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THE ROLE OF THE PROSECUTOR, HIS FUNCTIONS AND POWERS IN CRIMINAL PROCEEDINGS

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ABSTRACT

This article enlightens specific features of the participation of the prosecutors in court hearings of criminal cases, their procedural status, tasks and powers in accordance with the Criminal Procedural Code of the Republic of Uzbekistan and the Law of the Republic of Uzbekistan on the Prosecutor's Office. In the article, on the basis of its subjects, proposals are given on the improvement of the legal basis of the participation of the prosecutor in examining criminal cases by the courts.

KEYWORDS

Criminal process, litigation, prosecution function, the procedural status of the prosecutor, the stages of the criminal proceedings, evidences.

INTRODUCTION

The criminal proceedings established by the Criminal Procedural Code of the Republic of Uzbekistan are aimed at consolidation of the rule of law, prevention of crimes, guaranteed protection of the interests of the individual, state and society.

Under the article 13 of the Constitution, the human, his life, freedom, honor, dignity and other inalienable rights represent the ultimate value.

The government ensures the citizens' rights and freedoms of defined by the Constitution and the laws.

Prosecutorial bodies have a special place among government authorities, including law enforcement agencies, responsible for realizing these tasks.

The Prosecutor's Office of the Republic of Uzbekistan is the single centralized system of bodies of prosecutor's office headed by the General Prosecutor

of the Republic of Uzbekistan, whose main objectives are ensuring rule of law, legality strengthening, protection of the rights and freedoms of the citizens, the interests of society and government protected by the law, the constitutional system of the Republic of Uzbekistan, the prevention of offenses.

The execution of these objectives is carried out on substantive areas of the prosecutor's office in accordance with the article 4 of the Law of the Republic of Uzbekistan "On Prosecutor's Office".

The powers of the prosecutor in criminal proceedings are regulated by the articles 33-34 of the Criminal Procedural Code of the Republic of Uzbekistan.

In accordance with these norms, the General Prosecutor of the Republic of Uzbekistan and his subordinate prosecutors exercise supervision of exact and uniform execution of the laws of the Republic of Uzbekistan at the stage of inquiry and pretrial investigation.

The Main Findings and Results

In the same time, the prosecutor takes part in the court hearing and exercises the powers envisaged by the article 409 of the Criminal Procedural Code.

What are the criteria for the effectiveness of prosecutorial powers in criminal proceedings, and how should prosecutors be involved in preventing and eliminating judicial errors?

Before answering these questions, it is necessary to think about the place and role of the prosecutor in court proceedings in general.

The tenth edition[1] of the "Modern Problems of Legal Science", published by L.P. Chumakova, states that the criminal proceedings have a number of stages,

including the stage of trial, which is the key stage of the criminal proceedings. The other stages of criminal proceedings either are the preparation of the court hearing (pre-trial investigation, inquiry, pre-investigation stage) or inspection (examination of the validity, legality and fairness of judicial documents) or supplementary stages (relating to enforcement of court decisions).

According to L.P. Chumakova, taking into account that the criminal procedure is based on the significance of the various stages of judicial proceedings, the primary task of the prosecutor is to ensure the state prosecution and all other stages should serve this purpose.

A number of other scholars, such as S.N.Alekseev and V.Lazareva, also support this idea [2].

According to the Law "On the USSR Prosecutor's Office", which existed before the independence of Uzbekistan, the prosecutor's activities in this area were defined as the supervision of the execution of laws in the courts.

After Uzbekistan gained its independence, reforms in the country aimed at forming a legal state were initiated, and in the first place, under the Constitution of the Republic of Uzbekistan, independent judicial bodies have been established. This revealed the need to review the legal norms related to the participation of a prosecutor in the court.

The Law of the Republic of Uzbekistan "On Prosecutor's Office", which was adopted in 1992, maintained that the main function of the public prosecutor, i.e. exercising supervision of exact and uniform execution of the laws, but now it does not define the prosecutor's participation in court

proceedings with respect to exercising supervision of execution of laws in the courts.

Under this Law, the prosecutor's powers in this area is to support the state prosecution in consideration of criminal cases in courts, to participate in court proceedings on civil cases, administrative offenses and economic disputes, and to submit a protest against court decisions that violate laws.

Such changes in the legislation do not indicate that the prosecutor's place and role in criminal proceedings has been reduced.

Prosecutors have been charged with providing assistance to the courts as a safeguard of legitimacy in the administration of justice through ensuring effective and qualified participation in the court.

By participation in criminal proceedings, the prosecutor should be a person who assists the court in full and complete investigation of the evidence, in identifying the true circumstances of the case, in reaching a lawful and fair decision.

DcS, Professor B.X. Pulatov, commented on the prosecutor's involvement in the trial: "Through taking part in the court hearings, a prosecutor assists the court in fully and impartially investigating the evidences, detecting the guilty of the person committed crime, adequate legal assessing of the committed crime, imposing legal, fair punishment.

In order to fulfill educational purposes the prosecutors should use the court tribunal to create a climate of public discussions about those who commit crimes" [3].

Participants in criminal proceedings are persons who have certain rights and obligations and participate in criminal procedural legal relations.

In the same time, some of the participants of the criminal proceedings play a crucial role in the trials through ensuring such procedural functions as prosecution, defense and settlement of case.

According to the scientists A.V.Smirnov, K.B. Kalinovskiy, such participants of the proceedings are considered as participants of the criminal proceedings, which are not only the subjects of special procedural acts, but also criminal proceedings participants who are involved in consideration criminal case and its consequences based on their criminal procedural rights[4].

In the court, the prosecution function is carried out by the prosecutor. According to many criminal procedural scientists, the prosecution function is defined as the sphere of criminal procedure which involves detecting a person committed crime as well as ensuring prosecution against him[5].

DcS, Professor B.X.Pulatov noted that while prosecutors ensure state prosecution, they follow their own inner confidence based on protecting human rights and taking into consideration the requirements of the Criminal Procedural Code, other laws of the Republic of Uzbekistan as well as all circumstances of the case [6].

The procedural status of each subject involved in criminal proceedings has its own peculiarities. Obviously, the court plays the central role in criminal proceedings. In the same time, both the prosecutor and the defense counsel, who are parties in trial, are considered to be participants of the proceedings with extensive powers in the criminal procedure.

The prosecutor is entrusted with extensive duties in the criminal proceedings.

In the court proceedings, the prosecutor is not only a state prosecutor, but also an official body who is obliged to take measures to protect the personal, political, economic, social rights and freedoms of citizens, legitimate interests of society and government guaranteed by the Constitution and the laws of the Republic of Uzbekistan through qualified ensuring the prosecutor's participation in accordance with strict adherence to the principles of criminal procedure.

The prosecutor, participating in the criminal proceedings, should not only defend the offender's rights and legitimate interests by expressing opinion on the degree of justification, confirmed by evidence, legal grounding of the charge against the defendant, but also should be an official who protects the rights and interests of victims of the criminal case, prevents the violation of the rights and freedoms of the witnesses questioned in the case too.

In our opinion, it would be a mistake to reveal the prosecutor's role in the court proceedings in the narrow scope.

From this point of view, the article 18 of the Criminal Procedural Code of the Republic of Uzbekistan guarantees the protection of the rights and freedoms of citizens.

Under this norm, all state bodies and officials responsible for criminal proceedings are obliged to protect the rights and freedoms of citizens participating in the criminal proceedings.

Procedural status of the prosecutor in criminal proceedings, forms and methods of the court proceedings, the issues to be resolved at each stages of the trial and the participation of prosecutors in the

discussion of these issues are set out in the Criminal Procedural Code of the Republic of Uzbekistan.

If in the initial stages of criminal proceedings, i.e. in the stages of initiation of a criminal case, inquiry, pretrial investigation, the prosecutor has broad powers of competent character and has the right to carry out procedural actions, the prosecutor will be equal party of the trial in the course of the criminal proceedings.

In the criminal proceedings, the procurator supports the public prosecution in the courts of first instance, and if the accusation is unconfirmed, he should change or abandon it, by the participation in higher court instances he takes part in resolving the issues relating to legitimacy inspection of the acts of the lower courts and execution of judicial determinations, judgments and decisions.

The prosecutor's involvement in any stage of the court proceedings and his powers can be long discussed.

In the same time, one of the main tasks of the prosecutor, participating in the trial, is to ensure a justified and qualified public prosecution based on the requirements of law.

If the prosecutor, by the participation in court proceedings, has assisted the court in its comprehensive investigation, inspection of evidences and proper assessment of the case, the participation goal can be considered as achieved.

Certainly, the prosecutor can ensure the effective participation in the trial only in case of strict adherence to several requirements.

This is primarily due to the thorough preparation to the trial, i.e. by examining and analyzing the criminal case files thoroughly and comprehensively and by the study of relevant laws.

The procurator's entry to the trial without familiarization with the case materials and the relevant legislation, first of all, puts him in a difficult position and make it impossible to reach the intended purpose.

Prosecutors who are well-prepared to the trial will not be in stalemate in the face of situations that may arise in court sessions. Knowing badly or not knowing at all the materials of criminal case resulted to passive involvement of the prosecutor in the trial process, which excludes the fact that it can have a real impact on the course and outcome of the proceedings.

As a result of performing the indictment functions in such way by a prosecutor, the court takes upon itself the functions of a prosecutor and begins to verify the evidence of the defendant's guilt in committing a crime. This can lead to mistrust of the accused to court. In its turn, not to take steps to eliminate the shortcomings in the verification of evidence by the court, because of the prosecutor's passivity, is likely to result in judicial errors.

Thus, it is extremely important for a prosecutor to prepare properly for the trial.

The components of the prosecutor's preparation for the proceedings are as follows:

- applying specific tactical methods of examining the materials of the criminal case;
- studying specific literature, legal acts and judicial practice relating to the particular type of case;
- analyzing the materials of the criminal case;
- anticipating the various situations that may arise in the course of the proceedings and identifying ways to resolve them;
- preparation of an accusatory version;
- planning to support public prosecution.

It is important to know precisely what circumstances need to be analyzed in examining the materials of the criminal case. These are:

- 1) circumstances of a particular criminal case which should be proven;
- 2) evidences that prove the person has committed a crime;
- 3) evidences that are not in favor of the indictment;
- 4) information on the personality of the person who committed the crime;
- 5) legal acts and judicial practice on specific categories of cases.

It is also important to anticipate the circumstances that may arise at the court hearing by the prosecutor at the stage of preparation to the trial. These include the following:

- the probability of changing the testimony by an interrogated person;
- the probability of the absence of some persons in trial
- the probability of bringing new exculpatory facts in the trial, which were not brought during the pretrial investigation, by the defendant;
- the probability of submission of various motions by the participants of the proceedings and others.

The effective participation of the prosecutor in the court proceedings is ensured by the active participation in the inspection of the evidence directly during the court investigation, i.e. the skillful use of the tactics of interrogating the defendant, victims, witnesses (the main method of interrogation; cross-examination method), in-depth analysis of expert

opinions, evidences and other procedural documents and so on.

A substantial, legitimate prosecutor's speech delivered by a prosecutor in court proceedings is another important prerequisite for effective ensuring of prosecutors' participation.

The participation of a prosecutor in a particular court case ends with his speech. Despite whether the prosecutor supports or denies the state prosecution, the prosecutor will assist the court in making a legally motivated court decision.

The public prosecutor's speech should meet certain requirements. First of all, it involves knowing the materials of the criminal case.

According to I.N.Kojevnikov, a prosecutor, who is not well aware of the criminal case files, cannot answer the questions that should be reflected in the verdict, even though he is extremely talented. The prosecutor's speech should provide a deep social, legal and psychological analysis of the facts. The essential quality of speech is determined by its reliable presentation[7].

The prosecutor's participation in the trial is of a public character. The prosecutor with his participation in the court creates an atmosphere of respecting the law, the confidence in the restoration of violated rights and interests, the necessity of combating crime and the intolerance mood to law-breakings in the citizens.

Therefore the prosecutors' involvement in the trial is viewed as an essential service responsibility.

In order to ensure the proper execution of this service by employees of the prosecutor's office, a number of departmental acts have been adopted and some relevant requirements have been reflected in them.

One of them is that it is unacceptable to support a state accusation in a trial concerning crimes committed by juveniles and cases involving serious crimes by young prosecutors.

It should be noted that, in practice, it may be possible to support the accusation by a group of public prosecutors, taking into account the complexity, scale and relevance of some criminal cases.

In some countries, criminal procedural legislation provides a legitimate basis for supporting a public accusation by a number of prosecutors in prosecuting large-scale criminal offenses.

There is no such legal basis in our procedural legislation.

Additionally, the issue and procedure for replacing the prosecutor, in the case when it became known that the prosecutor participating in the trial will not further support the state accusation, is also not defined in our legislation.

Procedural legislation of some other states sets out the procedure for replacing the prosecutor and the procedure for continuing the court proceedings in the event of such circumstance.

In accordance with our criminal procedural law, the court investigation of the case begins with the announcement of the accusation filed by the state prosecutor, which is stated in the conclusion part of the indictment (the article 439 of the Criminal Procedural Code).

Upon the determination the queue of the inspection of the evidences, conducting of the interrogation of the participants, defendant, victim, witnesses of the proceedings, the examination of the evidence, the verification process has been defined.



In some countries, the criminal procedure law establishes a similar process of announcement of accusation by the public prosecutor, but the verification of evidence is to be carried out by the party submitting evidence. That means that firstly the evidence is presented by the prosecution and the evidence provided by the defense should be examined after the prosecution's provided evidence has been verified.

This means that first the evidence is presented by the prosecutor, and the evidence provided by the defense must be verified after examining the evidence provided by the prosecutor.

In our national legislation, conducting the court investigation in such way is set out in the article 25 of the Criminal Procedural Code, which can affect the implementation of the principle of adversarial proceedings in courts. However, this is definitely a point of view, requiring further discussions.

REFERENCES

1. Collection of scientific articles / L.P. Chumakova, Novosibirsk, 2011. 125-133.
2. Alekseev S.N., Lazareva V.A. The procedural status of the prosecutor in the criminal proceedings in the pre-trial investigation // Law and politics-2001.-№8.-68.
3. Пўлатов Б.Х. Прокурор назорати. Дарслик. 2008. 330 б.
4. Смирнов А.В., Калиновский К.Б. Жиноят процесси.ОўЮлари учун дарслик.– М.:КНОРУС, 2008. 113б.
5. Пикалов И.А. Жиноят процесси. Ўқув қўлланмаси, 2005. –М.:Юристъ, 2006. 124б.
6. Пўлатов Б.Х. Прокурор назорати. Дарслик. 2008. 331 б.

7. Кожевников И.Н. Прокурор ваколатлари // Россия юстицияси, 2012. –№ 12.– 22б.
8. Nodirov, D. (2020). Ensuring the supremacy of law in the development of agriculture in Uzbekistan. *European Journal of Molecular & Clinical Medicine*, 7(8), 1414-1418.
9. Nodirov, D. (2020). Issues of improving prosecutorial control over the implementation of legislation in the field of agriculture and food. *European Journal of Molecular & Clinical Medicine*, 7(2), 663-670.
10. Gafurov, R., & Nodirov, D. (2020). Issues of improving the system of the prosecutor's office of the Republic of Uzbekistan based on the tasks of ensuring legality in the field of environmental protection and agriculture. *European Journal of Molecular and Clinical Medicine*, 7(2), 982-989.