

Place of the Prosecutor's Office of the Russian Federation in System of Bodies Involved in Criminal Prosecution

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ABSTRACT

The relevance of the study to the problem of determining the place of prosecutors in the system of state bodies carrying out criminal prosecution, is determined, firstly, by the ongoing scientific debates and lack of consensus about the nature of the Prosecutor's office, the place and role of prosecutorial supervision in the structure of the system of state activities, and secondly, reform of the judicial system in Russia determined the structural changes in the public administration system and structure of state bodies carrying out criminal prosecution. The purpose of this article is to develop the functional-legal approach that defines the place of the Prosecutor's office in the system of state bodies carrying out criminal prosecution in Russia. The leading method to study the problem is the deductive method, allowing studying the activities of the Prosecutor's office for criminal prosecution. A leading method underlying the solution to the problem is to study the legal foundations of judicial reform and to transfer its legal mechanisms to functionally-legal development of the prosecution's power. The paper shows that the problem of determining the functions of the Prosecutor is theoretically unsolved. The practical significance of the results obtained lies in the fact that the vesting of certain provisions concerning the organization and activities of the Prosecutor's office, with status of the principle seems far-fetched and artificial.

KEYWORDS

The Prosecutor's office, rule of law, Prosecutor's supervision, the court

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Introduction

The Prosecutor's office of Russia is a complex hierarchically-constructed, Federal centralized system of bodies that perform a wide range of powers for implementing the maintenance of normal criminal situation in this country.

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The activity of prosecution bodies

In addition to activities related to the implementation of prosecutorial supervision, the prosecutors have the right to prosecute individuals accused of committing crimes. This function is implemented by the powers of prosecutors on initiating and investigating of criminal cases, the approval of the indictment and sending the case to court. Criminal proceedings are related to supervision over execution of law by bodies of inquiry and preliminary investigation. During the investigation the Prosecutor has the right to give binding instructions to extend the period of investigation and to check criminal cases.

For a long time (since early 1990s) in Russia the legal reform has been implemented. However, to date, probably due to the imperfection of the conceptual ideas, the reform hasn't brought expected results and objectively cannot be completed in the near future. One of the elements of legal reform is the reorganization of the law enforcement system of Russia, where the Prosecutor's office occupies an important place (Weitzer, 2000).

Methodological Framework

Tasks, powers, principles of organization and activity of Prosecutor's office are the subject of most intense debate since the early 1990s.

Directions of reforming of the Russian Prosecutor's office

By the early 1990 quite clearly two main ways in which could go the reform of the Prosecutor's office were delineated.

The first direction supported by the most part of practical prosecutors and some scientists (Boikov, 2002; Skuratov, 2002), involves further development and improvement of the Supervisory functions of the Prosecutor's office, taking into account its historical purpose and development experience.

The second direction, supported by the authors of the Concept of judicial reform in the Russian Federation provides for Prosecutor's office deprivation of general-supervisory powers, declaring them to be a relic of the totalitarian state. The authors of the second direction as the main arguments appeal to the experience of activities of Prosecutor's offices in foreign countries and especially Anglo-American ones (Burns, 2001; Friedrichs, 2000) and to some historical periods of development of the national Prosecutor's office (second half of XIX century, when, in the opinion of the representatives of this direction, the Prosecutor's office was arranged mostly reasonable) (Gutierrez-Lobos, Eher & Grunhut, 2001; Hart & Kropp, 2001).

General supervision

General supervision of the Prosecutor's office, i.e. supervision over the observance of laws by enterprises, institutions, organizations, officials was often come to be understood as "the sovereign instrument of coercion in the absence of a material interest of the manufacturer and lack of development of civil society", romantic, however, not sufficiently substantiated ideas that the transition to the domestic market would provide natural incentives for compliance with the laws is widely spread and in connection with it the withering away of general-supervisory prosecutorial functions cannot affect the state of legality in the country (Gouvis, Calvin & Depies, 2001; Maxwell & Barclay, 2000).

Results

The Prosecutor's office of Russia under current law, supervises the legality of activities of state bodies, various organizations, institutions and enterprises, officials and citizens. The Prosecutor may be party to litigation, to claims in the interests of citizens and organizations in case of violation of their rights to appear in court as state Prosecutor in criminal cases. Bodies of Prosecutor's office carry out a preliminary investigation of certain categories of criminal cases.

The investigative Committee of the Russian Prosecutor's office

Of course, the modern aspect of the format of a scientific research is predefined by the establishment in September 2007 of the investigative Committee under the Russian Prosecutor's office and innovative legislative support of procedural and organizational activities of bodies of Prosecutor's office of the Russian Federation. It should be recognized that a complex system of bodies of Prosecutor's office of the Russian Federation is formed and the criminal procedure law consolidated the non-standard approaches to the determination of the ratio of powers of bodies of inquiry, preliminary investigation and prosecution.

The legislation substantially changed the procedural position of investigators, defined qualitatively new powers of the heads of investigative bodies and re-built the procedure ratio of the powers of investigators, chiefs of divisions of inquiry, bodies of inquiry, heads of investigative agencies and prosecutors at all stages of pretrial proceedings of criminal cases.

First, the legislation governing criminal procedure of the Russian Federation in general and its Institute of criminal prosecution in particular, is based on the experience of creating an advanced criminal procedure institutes of Romano-Germanic and Anglo-Saxon legal system.

Secondly, this experience allows Russian legislator, all the other branches of government carrying out structural reforms of our national legal system, including the improvement of the criminal procedural law as its integral part, to use this experience for giving the national legislation of such properties as scientific-base, sustainability, effectiveness and its compliance with the real needs of law enforcement practices.

Specific forms of implementation of protection functions

As specific forms of implementation of protection functions should be recognized the procedural forms of the activities performed by the participants of the defense in a criminal case. For the lawyer participating in the case as a defender it is a function of providing legal assistance, for the suspect and the accused - activities aimed to refute the data, exposing these individuals in the crime, and to protect their rights and interests. Procedural activity of the defender, the suspect and the accused on defending or representing their interests is fully covered by the protection function.

Validity of the above findings is pointed by the fact that, even in the case of full recognition by a suspect, an accused of their guilt in committing a crime,

criminal procedural protection function continues to exist and is embodied in the activities of all entities of the defense: in defending the rights and legitimate interests of the suspect, the accused, in collecting and providing evidence needed for full protection and establishment of all circumstances on the subject of proof (article 73 of the code of criminal procedure RF).

Features of a civil claim in the criminal proceedings

In the literature the opinion is expressed that it is impossible to refer a civil complainant to the process's participants engaged in the prosecution, and the civil defendant to the entity of protection from prosecution as the civil action is only connected with the substance of the charges. Described position is argued by its supporters that in the resolution of the case a rejection is possible of a civil claim (or leaving it without consideration) in case of the confirmed charges, and the satisfaction of the claim (also in civil proceedings) can take place in case of the acquittal or termination of proceedings. Based on it the scientists, supporting this concept, believe that maintaining of the claim by a civil complainant does not mean maintenance of the charges, and protection from the claim is not tantamount to a defense against accusation. As a consequence, the function of a civil claim and protection function against a claim are independent (Lupinskaya, 1995).

In our opinion, the solution of this issue requires another methodological approach. It is necessary to identify the entity carrying the burden of proof in doing harm by a criminal act which resulted in the civil claim. Since civil claim is presented and considered in criminal proceedings for the resolution of the criminal case, the burden of proof in doing harm, the damages, causality and fault of the doer lies belongs to the civil complainant (victim) and its representatives. Their activities cannot be other, except for a conviction and the functions of members of the prosecution are procedural forms for realization of criminal procedure.

Discussion

The public prosecution system is based on centralized basis and is submitted to the Prosecutor General of the Russian Federation who is appointed and dismissed by the Federation Council of the Federal Assembly of the Russian Federation.

New priorities of the Prosecutor's office

In addition to the functions of supervision over observance of laws and of certain powers in any criminal prosecution the Prosecutor's office is entrusted to relatively new priorities, such as self-initiation of cases on the basis of inspections of state organizations or, for example, handling of prosecution with claims in favor of citizens to the court.

Particular interest regarding the powers of the Prosecutor's office belongs to two spheres of activity which are a function of the Prosecutor's office for prosecution and the Prosecutor in the proceedings. Thus, the aim of this work is to determine the structure of the Prosecutor's office and its core objectives, considering the peculiarities of Prosecutor's activities and establishing of its significance at this point of time.

The service in the Prosecutor's office

A special place for the exercise of prosecutorial activities belongs to a list of specific requirements for the post:

- a) the citizenship of the Russian Federation;
- b) higher legal education of a state University;
- c) age: district state prosecutors older than 25 years, prosecutors of entities older than 30 years;
- d) professional qualities: the district and city prosecutors – experience not less than 3 years, the Prosecutor of the entity – at least 5 years;
- e) moral qualities (no criminal record, honesty, etc.);
- f) oath of allegiance and more.

The Prosecutor participates in the consideration of cases by courts in cases envisaged by the procedural legislation of the Russian Federation and other Federal laws. Conducting a criminal prosecution in court, the Prosecutor acts as a public Prosecutor. The Prosecutor in accordance with the procedural legislation of the Russian Federation may apply to the court or to intervene the case in any stage of the process, if required by the protection of citizens' rights and legally protected interests of society or the state. Powers of Prosecutor participating in court cases is determined by the procedural legislation

The structure of the prosecution

The Prosecutor General of the Russian Federation in accordance with the legislation of the Russian Federation participates in sessions of the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation.

The Prosecutor General of the Russian Federation have the right to appeal to the constitutional Court of the Russian Federation on the issue of violation of constitutional rights and freedoms of citizens by law, applied or subjected to application in a particular case. The Prosecutor or his Deputy within its competence bring to a higher court cassation or the private protest, or the protest in order of supervision, and in arbitration court - the appeals or cassation complaint or protest in order of supervision on the illegal or unreasonable decision, verdict, definition or decree of the court. Assistant Prosecutor, Prosecutor of the Department, Prosecutor of the Department may bring a protest just in case, in consideration of which they participated.

The Prosecutor or his Deputy is regardless of participation in the proceedings has the right within its competence to request from the court any case or category of cases in which the decision, sentence, ruling or resolution come into legal force. Seeing that the decision, verdict, definition or the decision of the court are unlawful or unfounded, the Prosecutor brings the protest in order of supervision or drawn with a view to the hierarchically superior Prosecutor.

Protest against the referee's decision in the case of an administrative offense may be brought by a city attorney, district, superior Prosecutor and their deputies. A protest on a decision, verdict, definition or decree of the court prior to its consideration by the court may be withdrawn by the Prosecutor who brought the protest. The bringing by the Prosecutor General of the Russian Federation or his Deputy of the protest against the verdict, in which the punishment is the death penalty, suspends its execution.

The Prosecutor General of the Russian Federation is entitled to apply to the Plenum of the Supreme Court of the Russian Federation, Plenum of the Supreme Arbitration Court of the Russian Federation with the idea of giving the courts clarifications on issues of judicial practice in civil, arbitration, criminal, administrative and other cases.

Despite the constant adjustments of the criminal procedure law, the urgent questions of lack or falsity of normative regulation of criminal-procedural activity in criminal prosecution implementation remain and need to be addressed, as outlined in the present work, making appropriate proposals. Sharp, sometimes dramatic factors are such things like the imbalance and the inefficiency of legal procedural forms of powers of Prosecutor by which is provided the ratio of their various elements and the interaction with other participants of criminal proceedings involved in the process of criminal prosecution in those or other stages of the criminal process. As a result, there are investigative and judicial errors, which are often expressed as illegal criminal prosecution and condemnation of innocent persons, in violation of the principle of inevitability of criminal responsibility of the perpetrators of the crime.

The law on Prosecutor's office, revealing the implementation order by the Prosecutor of the criminal prosecution, does not analyze the content of this procedure, and refers to settle this matter to the criminal procedural law, which in this decade has undergone fundamental changes.

The current code of criminal procedure of Russian Federation, which entered into force on 1 July 2002, provided generally traditional well-established in the previously applicable criminal procedure code of the RUFSSR (Russian Union of Federative Soviet Republics) mechanism of criminal prosecution, implemented by the Prosecutor and other entities of the prosecution in pre-trial criminal proceedings and in subsequent stages of criminal proceedings.

Scientific debate about the place of the Prosecutor's office

As correctly noted by P. A. Lupinskaya, criminal procedure features vary depending on in which stage - pre-trial or judicial - is the criminal process (Lupinskaya, 1995). This scientific conclusion is of fundamental importance in addressing the issue of correlation of the criminal proceedings' functions with the functions of organs and actors, which are determined by the functions of the criminal proceedings.

It is appropriate to add that the above features are not exhaustive, as in criminal proceedings there are other areas of procedural activities arising from its basic purpose and fundamental principles of criminal process. A multifunctional approach has prompted a number of authors to streamline functions by their classification. So, N.A. Yakubovich proposes to divide the procedural functions into basic and advanced. In addition the procedural functions, in her opinion, will be the main by nature in that case, if the focus of procedural activities of the participant is determined by one such motivational starting as: tasks of the criminal proceedings; subjective procedural interest; the performance of procedural duties. At the same time, according to N.A. Yakubovich (1980), in addition to basic, the participant may perform additional functions. They are either derived from the main, or their implementation is

conditioned by the obligation to provide assistance to other participants in the process of implementation of their functions, which for them are basic.

With this position agreed A.G. Khaliulin (2015), who in the framework of the classification of criminal-procedural functions on the main and secondary ones (as presented above) indicated that the functions of prosecution and procedural guidance of the investigation may be as basic so additional.

V.M. Savitsky (1975), in addition to exercising prosecutorial activities, has endowed the investigator with the protection function, basing his position on the provisions that the investigator is obliged to provide the accused the opportunity to defend against the charges against him, to reveal not only incriminating but also exonerating circumstances of the accused, and the circumstances not only aggravating, but also mitigating his / her liability (Savitsky, 1975). Slightly softer is the position of V.D. Adamenko (1991), who refers the investigator, the person conducting the inquiry, the Prosecutor and the court to the entities of indirect functional protection of the accused.

Against this view argued N.A. Yakubovich (1980). She notes that the clarification of justifying and mitigating circumstances, as well as the responsibility of the investigator to comply with all the rights of the accused to be defended, does not mean that thereby the investigator carries out activities for the protection of the accused. His duties stipulated by the law are in this case only guarantees of the defendant's right to be protected, and not the content of the protection function.

Similarly should be considered and the criminal procedural function of protecting of the victim by his representative - a lawyer, which, as reasonably approved by process's doers and is called by the function of the prosecution.

In the legal literature there are different positions on this issue. So, A.G. Khaliulin (2015) speaks about the versatility of the defender's activities in the criminal process. He identifies two separate functions of a lawyer in a criminal case:

- 1) the function of protection of the rights and legitimate interests of suspects and accused persons and legal aid;
- 2) a function of circumstances' revealing, refuting the charges or mitigating the responsibility of the suspect or accused.

The function of legal aid according to A.G. Khaliulin (2015) is independent one, and it is not absorbed by the protection function. He justifies this by the fact that various participants in the criminal process has the right to use this help, including those who do not have own interest in a criminal case, such as witnesses.

Conclusion

The main criteria of the new legal regulation of criminal prosecution based on the borrowing of the experience of foreign States must be: existence of not legally regulated social relations, collision node of procedural rules or the absence of positive social outcomes from the application of existing legal rules in case of objective demand of the new legal regulation of legal practice.

Borrowing of foreign experience

It would be advisable to take into account the experience of the procedural support of criminal prosecutions' realization in the developed constitutional States of the international community (USA, UK, Scotland, Germany, France, Italy, etc.) which legally give the leading entity of the prosecution - Prosecutor - the right to initiate and terminate criminal prosecution and personally to perform investigative acts or fully to investigate the crime, including in cases prosecuted by other law enforcement agencies, to adopt, with the consent of the court the alternative to criminal prosecution procedural decisions, to create at the pre-trial stages of criminal proceedings equal legal conditions for the officials conducting the investigation, and stakeholders engaged in the protection from extended suspicion or accusation.

Based on the adopted as the basis of the semantic function value as directions, the Prosecutor in the criminal process - the entity carrying out the function of prosecution, which is, as it is established, realized in criminal proceedings by the Prosecutor and the investigator. Because the charge as a function of the criminal process is an indictment activity of the entities of the prosecution, it is logical to assume that the function is one of the activities of an entity, which is the state law enforcement authority - the Prosecutor's office of RF.

The versatility of the Institute of prosecutors in the state

The conducted study of one of the most complex institutions of the criminal proceedings shows that the diminishing role of the Prosecutor with its multifunctional accessory in any criminal prosecution during the pretrial and trial stages of criminal proceedings is, of course, counterproductive and unscientific approach.

The scientific theme of the whole research is the idea that modern Russian criminal proceedings must comply with the conditions of competition in the production of criminal cases, content-specifically depend on phases and stages of criminal proceedings, where criminal trials take place. In this regard it is appropriate to quote the words of V.M. Lebedev (2000), who exploring this issue argues that "without the participation of the public Prosecutor in criminal proceedings (a private Prosecutor for private prosecution cases), the judicial process cannot take place, which in turn entails mandatory participation in the case of the protector.

Recommendations

The contents and the procedural forms of implementation by the Prosecutor of criminal prosecution at the pretrial stages of criminal proceedings with the adoption of Law No. 87-FL has undergone significant changes in the mechanism of procedural activities of the Prosecutor, the performance of which can only be evaluated after a certain period of time. Depending on the obtained results there is a need in corresponding adjustments' making in the criminal procedure legislation in terms of recovery of the procedural rights of the Prosecutor to institute criminal proceedings, the nomination of suspicion and charges, application of procedural coercive measures, as well as the optimal forms' definition of acceptance by the Prosecutor of procedural decisions that determine the direction of movement of criminal prosecution in cases of public and private-public prosecution.

Problematic aspects of activities of the Prosecutor's office

Up to the present time remains unresolved a number of questions: how effective is the existing system of principles, structure and powers of the prosecution at the present stage; what is the place of the Prosecutor's office in the system of bodies of state power; what should be the ratio of prosecutorial supervision and independence of the judiciary; how we can take into account the experience of similar foreign institutions of the state (Monto, 1999).

In 1862 the State Council of the Russian Empire adopted the "Basic provisions on the transformation of the judiciary", where the state appointment of the Prosecutor as the supervision over the precise and uniform execution of laws in the judicial Department of the Russian Empire was determined, the principles of organization and activity of Prosecutor's office - the unity and strict centralization, the implementation by prosecutors of their functions on behalf of the entire system of prosecutors headed by the Prosecutor-General were formulated.

Until the mid-nineteenth century the main purpose of the Prosecutor was to supervise the execution of the laws of the Central government (Smallbone & Milne, 2000; Wasserman & Wachbroit, 2001). This is the main distinctive historical feature of Russian prosecutors. The main purpose of this organ in Russia - supervision of correct and uniform application of laws throughout the state, constitutes its essence, identity, historical mission, has a deep meaning, and taking into account the traditions and characteristics of the Russian state it is important up to the present day (Perry, 2000; Piquero & Mazerolle, 2001).

Participation of prosecutors in court proceedings

Prosecutors are involved in court proceedings. Carrying out the criminal prosecution in court, the Prosecutor acts as a public Prosecutor. According to the new code of criminal procedure of Russian Federation the obligatory participation of the Prosecutor is established in judicial proceedings on public and partially-public prosecution. In civil proceedings the Prosecutor is entitled to appeal to court with the statement in protection of state and municipal interests, as well as an indefinite number of persons; to join in the process and to give its opinion in cases stipulated by part 3 of article 45 of SPC (state procedural code) of the Russian Federation; to apply to the protection of the rights of the citizen and his interests protected by law if he is for valid reasons cannot go to court.

Powers of attorney, participating in court cases are determined by the procedural legislation. The possibility of bringing a claim in the interests of the state, its bodies or individuals closely is related with the function of general supervision.

The Prosecutor or his Deputy within its competence brings to the higher court cassation or private appeals (submission), not a legitimate or an unreasonable decision, verdict, definition or decree of the court. The Prosecutor or his Deputy regardless of participation in the proceedings has the right within its competence to request from the court any case or category of cases in which the decision, sentence, ruling or resolution comes into legal force.

The criminal procedural function of the resolution of the criminal case

The criminal procedural function of the resolution of the criminal case is implemented through the activities of the court, and is manifested due to the demand of the competitiveness of the opposing prosecution and protection functions, the dispute between of which must resolve the court. Under this procedural nature of its activities, the court exercises its own functions inherent to it as a participant in the criminal process.

In the legal literature the view is expressed that in no way can be fit into the concept of the existence of only three criminal procedure functions the activities' directions of the so-called other participants of the criminal process. By them we mean the witnesses, experts, specialists, interpreters, witnesses, court clerks, bailiffs and assistant investigators. In our view, it is possible to agree with this proposal, however, to review the activities of these persons as implementing of independent criminal procedural functions is impossible, because their activity is not independent direction of the process.

The Prosecutor's office and the state compulsion

In conclusion, it should be noted that the Prosecutor's office is a significant element in the implementation of state coercion, is a centralized system of bodies forming the Foundation for the implementation of the principles of law and normal life of society.

The Prosecutor carries out the function of prosecution, which is not unimportant in the conditions experienced by the country's economic crisis. Indeed, thanks to the energetic inspection of the Investigative Committee under the Russian Prosecutor's office a large number of people were able to get their wages, many wishing to take advantage of the situation in irregular form were brought and the present time to justice for their actions, and organizations associated with the extremism were eliminated before the start of their negative activities.

And as a generalization to all of the above, it should be said that the prosecution is not only "public Prosecutor" but "public defender", because all its activities are based on law and justice.

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No potential conflict of interest was reported by the authors.

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