish **mandatory prosecutorial participation** across all civil disputes concerning child custody, extraction of children, parental contact restrictions, and guardian-child property disputes.

6. Normative Conflict Between CPC Article 42, Family Code Article 67, and the Child Rights Guarantees Act

Article 42 of the CPC designates parents, adoptive parents, and guardians as representatives of minors aged 14–18, granting minors personal standing only in narrow employment and maintenance disputes. Crucially, Article 42 omits prosecutors and guardianship authorities from direct legal standing. Conversely, Article 67(2) of the Family Code and Article 11(2) of the Law "On Guarantees of the Rights of the Child" expressly empower guardianship authorities, prosecutors, and the judiciary to protect children's legal rights. This constitutes an unaddressed normative collision (kolliziya).

- **Proposed Solution:** Harmonize Article 42 of the CPC with the Family Code and the Law "On Guarantees of the Rights of the Child" by codifying statutory standing for prosecutors and guardianship bodies to represent minor rights when parental protection is absent or compromised.

7. Absence of Structural and Substantive Requirements for Prosecutorial Legal Opinions

Article 245 of the CPC ("Opinion of the Prosecutor") obligates an intervening prosecutor to deliver an opinion on the merits following judicial examination. However, procedural law fails to define the structural composition, evidentiary standards, or formal criteria governing this opinion, often degrading it into a nominal, perfunctory statement (analyzed by U.T. Shamshidinov).

- **Proposed Solution:** Revise Article 245 of the CPC to institute mandatory statutory requirements for the written and oral prosecutorial opinion, including:

1. Designated judicial body and civil action docket number;
2. Legal appraisal of parties' claims, counterclaims, and third-party arguments;
3. Evidentiary weight and credibility analysis;

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4. Substantiated citation of applicable substantive and procedural legislation;
5. Concrete assessment of the child's best interests;
6. Final, reasoned conclusion on the merits.

8. Fragmentation of Civil Procedural Powers in the Law "On the Prosecutor's Office"

Statutory powers concerning prosecutorial engagement in civil litigation remain scattered across disconnected provisions of the Law "On the Prosecutor's Office," undermining systematic implementation and specialization.

- **Proposed Solution:** Enact a dedicated chapter titled "Participation of the Prosecutor in Civil Judicial Proceedings" within the Law "On the Prosecutor's Office," defining procedural status, filing prerequisites, forms of intervention, rights of protest, vulnerable party protection mandates, and the status of specialized juvenile-civil prosecutorial officers.

9. Inter-Agency Coordination Deficits Between the Children's Ombudsman and the Prosecution Service

Law No. ZRU-908 of February 29, 2024 ("On the Commissioner for Children's Rights (Children's Ombudsman)") established an institutional monitoring body for child protection. However, the procedural bridge connecting the Ombudsman's parliamentary-type monitoring functions with the imperative judicial powers of the prosecution remains unregulated, creating risks of duplicated functions or regulatory gaps. As reflected in Council of Europe Guidelines on Child-Friendly Justice (2010), multi-tiered institutional synergy is paramount.

- **Proposed Solution:** Codify formalized institutional interaction:
  - Grant the Children's Ombudsman statutory standing to submit binding representations to the Prosecutor General's Office requesting judicial intervention;
  - Establish prioritized procedural review timelines for Ombudsman referrals within prosecutorial bodies;
  - Institute collaborative annual oversight reporting to the Oliy Majlis.

10. Lack of an Enforceable Judicial Notification Mechanism for Civil Proceedings

While prosecutorial involvement is statutorily mandated in certain specialized procedures (e.g., parental rights deprivations), procedural deadlines and binding electronic protocols obligating courts to provide timely advance notice to the prosecutor remain deficient, resulting in hearing delays or missed proceedings.

- **Proposed Solution:** Formally anchor the "Prosecutorial Participation in Courts" electronic data interchange system within the CPC, establishing mandatory advance notification timelines between automated court registers and the Unified Information System of the Prosecutor's Office.

11. Procedural Ambiguity Surrounding the Hearing of the Child's Opinion in Court

Article 12 of the UN Convention on the Rights of the Child and Article 65 of the Family Code of Uzbekistan establish the child's right to express their views in all matters affecting them. However, procedural law lacks operational guidelines delineating how the child's views should be ascertained in civil court, what protective measures apply to avoid trauma, and what oversight role the prosecutor exercises (M. and M. v. Croatia, ECtHR).

- **Proposed Solution:** Supplement Article 51 of the CPC with specific prosecutorial safeguards during the judicial examination of a child:
  - Explaining proceedings to the child in an age-appropriate manner;
  - Objecting to traumatic or leading questions posed by adverse litigants;
  - Petitioning for the child's testimony to be taken outside public courtrooms (e.g., child-friendly observation rooms);
  - Requesting mandatory involvement of child psychologists and educational specialists.

Conclusion

The procedural, structural, and inter-institutional challenges identified above delineate the primary legal gaps in civil proceedings affecting minors under reformed procedural conditions. Implementing the "general restriction — specific exception" model alongside targeted revisions to the Civil Procedure

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Code, the Family Code, and the Law "On the Prosecutor's Office" will eliminate normative contradictions, safeguard trial parity, and ensure comprehensive protection of the rights and legitimate interests of minors across civil courts in Uzbekistan.

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