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THE PROBLEMS OF REGULATING THE POWERS OF THE PROSECUTOR TO SUPERVISE THE PROCEDURAL ACTIVITIES OF THE BODIES OF INQUIRY AND PRELIMINARY INVESTIGATION

The article examines the current state of law enforcement practice; theoretical, legal and organizational foundations of the prosecutor's supervision of the criminal procedural activities of the bodies conducting pre-trial investigation; issues of the organization of the prosecutor's supervision of the criminal procedural activities of the bodies conducting pre-trial investigation. The ways of increasing the effectiveness of prosecutorial supervision over the execution of laws by bodies carrying out pre-trial investigation are indicated. The author actualizes: the essence, the significance of the prosecutor's supervision over the legality of pre-trial investigation and its role as a separate object; the significance and role of the principle of legality as the main and leading beginning of the entire criminal process of the Republic of Kazakhstan; the definition of the boundaries of the prosecutor's supervision over the legality of pre-trial investigation.

In the study of the questions posed, a logical, formal – legal, analytical, as well as functional method is used, revealing the qualitative characteristics of the subject of research, allowing to determine the essence of the institution under study, the possibility of regulatory impact of constitutional and sectoral legislation on the state of law and order in the Republic of Kazakhstan. In the scientific analysis undertaken by the authors, the principles of complexity and consistency are consistently implemented and productively combined, which made it possible to more fully, scientifically actualize the issues of improving criminal procedural capabilities for the realization of individual rights and freedoms.

As a result of the study, it was determined that the supreme supervision should be directed primarily to the application of laws by the apparatus of departmental and non-departmental control, but not to replace these bodies, therefore, interaction with regulatory authorities should be carried out only as their supervision.

Key words: criminal process, prosecutor's supervision, the principle of legality, pre-trial investigation.

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Анықтау және алдын ала тергеу органдарының іс жүргізу қызметін қадағалауды жүзеге асыру жөніндегі прокурордың өкілеттіктерін регламенттеу мәселелері

Мақалада құқық қолдану практикасының қазіргі жағдайы; сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың қылмыстық-процестік қызметіне прокурорлық қадағалаудың теориялық, құқықтық және ұйымдастырушылық негіздері; сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың қылмыстық-процестік қызметіне прокурорлық қадағалауды ұйымдастыру мәселелері зерттелді. Сотқа дейінгі тергеп-тексеруді жүзеге асыратын органдардың заңдардың орындалуын прокурорлық қадағалаудың тиімділігін арттыру жолдары көрсетілген. Автор: сотқа дейінгі тергеп-тексерудің заңдылығын прокурорлық қадағалаудың мәнін, маңыздылығын және оның жеке объект ретіндегі рөлін; Қазақстан Республикасының бүкіл қылмыстық процесінің негізгі және жетекші бастауы ретіндегі заңдылық қағидатының мәні мен рөлін; сотқа дейінгі тергеп-тексерудің заңдылығын прокурорлық қадағалаудың шекараларын айқындауды өзектендіреді.

Қойылған мәселелерді зерттеу кезінде зерттеу нысанасының сапалық сипаттамаларын анықтайтын, зерттелетін институттың мәнін айқындауға мүмкіндік беретін логикалық, формальды-құқықтық, Талдамалық, сондай-ақ функционалдық әдіс, Қазақстан Республикасындағы заңдылық пен құқық тәртібінің жай-күйіне конституциялық және салалық заңнаманың реттеушілік әсер

пен құқық тәртібінің жай-күйіне конституциялық және салалық заңнаманың реттеушілік әсер ету мүмкіндігі пайдаланылады. Авторлар қабылдаған ғылыми талдауда күрделілік пен жүйелілік принциптері дәйекті түрде жүзеге асырылады және нәтижелі біріктіріледі, бұл жеке адамның құқықтары мен бостандықтарын іске асыру үшін қылмыстық іс жүргізу мүмкіндіктерін жетілдіру мәселелерін неғұрлым толық, ғылыми тұрғыдан жандандыруға мүмкіндік берді.

Зерттеу нәтижесінде жоғары қадағалау ең алдымен ведомстволық және ведомстводан тыс бақылау аппаратымен заңдарды қолдануға бағытталуы керек, бірақ бұл органдарды алмастыруға бағытталмауы керек, сондықтан бақылаушы органдармен өзара іс-қимыл тек олардың қадағалауы ретінде жүзеге асырылуы керек.

Түйін сөздер: қылмыстық процесс, прокурорлық қадағалау, заңдылық қағидаты, сотқа дейінгі тергеп-тексеру.

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Проблемы регламентации полномочий прокурора по осуществлению надзора за процессуальной деятельностью органов дознания и предварительного следствия

В статье исследовано современное состояние правоприменительной практики; теоретические, правовые и организационные основы прокурорского надзора за уголовно-процессуальной деятельностью органов, осуществляющих досудебное расследование; вопросы организации прокурорского надзора за уголовно-процессуальной деятельностью органов, осуществляющих досудебное расследование в свете изменений законодательства, регулирующего процессуальную деятельность прокурора. Указаны пути повышения эффективности прокурорского надзора за исполнением законов органами, осуществляющими досудебное расследование. Автор анализирует: сущность, значение прокурорского надзора за законностью досудебного расследования и его роль как отдельного объекта; значение и роль принципа законности как основного и ведущего начала всего уголовного процесса Республики Казахстан; определение границ прокурорского надзора за законностью досудебного расследования.

При изучении поставленных вопросов используется логический, формально – правовой, аналитический, а также функциональный метод, определяющий качественные характеристики предмета исследования, позволяющий определить сущность исследуемого института, возможность регулирующего воздействия Конституционного и отраслевого законодательства на состояние законности и правопорядка в Республике Казахстан. В принятом авторами научном анализе последовательно реализуются и продуктивно объединяются принципы комплексности и системности, что позволило более полно, научно активизировать вопросы совершенствования уголовно-процессуальных возможностей для реализации прав и свобод личности.

В результате исследования определено, что высший надзор должен быть направлен в первую очередь на применение законов аппаратом ведомственного и вневедомственного контроля, но не на замещение этих органов, поэтому взаимодействие с контролирующими органами должно осуществляться только как их надзор.

Ключевые слова: уголовный процесс, прокурорский надзор, принцип законности, досудебное расследование.

Introduction

Unquestioning observance and implementation of the provisions of the Constitution, laws and relevant other normative acts by all State and non-state organizations, institutions, officials and citizens means legality. This is a general legal constitutional principle.

In accordance with Article 78 of the Constitution of the Republic of Kazakhstan, «The courts have no right to apply laws and other normative legal acts that infringe on the rights and freedoms of

man and citizen enshrined in the Constitution. If the court finds that a law or other normative legal act to be applied infringes on the rights and freedoms of a person and citizen enshrined in the Constitution, it is obliged to suspend the proceedings and apply to the Constitutional Court with a submission to declare this act unconstitutional» (<https://adilet.zan.kz/rus/docs/K950001000>).

The Code of Criminal Procedure of the Republic of Kazakhstan enshrines the norms of the Constitution in Articles 9, 10, indicating that «The court, prosecutor, investigator, body of inquiry and in-

quirer in criminal proceedings are obliged to strictly comply with the requirements of the Constitution of the Republic of Kazakhstan, this Code, other normative legal acts specified in this Code», reveals the meaning of the principle of legality in the criminal process. Violation of the law by a court or criminal prosecution authorities in criminal proceedings is unacceptable and entails liability established by law, invalidation of illegal acts and their cancellation (<https://adilet.zan.kz/rus/docs/K1400000231>).

If you look at the meanings of the principles of criminal justice, you can conclude that they form a special group of guarantees for the rights and legitimate interests of citizens. The principle of legality, in fact, covers all other principles and forms the initial basis of all criminal procedural relationships. Thus, the observance of the principle of personal inviolability is impossible without legality. In this case, taking into account the sectoral «specific» inviolability of the individual, we are talking about constitutional legality, which is the prerogative of Kazakh legislation. Violation of the rule of law, of course, leads to violation of the principle of personal inviolability. The subjects of the violation of the rule of law in the criminal process are the bodies conducting the criminal process and their officials. Their violation of the rights and legitimate interests of citizens, including the right to personal inviolability in criminal proceedings, constitute a violation of the rule of law. In fact, if the principle of personal inviolability is violated, then we are talking about a violation of the principle of legality. These two principles are closely related to each other. In any case, if the violation of the principle of legality in criminal proceedings affects the rights and freedoms of citizens, then the inviolability of the individual is the primary guarantee of their protection. According to the Law of the Republic of Kazakhstan dated July 5, 2008 «On amendments and additions to certain legislative acts of the Republic of Kazakhstan on the application of preventive measures in the form of arrest, house arrest», the court authorizes detention as a measure of criminal procedural restraint (https://adilet.zan.kz/rus/docs/Z080000065_). This change can be described as a step towards the goal of preventing the facts of illegality. Thus, the authorization of detention by the courts, in turn, contributes to the implementation of the principle of personal inviolability in criminal proceedings.

The principle of comprehensive, complete and objective investigation of the circumstances of the case is also closely related to the principle of legality (Article 24 of the CPC of the Republic of Kazakh-

stan). The violation of legality is mainly due to an incomplete study of the circumstances of the criminal case, due to the fact that the rights of the suspect, the accused, the defendant and the convicted are not taken into account, as a result of which personal freedom is violated. Criminal procedure practice proves this. Due to the unsatisfactory indicators of law enforcement practice, first of all, the question of personal integrity arises. Statistical data indicate that during the application of measures of criminal procedural coercion, violations of the law took place, during which many citizens were illegally detained and placed in temporary detention facilities, violent actions, including mental violence, were used by the authorities conducting the preliminary investigation. Thus, the Coalition of NGOs of Kazakhstan against torture registered 624 cruel, inhuman, degrading treatment and facts of torture (Report of the NGO Coalition of Kazakhstan against Torture 2017-2019 <https://www.notorture.kz/>). According to the data of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, 86 criminal offenses were registered in the Unified Register of Pre-Trial Investigations in 2019 under Article 146 of the Criminal Code of the Republic of Kazakhstan for crimes of torture. In 5 months of 2020, 131 criminal offenses were registered in Kazakhstan under this article. In 3 months of 2020, 16 people were convicted of torture. In 3 months of 2020, 1 police officer was convicted of torture, 10 employees of the CUIS, 5 previously convicted persons (<https://www.gov.kz/memleket/entities/pravstat/documents/1?lang=ru>).

The facts of illegality committed by law enforcement officers of the Republic of Kazakhstan cause enormous damage to the reputation of the state power, of which they are representatives, and the prestige of the state. Thus, a single way of forming intolerance to such manifestations of law enforcement agencies has been deduced. As a result, there is an immediate strict demand from the heads of bodies that admit facts of illegal detention, detention and torture.

Methods

In the study of the issues raised, logical, formal – legal, analytical, as well as functional methods are used to identify the qualitative characteristics of the subject of research, allowing to determine the essence of the institution under study, the possibility of regulatory impact of constitutional and sectoral legislation on the state of law and order in

the Republic of Kazakhstan. The scientific analysis undertaken by the authors consistently implements and effectively combines the principles of complexity and consistency, which made it possible to more fully, scientifically update the issues of improving criminal procedural capabilities for the implementation of prosecutorial supervision of the execution of laws as a guarantor of the implementation of the principle of legality in criminal proceedings.

Discussion

In Kazakhstan, work continues to improve the activities of the law enforcement and judicial systems. Thus, in 2014, the Criminal Procedure Code of the Republic of Kazakhstan was adopted, aimed at modernizing the criminal justice system and bringing it into line with international standards. This contributed to strengthening the legal framework and improving the quality of justice. Until the end of 2016, many amendments and additions were made to the Law «On the Prosecutor's Office» of December 21, 1995 (https://adilet.zan.kz/rus/docs/Z950002709_) at different times.

At the initiative of the head of state, the constitutional reform of 2017 marked the beginning of a new stage in the activities of the prosecutor's office, which is a law enforcement agency. If, in accordance with the old version of Article 83 of the Constitution of the Republic of Kazakhstan, the Prosecutor's office exercised supreme supervision on behalf of the state over the accurate and uniform application of laws and decrees of the President of the Republic, now the Prosecutor's office is called upon to exercise supreme supervision over the observance of legality on the territory of the Republic of Kazakhstan within the limits and forms established by law, to represent the interests of the state in court on behalf of the state and to carry out criminal prosecution. Thus, on June 30, 2017, a new Law of the Republic of Kazakhstan «On the Prosecutor's Office» was adopted (<https://adilet.zan.kz/rus/docs/Z1700000081>), which is a logical continuation of the implementation of the constitutional reform announced by the Head of State, and the implementation of the policy of forming a competitive national economy, as well as the introduction of the best practices of the OECD in public administration. During its development, many issues arising in the practice and theory of the application of the new Criminal Procedure Legislation were resolved. This law defines the purpose of the activity, the legal basis, the principles of organization and activity, the areas of prosecutorial super-

vision (main directions, subject, forms, limits and types of supervision), representation of the interests of the state in court, criminal prosecution, legal acts and the system of prosecutor's offices, as well as other issues.

By Resolution No. 608 of the Government of the Republic of Kazakhstan dated August 25, 2022, the draft Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office» was submitted to the Majilis of the Parliament of the Republic of Kazakhstan (<https://adilet.zan.kz/rus/docs/P2200000608>). On September 28, 2022, the Mazhilis of the Parliament of the Republic of Kazakhstan approved in the second reading the draft Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office», developed in pursuance of the Address of the Head of State to the People of Kazakhstan dated March 16, 2022 «New Kazakhstan: the path of renewal and modernization» (https://adilet.zan.kz/rus/docs/K22002022_1), where the Head of State noted that to increase the rule of law and systematic strengthening Law enforcement activities require the adoption of a separate Constitutional Law «On the Prosecutor's Office». Thus, on November 5, 2022, the Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office» was adopted, defining the competence, organization and procedure of the Prosecutor's Office of the Republic of Kazakhstan (<https://adilet.zan.kz/rus/docs/Z2200000155>).

Article 1, Article 6 of the Law «On the Prosecutor's Office»: «Prosecutor's supervision over the observance of legality on the territory of the Republic of Kazakhstan, over the legality of the activities of state, local representative and executive bodies, local self-government bodies, institutions, their officials, other organizations, regardless of their forms of ownership, as well as acts and decisions taken by them, proceedings on administrative offenses, pre-trial investigation, criminal prosecution, promptly-investigative and counterintelligence activities, enforcement proceedings, judicial acts that have entered into force, the execution of criminal penalties and the use of other measures of state coercion, state legal statistics and special accounting, compliance with international obligations of the Republic of Kazakhstan is the main guarantee of compliance with the provisions of the law, i.e. a guarantee of legality».

First Deputy Prosecutor General T.G.Tashimbayev noted the main novelties of the law: 1) The Prosecutor General of the Republic has been granted the right to apply to the Constitutional

Court before the ratification of international treaties to review their compliance with the Constitution of normative legal acts of the Republic of Kazakhstan, as well as official comments on the basic norms of the law. «This provision, along with the powers of the Prosecutor's office to challenge illegal legal acts and their cancellation in court in courts of general jurisdiction, strengthens the protection of citizens' rights. 2) When a signal is received, the main requirement for the prosecutor will be to promptly solve the problems of the population. According to previous practice, many complaints were sent to the authorized State bodies for consideration on the merits. These restrictions have justifiably attracted criticism from citizens. Now the law has expanded the list of appeals that will be considered by the prosecutor's office», T.G.Tashimbayev explained (Tashimbayev 2022).

In 2023, in order to increase the effectiveness of prosecutorial supervision over the application of legality by the bodies of preliminary investigation and inquiry, the list of normative legal acts regulating the powers of prosecutors related to the supervision of pre-trial investigation was supplemented with Instructions on the organization of supervision over the legality of criminal prosecution (<https://online.zakon.kz>). The main tasks of supervision are:

- 1) Protection and restoration of violated human and civil rights and freedoms, legally protected interests of legal entities, society and the state;
- 2) Identification and elimination of violations of the rule of law, the causes and conditions contributing to them, as well as their consequences;
- 3) Coordination of the activities of law enforcement and other government agencies in the field of combating crime.

The Instruction defines the legality of criminal prosecution as the priority areas of activity of the prosecutor's office exercising supervision:

- 1) Observance of constitutional human and civil rights and freedoms in criminal proceedings, prevention and prevention of torture;
- 2) high-quality and timely consideration of appeals from participants in the criminal process;
- 3) Ensuring the rights of participants in criminal proceedings to compensation for damage caused by criminal offenses;
- 4) Implementation of special supervision in criminal cases of violent crimes of a sexual nature against minors.

The Instruction established the procedure for supervising the legality of criminal prosecution in

order to avoid duplication of activities of the prosecutor's office, in which the powers of prosecutors in the area under consideration are limited.

In the instruction, the provision is fundamental, according to which supervision should be organized from the point of view that the legality of decisions taken by investigative and inquiry bodies, as well as actions of officials conducting criminal prosecution, should be ensured. Supervision should be carried out at all stages of pre-trial proceedings – from the moment the criminal prosecution authorities are informed about the crime committed or about to be committed until the criminal case is sent to court. Verification of the legality of the start of a pre-trial investigation and taking measures to eliminate violations are carried out by the prosecutor within 24 hours from the moment of registration in the Unified Register of Pre-Trial Investigations of a statement, message or report on a criminal offense. If the fact of incorrect qualification of a criminal offense is revealed, the prosecutor immediately issues a resolution in accordance with part 1 of Article 207 of the CPC on changing its qualification, with consideration of the issue of bringing the perpetrators to disciplinary responsibility.

In accordance with the Instruction «On the organization of pre-trial investigation in the Prosecutor's office», approved by the order of the Prosecutor General of the Republic of Kazakhstan dated 2023, supervision of the legality of pre-trial investigation in criminal cases under prosecutor's proceedings is carried out in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and in accordance with the procedure determined by the Prosecutor General of the Republic of Kazakhstan. This instruction regulates the procedure for the prosecutor to conduct a pre-trial investigation in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and other legislation (https://online.zakon.kz/Document/?doc_id=39398226&pos=13;-40#pos=13;-40).

When a prosecutor carries out a pre-trial investigation, he is entrusted with the powers, rights and duties of an investigator provided for by the CPC. The powers and rights of the head of the investigative department provided for in article 59 of the CPC are assigned to prosecutors authorized to exercise departmental control over the pre-trial investigation in accordance with this Instruction.

According to the Instructions, the pre-trial investigation of cases of torture in accordance with part 1-1 of Article 193 of the CPC is carried out by the prosecutor. To regulate their work, the «Instruc-

tion on the organization of pre-trial investigation of cases of torture in the Prosecutor's office» was approved. The Prosecutor General's Office analyzed the main causes and conditions of torture, on their basis, on January 16, 2023, a joint order was adopted, approved by the first heads of law enforcement agencies «On approval of Instructions on ensuring respect for the constitutional rights and freedoms of citizens in criminal proceedings and in the execution of punishment» (https://ratel.kz/kaz/kak_borjutsja_s_pytkami_v_kazahstane). Prosecutors note that cases of this category are investigated only by prosecutors, that is, this is an exceptional investigative procedure, and also argue that this requires prosecutors to ensure a professional independent investigation of cases of this category (Dembaev 2022).

Also, by Order of the Prosecutor General of the Republic of Kazakhstan dated January 9, 2023 No. 15, the Instruction on the organization of supervision over the observance of constitutional human and civil Rights and Freedoms in criminal proceedings was approved, where chapter 4 «Countering torture and other forms of ill-treatment of citizens» states that the heads of territorial prosecutor's offices ensure control over the investigation of criminal cases criminal cases of torture are heard at least once a month, as well as, upon receipt of information about the use of torture, the prosecutor immediately carries out an immediate report to the head of the prosecutor's office and registration in the unified register of pre-trial investigations of the relevant report or statement under article 146 of the Criminal Code (https://online.zakon.kz/Document/?doc_id=32819787&pos=20;-48#pos=20;-48).

The use of physical methods of violence is formally prohibited in all democratic countries of the world, however, in law enforcement practice this condition is almost universally violated. For example, Section 136-a of the German Criminal Procedure Code established: "The freedom of will and volitional actions of the accused must not be violated as a result of ill-treatment, fatigue, physical intervention, the use of means, torture, deception or hypnosis. Coercion may be used only to the extent permitted by the criminal procedure legislation. The threat of using measures unacceptable by its rules and the promise of benefits not provided for by law are prohibited" (*Strafprozeßordnung* // https://www.gesetze-im-internet.de/stpo/_136a.html).

However, in reality, illegal interrogation methods of the accused in Germany were and remain a

great evil, often leading to judicial errors (Peters 1972: 5-48).

According to the United States Crime Control Act of 1968, a confession should be considered valid if no more than six hours have passed from the moment of detention to the moment of arraignment. An accused seeking to exclude a confession from the evidence system "must convincingly prove to the jury that he was forced to make this confession" (Ginger E.F., 1981. – 392 p.). According to American law, the accused has the burden of proving the illegality of the techniques by which the confession was extracted.

The use of violence against interrogated persons in the Republic of Kazakhstan is no exception. In the case where physical violence takes place, according to this Instruction, it is necessary to require a medical examination and inform the prosecutor about these facts of violation of the law.

Senior Assistant to the Prosecutor General of the Service for Supervision of the Legality of Pre-Trial Investigation and Criminal Prosecution A.B. Burbayev reports that as a result of the measures taken, this year the registration of torture decreased by 60% (from 687 to 277), 8 criminal cases were sent to court with an indictment, 531 citizens were released by prosecutors this year, illegally detained and delivered by the investigation authorities (Burbayev 2023).

The prosecutor has the right to carry out pre-trial investigation in cases of criminal offenses provided for in Chapter 17 of the Criminal Code of the Republic of Kazakhstan, in accordance with paragraph 12) of part 1 of Article 193 of the CPC. Conducting a pre-trial investigation in cases of criminal offenses provided for in other articles of the Criminal Code may be entrusted to the prosecutor, regardless of the jurisdiction established in the CPC. Also, in accordance with subparagraph 12) of part 1 of Article 193 of the CPC, the prosecutor withdraws the case from the body conducting the pre-trial investigation and transfers it to another body of pre-trial investigation in accordance with the jurisdiction established by the Code; in exceptional cases, related to the need to ensure the objectivity and sufficiency of the investigation, at the written request of the criminal prosecution body or a participant in the criminal process, transfers the case from one body to another or accepts it for its own production and investigates them regardless of the jurisdiction established by the Code.

In addition, in this area of prosecutorial supervision, we can mention the «Instructions for consider-

ing appeals to the Prosecutor's Office of the Republic of Kazakhstan», approved by Order No. 29 of the Prosecutor General of the Republic of Kazakhstan dated January 17, 2023 (<https://adilet.zan.kz/rus/docs/V2300031715>). This instruction has been developed in accordance with the Constitution of the Republic of Kazakhstan, the Constitutional Law of the Republic of Kazakhstan «On the Prosecutor's Office», the Criminal Procedure Code of the Republic of Kazakhstan, the Criminal Executive Code of the Republic of Kazakhstan, the Civil Procedure Code of the Republic of Kazakhstan, the Code of Administrative Offences of the Republic of Kazakhstan, the Administrative Procedural Code of the Republic of Kazakhstan, other legislative acts and clarifies the issues consideration of appeals, messages, proposals, responses and requests in bodies, departments, institutions and educational institutions of the Prosecutor's Office of the Republic of Kazakhstan. In the part not regulated by the criminal procedure legislation, it is indicated that the provisions of this Instruction apply.

As we can see, the powers of the prosecutor to supervise the execution of laws in the process of pre-trial investigation are of an authoritative and administrative nature. The new status of the Prosecutor's Office is associated with one of the main mechanisms for strengthening the rule of law – supreme supervision. All decisions were made by the investigator himself earlier, the prosecutor checked the legality of these decisions. Currently, the five main decisions in the criminal process come into force only after approval by the prosecutor. They are next. The first is the recognition of a person as a suspect; the second is the qualification of the suspect's actions; the third is the qualification of a criminal offense; the fourth is the interruption of the investigation; the fifth is the termination of a criminal case or criminal prosecution. These changes came into force at the end of 2020 and became the first stage of the implementation of the three-tier model.

From the analysis of the above-mentioned powers of the prosecutor, the following can be seen:

1. Chapter 8 of the CPC «State bodies and officials performing the functions of criminal prosecution» specifies the powers of each of them. According to the general principle, each participant in the criminal process must perform his function.

The head of the investigative department is the head of the investigative unit of the body conducting the pre-trial investigation and his deputies acting within their competence. The Head of the Investigation Department is authorized:

1) to entrust the investigation or accelerated pre-trial investigation to the investigator;

2) to monitor the timeliness of the execution of investigative actions by the investigator on the cases under his production, the observance by the investigator of the terms of investigation and detention, the execution of the instructions of the prosecutor, the instructions of other investigators;

3) to entrust the investigation to several investigators;

4) to remove the investigator from the proceedings in the case;

5) to study criminal cases and give instructions on them;

6) within the limits of its competence, to withdraw a criminal case from one investigative unit of a subordinate body carrying out a preliminary investigation and transfer it to another investigative unit of this or another subordinate body carrying out a preliminary investigation;

7) to send criminal cases to the prosecutor with a report on the completion of the pre-trial investigation, the protocol of the accelerated pre-trial investigation, as well as criminal cases completed in the order of writ proceedings;

8) to apply to the prosecutor with a petition for the cancellation of an unjustified procedural decision of the investigator;

8-1) to apply to the prosecutor for a petition against the decision of the investigating judge;

9) within the limits of their competence, to give binding instructions and instructions to the bodies of inquiry;

10) to consider complaints about actions (inaction) and decisions of the investigator.

In this regard, in order to avoid confusion of functions in the domestic criminal process, pre-trial investigation should be carried out from the very beginning by prosecutors (special prosecutor, procedural prosecutor) or investigators (interrogators).

It is also clear from the powers of the prosecutor that he carries out not only supervision, but also procedural control, that is, the prosecutor performs some of the powers of the head of the investigative department, enshrined in part 2 of Article 59 of the CPC. For example: in subparagraph 6 of part 1 of Article 193 of the CPC, in cases provided for by the CPC, the prosecutor coordinates, approves the actions and (or) decisions of the person conducting the pre-trial investigation; in case of violation of the legality, removes the investigator, the inquirer from conducting a pre-trial investigation in a criminal case. Hence, the issues of planning and organiz-

ing the pre-trial investigation process, determining the direction of the preliminary investigation and inquiry, presenting options, choosing tactics and methods of investigation, removing the investigator from conducting a pre-trial investigation in a criminal case, etc. should remain within the competence of the head of the investigative department.

2. From the analysis of this area of prosecutorial supervision, it can be noted that supervision of pre-trial investigation, criminal prosecution, operational investigative and counterintelligence activities is the main function of the prosecutor's office – an independent area of prosecutorial supervision. Therefore, prosecutorial supervision of the execution of laws by bodies conducting pre-trial investigations should be differentiated and considered as independent areas of supervisory activity, differing in criteria such as the legal basis, subjects, objects of supervision, subject matter, means of prosecutorial supervision and features of their implementation.

Conclusion

In any country, the authorities are interested in creating such a state body, which, by its structure and powers, meets the task of introducing a single order and uniform legality in all spheres of life. State and public life obliges the country to have a reliable mechanism for ensuring accurate and uniform enforcement of laws, as well as law and order.

Therefore, the main integral attribute of the political system of almost every state is such a structure as the prosecutor's office. The creation of such a body as the Prosecutor's Office is an objective necessity due to the social role of law and legality in the development of society and the state. In this regard, it should be noted that the role and place of the prosecutor's office in the system of State bodies and management do not yet fully correspond to its functions of exercising supreme supervision over the current legislation. The role of the prosecutor's office is often reduced to subtle guardianship over the verification of departmental acts, instructions, and not supervision of the legality of these instructions. In accordance with Article 83 of the Constitution of the Republic of Kazakhstan, supreme supervision should be aimed primarily at the application of laws by the apparatus of departmental and non-departmental control, but not at replacing these bodies. Therefore, interaction with regulatory authorities should be carried out only as their supervision.

Thus, the institution of prosecutorial supervision in criminal proceedings in the Republic of Kazakhstan needs further development and complete improvement. The directions of subsequent research should be based on strengthening the rule of law and the rule of law; the introduction of democratic approaches and actions in all spheres of public life of the people of Kazakhstan, including state and legal institutions of power.

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