

Prosecutor's activity model as the most important guideline for reforming the system of criminal proceedings

Nina Sergeevna Manova^{1*} and *Anna Yurievna Churikova*²

¹Saratov State Law Academy, Criminal Procedure Department, Saratov, Russia

²Volga Region Institute of Management – branch of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation, Administrative and Criminal Law Department, Saratov, Russia

Abstract. The problems associated with the development of a normative model of the prosecutor's activity in criminal proceedings and the way in which such a model can affect the direction of reforming the entire criminal process are considered by the authors. Purpose: to analyze the influence of the prosecutor's activity model on the effectiveness of achieving the purpose of criminal proceedings, to propose the directions for reforming the criminal justice system. Methods: The study uses the method of legal modeling, statistical and sociological methods of cognition, as well as the comparative legal method. Results and novelty: The novelty of the study is expressed in the fact that for the first time an attempt was made to reveal the influence of the prosecutor's activity model on the directions of reforming the criminal proceedings. The results of the study include the identification of the main factors that determine the construction of a legal model of the prosecutor's activity in the field of criminal proceedings and the determination of the directions of the possible influence of this model on the reform of the system of criminal proceedings.

Keywords: prosecutor; criminal prosecution; prosecutor's discretionary powers; purpose of the criminal proceedings

1 Introduction

The modern state constantly faces new problems and challenges in all fields of its activity (including criminal proceedings). Therefore, the directions of the possible reform of criminal proceedings are naturally the scientific research subject for scientists-proceduralists. At the same time, the activity of the prosecutor, as a key participant in the criminal proceedings, is also the subject of focus for both domestic and foreign scientists [1-7]. In a number of countries, prosecutors' powers in the field of criminal proceedings are so extensive that, according to scientists, they are responsible for "systemic failures, such as mass incarceration, widespread racial inequality in the justice system, etc." [8].

* Corresponding author: n.manova@mail.ru

It should be noted that foreign scientists consider the role of the prosecutor in criminal proceedings inseparably from his or her status as an employee of the prosecutor's office, from the position of the prosecutor's office in the state mechanism [3, 4, 9]. Russian procedural scientists often ignore the issues of the general organization and activities of the prosecutor's office when studying the role of the prosecutor in criminal proceedings [10-12]. Meanwhile, the development of a strategy for any reform presupposes an integrated approach, which should take into account not only one area of legal regulation (criminal proceedings in this case) but also the entire system of organization and activity of the legal institution under study. Therefore, the study of the influence of the prosecutor's activity model on the reform of the system of criminal proceedings should be carried out in a complex of problems related to the organization of the operation of the prosecutor's office as a whole.

2 Methods

The modeling method was used by the authors as the fundamental one, which made it possible to identify the directions of the influence of the prosecutor's activity on criminal proceedings and to determine the vectors of its reforming. In order to increase the relevance of the research results, a survey of 68 prosecutors and their deputies working in Saratov, the Saratov Region, and Moscow was conducted. The methods of comparative jurisprudence were also used in order to establish the degree of influence of various legal models of the prosecutor's activity on the effectiveness of criminal proceedings.

3 Results

The authors compared the current legislation of Russia, Georgia, Ukraine, France, and the United States of America and identified three main factors that determine the prosecutor's activity model in criminal proceedings:

1. the position of the prosecutor's office in the system of the state mechanism (the prosecutor's office is exclusively or predominantly a criminal prosecution body or an autonomous state body that oversees the observance of laws throughout the country in various fields, and participates in criminal proceedings as well);
2. the type of prosecutorial criminal proceedings (vesting the prosecutor with discretionary powers to order criminal prosecution or rigidly building criminal proceedings based on the principle of publicity);
3. the procedure for the replacement of the position by a prosecutor (appointment or election).

4 Discussion

The Russian procedural scientists have been writing for many years about the inadmissibility of a combination of such mutually exclusive powers as procedural guidance of a preliminary investigation and supervision of this activity in the competence of a prosecutor. After the 2007 reform, the prosecutors were deprived of the powers to direct the preliminary investigation, as well as many powers to independently carry out criminal prosecution in pre-trial proceedings, including the right to initiate criminal cases. However, actually, the prosecutor still has real opportunities to influence both the decision on initiation of a criminal case and the criminal prosecution carried out by the investigating body. The prosecutors interviewed during the preparation of the study unanimously stated that investigators and inquiry officers in many cases agreed with the prosecutor on the initiation of criminal cases, on the scope and qualifications of the charges brought against them.

This situation seems completely justified and inevitable, if one proceeds from the fact that in pre-trial proceedings, the evidence base is prepared for the prosecutor as for the future public prosecutor, which he will use in court, that it is the prosecutor who, upon completion of the investigation, is obliged to make the final decision on the direction of the criminal cases to the court, and then during the trial to support the state prosecution.

According to Part 1 of Art. 8 of the Law “On the Prosecutor's Office of the Russian Federation”, the prosecutor is responsible for coordinating the activities of law enforcement agencies in the fight against crime. Such coordination is virtually impossible without the influence of the prosecutor on the criminal prosecution carried out by the investigative and inquiry bodies.

Thus, since the legislative changes in 2007, the actual model of the prosecutor's activities practically have not undergone any changes, which casts doubt on the thoughtfulness of the reform of the procedural position of the prosecutor in pre-trial proceedings carried out 13 years ago. The legislator has not taken into account such essential components of the real model of the prosecutor's activity as:

- 1) the nature of the prosecutor's relationship with other participants in the proceedings carrying out criminal prosecution (the coordinating role of the prosecutor in this activity);
- 2) the responsibility of the prosecutor for the legality of the pre-trial criminal prosecution, his duty to support the state prosecution in court.

As a result, the prosecutorial leadership of the investigation turned into the “shadow practice” of the prosecutor's office.

Another problem associated with the prosecutor's activity model in the criminal proceedings is as follows: in the Russian criminal procedural doctrine, the opinion has been established that the function of the prosecutor in criminal prosecution is not of a one-sided accusatory nature, but at the same time it is public legal protection and the prosecutor is obliged to contribute to the objective resolution of the criminal case and to drop the charge if it has not been confirmed in court [13, 14]. Actually, by virtue of his role in the Russian criminal process, the prosecutor is “programmed” to support the prosecution.

Relying on the so-called fiduciary theory, foreign scientists propose a new paradigm of the prosecutor's activity, obliging the latter to “show concern and loyalty and give priority to the interests of criminal justice over other interests of public policy” and, “having broad discretionary powers, to participate in interest alignment of the prosecutorial authority with the public interest” [15] and to “bring to the forefront a meaningful provision of procedural fairness” [9].

The matter of the type of criminal prosecution carried out by the prosecutor: public (mandatory) or discretionary, is significant for the development of the prosecutor's activity model in the criminal process and for determining the guidelines for the further development of criminal proceedings. The current Criminal Procedure Code of the Russian Federation proclaimed the protection of individual rights as the goal of criminal proceedings, which is a natural representation of the constitutional paradigm that the highest value of the Russian state is a person, his or her rights and freedoms [16]. If this entails the effectiveness of achieving the appointment of criminal proceedings, the ensuring a fair balance of interests of its participants, this largely depends on the way in which the prosecutor's activities are structured. It is required to change the balance of powers of the prosecutor in the implementation of criminal prosecution in the direction of expanding discretionary principles. This is not about absolute, unlimited discretion at the disposal of the prosecutor in the criminal prosecution. However, the prosecutor may be given the opportunity, based on considerations of expediency, not to initiate criminal prosecution or to terminate it in certain categories of cases, in which there is more formalism than a desire to ensure the inevitability of criminal liability.

In countries where the prosecutors are vested with discretionary powers to order criminal prosecutions, they have the ability to significantly influence the criminal policy of the state [17-19], influencing the effectiveness of achieving the purpose of criminal proceedings. Granting the prosecutor discretionary powers to order criminal prosecution will also unload the country's judicial system, free the courts from considering a huge number of criminal cases on crimes of small and medium gravity (their percentage in the total number of crimes in Russia is consistently above 75% [20]).

In the Russian Federation, the exercise of supervisory activities by prosecutors outside the sphere of criminal proceedings takes the main place in the general competence of the prosecution authorities and has a significant impact on the efficiency of the work and the level of the workload of the prosecutor in criminal proceedings. This is confirmed by the results of the questionnaire survey of prosecutors and statistical data. Consequently, for 6 months of 2020 in the Saratov Region (where there are 37 district and inter-district prosecutor's offices, in each of which a prosecutor and his/her deputy, that is, 74 people, work in the field of criminal proceedings with the right to sign), 15,200 crimes were registered [21]. The prosecutor must check the decision to initiate a criminal case or to refuse to do so for each of them. In addition, the prosecutor works with citizens' complaints about the actions and inaction of the bodies of inquiry and investigation, checks suspended and terminated criminal cases, participates in court hearings when choosing preventive measures, and approves the final charge. These powers, exercised by the prosecutor, clearly indicate that the burden on such a small number of employees involved in criminal proceedings is clearly excessive.

5 Conclusion

Consequently, concerning the prosecutor's activity model and its impact on the reform of the system of criminal proceedings, the following conclusions can be drawn:

1. The powers of the prosecutor and the schemes of the prosecutor's relationship with the bodies of inquiry and investigation, stipulated by the current Code of Criminal Procedure of the Russian Federation, are not optimal initially, and they often acquire a kind of interpretation in law enforcement practice. Therefore, it is required to legislatively consolidate the actually existing provision that the prosecutor organizes the criminal prosecution of the suspect and the accused, bringing him or her to justice, ensuring that the investigation authorities use exclusively legal means and methods.

2. Vesting the prosecutor with discretionary powers to carry out criminal prosecution, to use alternatives to criminal prosecution, granting him or her the right to decide on the expediency of criminal prosecution in certain categories of criminal cases (on juvenile crimes, crimes committed in the field of entrepreneurial activity, and some others) is a promising direction of criminal proceedings reforming, able to increase its efficiency, as well as to ensure a fair balance of interests of its participants.

3. Due to the fact that the Russian prosecutor's office is not only a body carrying out criminal prosecution, and in the first instance, a body, the main function of which is to supervise the observance of laws in the territory of the country, the activities of a prosecutor in the field of criminal proceedings often lack adequate staffing and resourcing.

The reported study was funded by RFBR, project number 20-011-00887 "Legal model of Prosecutor's activity as a basis of strategy for reform of the criminal procedure".

References

1. G. Michellini, M. Cadelli, Le juge d'instruction est inutile lorsque le parquet est indépendant: l'exemple italien, in *La figure du juge d'instruction: réformer ou supprimer?* 37-55 (Anthémis, Limal, 2017)
2. B. Kelker, *Zeitschrift für die gesamte Strafrechtswissenschaft*, **118(2)**, 389-426 (2006). <https://doi.org/10.1515/ZSTW.2006.013>
3. F. Bittmann, *Die Verständigung und die Rolle der Staatsanwaltschaft*, in A. Sinn, C. Schöbbling (eds.), *Praxishandbuch zur Verständigung im Strafverfahren*, 19-126 (Springer, Berlin, Heidelberg, 2017). https://doi.org/10.1007/978-3-662-48976-5_2
4. M. Heger, *Staatsanwaltschaft*, in R. Voigt (ed.), *Handbuch Staat*, 873-883 (Springer VS, Wiesbaden, 2018). https://doi.org/10.1007/978-3-658-20744-1_79
5. R. Richardson, B.L. Kutateladze, *J. Res. Crime Delinq.* **58(1)**, 41-73 (2021). <https://doi.org/10.1177/0022427820940739>
6. P. Ricci, P. Pavone, *Int. J. Public Sect. Manag.* **33(6/7)**, 713-729 (2020). <https://doi.org/10.1108/IJPSM-04-2020-0102>
7. N.V. Demleitner, *Fed. Sentencing Report.* **32(4)**, 187-194 (2020). <https://doi.org/10.1525/fsr.2020.32.4.187>
8. E. Gonzalez, *Crim. Justice* **34(3)**, 9-14 (2019). Accessed on: December 20, 2020. [Online]. Available: <https://search.proquest.com/openview/eef0a26f19f99d58b0681ae82223873b/1?pq-origsite=gscholar&cbl=35991>
9. K. Levine, Kay, *Hastings J. Crime & Punish.* **169** (2020), Emory Legal Studies Research Paper 20-9. <http://dx.doi.org/10.2139/ssrn.3601928>
10. G.N. Korolev, *Prokurorskoe ugovolnoe presledovanie v rossiiskom ugovolnom protsesse* [Prosecutor's office criminal prosecution in the Russian criminal procedure] (Yurlitinform, Moscow, 2006)
11. V.F. Kryukov, *Prokuror v ugovolnom sudoproizvodstve Rossii: (istoriya i sovremennost)* [Prosecutor in criminal proceedings in Russia: (history and modernity)] (Kursk, 2012)
12. A.A. Tushev, *Prokuror v ugovolnom protsesse Rossiiskoi Federatsii* [Prosecutor in the criminal process of the Russian Federation] (Yuridicheskii tsentr Press, Saint Petersburg, 2005)
13. V.S. Balakshin, *Bulletin of the Ural Law Institute of the Ministry of Internal Affairs of Russia* **1**, 5-9 (2019)
14. S.M. Darovskikh, *Bulletin of the South Ural State University. Series: Law*, **5**, 124-127 (2006)
15. R. Roiphe, B.A. Green, *Am. Univ. Law Rev.* **69(3)** (2020). Accessed on: March 16, 2021. [Online]. Available: <http://www.aulawreview.org/a-fiduciary-theory-of-prosecution/>
16. N.S. Manova, *Obespechenie prav uchastnikov ugovolnogo sudoproizvodstva: dostoinstva i problemy deistvuyushchego zakonodatelstva* [Ensuring the rights of participants in criminal proceedings: dignity and problems of current legislation], in *Materialy mezhdunarodnoi nauchno-prakticheskoi konferentsii "Prava cheloveka – vysshee dostizhenie sovremennoi tsivilizatsii"* 27 noyabrya 2015 g., Krymskii yuridicheskii institut (filial) Akademii Generalnoi prokuratury RF [Materials of the International Scientific and Practical Conference "Human rights – the highest

- achievement of modern civilization”, November 27, 2015, Crimean Law Institute (branch) of the Academy of the Prosecutor General's Office of the Russian Federation (IT “ARIAL”, Simferopol, 2015)
17. A. Taleb, T. Ahlstrand, *Revue internationale de droit penal*, **82(3-4)**, 523-540 (2011). <https://doi.org/10.3917/ridp.823.0523>.
 18. A. Arora, *Too tough on crime? The impact of prosecutor politics on incarceration* (American Economic Association, 2018)
 19. A. Ouss, M.T. Stevenson, *Bail, jail, and pretrial misconduct: The influence of prosecutors* (2020). <http://dx.doi.org/10.2139/ssrn.3335138>
 20. The state of crime in Russia in January-June 2020, January-December 2019, January-December 2018, Official website of the Prosecutor General's Office of the Russian Federation. Accessed on: April 13, 2021. [Online]. Available: https://genproc.gov.ru/upload/iblock/4fb/sbornik_6_2020.pdf; https://genproc.gov.ru/upload/iblock/034/sbornik_12_2019.pdf
 21. Analysis of the state of crime in the Saratov Region for the 1st half of 2020, Official website of the Saratov Region Prosecutor's Office, Accessed on: April 13, 2021. [Online]. Available: https://epp.genproc.gov.ru/web/proc_64/mass-media/news?item=51758495