

Actual problems of criminal law, criminal procedure and criminalistics

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Actual problems of criminal law, criminal procedure and criminalistics

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Editorial office	
Email:	
Homepage:	

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convicted (acquitted) must take part in appellate proceedings of criminal case. The principles of the European Court of Justice, "no one can be found guilty of not being listened to," must be adhered to in the Republic of Kazakhstan too.

Introduction of appellate procedure will assist to improve judicial work of juvenile cases. Consideration of juvenile case in the appeal procedure will provide more rapid and efficient elimination of mistakes made by the courts of the first instance, and will prevent to come into force illegal, unjustified and unfair sentences. First of all, introduction of the stage of proceedings of juvenile cases to criminal proceedings means the appeal courts of the first instance should be responsible for their judicial activities. Moreover, considering

juvenile case of the first instance, the judges will be more responsible for their work, as any mistakes and violations will inevitably be revealed in the course of appellate review of cases. The activities of the appellate court is one of the most important forms to observe the work of the courts of the first instance of juvenile courts in order to observe legality, validity and fairness of sentences. The results of the appeal cases will testify the quality of the courts of the first instance, the competence of judges of juvenile cases, and their professional level. Introduction of the stage proceedings of juvenile cases will increase the level of activity of courts of the first instance and therefore - further improvement of guarantees of protection of the rights and legitimate interests of juveniles.

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*Zhaksybekov B.
First-year Master's Student
Department of Criminal Law,
Criminal Procedure and Criminalistics
Faculty of Law
Al-Farabi Kazakh National University*

*Bersugurova L.Sh.
Doctor of law
Docent of Department of criminal law,
Criminal procedure and criminalistics
Faculty of law
Al-Farabi Kazakh National University*

The role of the Prosecutor's supervision on stages of the criminal process

Abstract. The article considers the powers of public Prosecutor on supervision of legality of pre-trial proceedings in criminal matters. The article analyzes the modern criminal procedure legislation of the Republic of Kazakhstan after its conceptual transformation. Perform of comparative analysis of powers of the Prosecutor at the pretrial stage and the further development of its procedural functions for the court.

Keywords: attorney, powers of attorney, pre-trial proceedings, registration of notifications about the criminal offense, starting pre-trial investigation, the petition for judicial decision.

The Prosecutor's office is the major law enforcement Agency of the state and occupies a special place among law enforcement agencies because of not been attributed neither to the legislative nor to the Executive nor to the judiciary branches. It is an independent law enforcement Agency which ensures compliance with the law in the state.

Under article №83 of the Constitution of the Republic of Kazakhstan the Prosecutor's office on behalf of the state exercises the highest supervision over exact and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other normative legal acts on the territory of the Republic, over legality of operatively-search activity, inquiry and investigation, administrative and enforcement proceedings, takes measures to identify and remedy any violations of the law, and also challenges laws and other legal acts contradicting the Constitution and laws of the Republic. The Prosecutor's office represents the state's interests in court, and in cases, that manner and within the limits established by law, carries out criminal prosecution[1].

There are different opinions about the role of the Prosecutor in criminal proceedings, one of the versions that the Prosecutor is only a party charged with monitoring compliance with the norms of criminal and criminal procedure legislation during a criminal prosecution, that is why the Prosecutor, as an official in the state, should not have unspecified rights and powers in criminal proceedings. But we believe that the Prosecutor is not only the public Prosecutor, because he still performs another, far more important function – the function of representation of state interests and protection of an indefinite number of interests of individuals and legal entities. Therefore, it is necessary to maximize the ability of the Prosecutor to influence the strengthening of the rule of law in the proceedings.

The first function of the Prosecutor is criminal proceedings, i.e., actions authorized by law persons committed in accordance with the code of criminal procedure aimed to exposing the perpetrators of crime, bringing him to criminal responsibility through the initiation of criminal proceedings against him,

the nomination and the indictment, the gathering of evidence. In the course of criminal prosecution to such persons may be applied measures of procedural coercion, detention and election concerning it a preventive measure.

Modern criminal procedure legislation of the Republic of Kazakhstan establishes that the Prosecutor in the criminal process has a variety of powers. He has a right to register a statement about the criminal offence and refer it to the prosecuting authority, may take over the production and conduct pre-trial investigation independently.

The Prosecutor participates in the initial pre-trial criminal proceedings and in cases of considering complaints of unreasonable refusal in acceptance of messages about the crime and cases of carried out in accordance with article №193 of the criminal procedure code supervision of the lawfulness of pre-trial proceedings [2].

The collection of evidence and a full investigation of the case, lies not on the Prosecutor, it lies on the agency of preliminary investigation and the private prosecution the burden of proving the charges lies on the private Prosecutor.

In accordance with the criminal procedure code the Prosecutor during the preliminary investigation enforces the law and resolves complaints against the actions (inaction) of officials conducting the proceedings.

When the investigation is completed, the Prosecutor in accordance to articles №301 - 305 of the code of criminal procedure checks the materials in the case, and if there are reasons for it betrays the accused to the court, the case is under the jurisdiction directs to the court [2].

Supervisory functions of the Prosecutor in criminal proceedings at the pretrial stage is very wide and necessary. In this stage the Prosecutor, representing the interests of the state, performs a public function of criminal prosecution, which consists in the fact that the crimes were uncovered, and their perpetrators brought to face justice. However, he also carries out the function of supervision over legality of investigation. Prosecutorial supervision over the legality of preliminary

(pre-trial) investigation is a mean of ensuring the admissibility and reliability of evidence.

After the adoption of the case by the court for trial, the Prosecutor's role changes. Now he, in compliance with the criminal procedure code of the Republic of Kazakhstan, performs the function of the public Prosecutor, and all his actions related to the charges that the Prosecutor has the right to support or to modify or even drop the charges.

In court a study of the evidence is contained in the file and additionally presented by the parties.

Here is appropriate to recall the principles of the criminal process. One of them is the implementation of the proceedings on the basis of competitiveness and equality of the parties. Before discussing the question of the rights of the parties there should be determined who in the court are the parties. As it is known, there are two sides: the prosecution and the defense. The defense presented in court proceedings -the accused, his counsel and representatives, civil defendant. The prosecution -is the victim and his representatives, the civil plaintiff. The Prosecutor represents the prosecution side.

Determination by the legislator the place and role of the Prosecutor in the trial stage of the case allows to understand the functions of the Prosecutor in court.

So, the Prosecutor who participates in consideration of the case by the court and the law is recognized as the prosecution, which in accordance with article №23 of the CPC is assigned to prove the prosecution presented against the defendant [2].

At the hearing the Prosecutor voiced the indictment and the process of litigation begins, parties submit evidence on each side and express their opinion on the evidence presented by the other party. Then, after judicial debate, the court retires to the deliberation room, after which you hear a

sentence that includes the punishment that should continue to be in accordance with the laws executed. The court is neutral and only creates the conditions to the parties for implementing their procedural rights.

When the court made decision by the case, the parties, including the Prosecutor, shall be entitled to agree with it, and in case of disagreement - to appeal or contest.

Further understanding of the functions of the Prosecutor associated with the exercise of supervision over legitimacy of judicial acts.

Not accidentally, the criminal procedure law of many States, including former Soviet republics (Kyrgyzstan, Georgia, and not so long ago Russia), have eliminated the term «protest» from the text at all. The Prosecutor's appeal to reconsider the ruling to a higher court is called either a complaint or submission, but not protest, and it has the same legal force as the complaint of any other entity, i.e. is considered with respect a single procedure.

Thus, it should be noted that the role of prosecutors at the stages of the criminal process is great and irreplaceable, and from benign activities of employees of the Prosecutor's office related to the criminal process may depend on the decision of the court regarding the accused, and his fate. In this regard, the Prosecutor is in order to ensure the supremacy of the Constitution and laws of the Republic of Kazakhstan, protection of rights and freedoms of man and citizen, on behalf of the state must follow the main directions and content of activity of bodies of Prosecutor's office in accordance with the law of the Republic of Kazakhstan «About Prosecutor's office» [3]. To operate, the obligation imposed by law, strictly in accordance with law, fairly and honestly, recognizing the seriousness of the situation and the responsibility rests on his shoulders.

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