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# КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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## **Public prosecuting attorney supervision in the system of State Control of the Republic of Kazakhstan**

This article based on the analysis of the constitutional and legal foundations of the status of the prosecutor's office of the Republic of Kazakhstan, the development of prosecutor's supervision in the conditions of the modernization of the Constitution, its problem aspects were revealed in the process of implementing constitutional requirements, and the necessity of its constitutionalization is substantiated. Specificity of prosecutorial supervision gives grounds to characterize this state-legal institution as going beyond the scope of control activity. Prosecutor's supervision is characterized as the main type of higher state control over the implementation of laws by participants in legal relations, extends to representative bodies of power, to all executive authorities, to courts (in a specific form). The article actualizes the problem of necessity to separate in a separate section of the Constitution of the Republic of Kazakhstan the norms regulating the legal status of the prosecutor's office. It is proposed to provide in the constitutional legislation the right to address the Attorney General of the Republic of Kazakhstan to the Constitutional Council on matters of constitutionality of laws and other normative legal acts, to expand the circle of subjects of appeal to the body of constitutional control.

*Keywords:* Office of Public Prosecutor, Republic of Kazakhstan, public prosecutor's supervision, state control, Constitution, specificity, state-legal institute, problem, constitutional legislation.

State Control is represented by organizational-legal form of State authority realization which provides checking of law fulfillment and other normative legal actions by State authorities due to barring of deviation from state established rules and standards. Independent, specific structural element of integrated State Control system is public prosecuting attorney supervision. Constitutional-legal bases analysis of the Republic of Kazakhstan public prosecutor's office status, prosecuting attorney supervision development on the terms of actions and realization of the Republic of Kazakhstan Constitution enables to reveal problem aspects available in the process of constitutional request realization, substantiate measures to improvement and constitutionalization.

There are many different positions defining place and predestination of attorney supervision authority in the juridical literature: public prosecutor's office proposed to be inserted in legislative, executive and even in judicial power branch; assign it in independent State authority brunch; refer to presidential control as one of its components. However, there is right opinion that public prosecutor's office refers neither to the legislative, executive nor judicial power branches, meanwhile it takes important part in the state mechanism and corresponds itself an important and effective element of checks and balances system. Activity of public prosecutor's office as an independent direction of state power realization is inferred in creation on the state territory the state legality regime, which would allow providing the leadership and observance of Constitution, law execution and forming constructive mechanism of citizen rights and liberty security, which are protected by law pursuits of the society and the state. In the process of prosecuting attorney supervision fulfillment are realized the tasks of legal space security unity in the state by means of attaining uniformity and accuracy in

the execution of active legislation; assured observance of human and citizen rights and freedoms on the whole territory of the country [1; 17].

Among the specific features of public prosecutor's office as control-supervised authority it should be mentioned that its direction only to checking of law executing, the exclusion of interference into the operational-economic activity supervised objects, while other branches of state control could estimate the activity of supervised structures not only from the position of legality, but also of effectiveness and suitability [2; 25], and also include execution opportunity of administrative activities, which are expressed by the abolition of the normative-legal act, responsibilities assignment of any action implementation and etc.

Office of public prosecutor of the Republic of Kazakhstan according to article standards 83 of the Republic of Kazakhstan Constitution in the name of the state implements its activity in following directions: supreme power of supervision to 1) accurate and uniform application of laws, orders of the President of the Republic of Kazakhstan and other normative legal actions on the Republic territory, 2) operative crime detection activities, inquiry and investigation legality, 3) administrative, executive process, 4) takes measures to reveal and eliminate any illegitimacy, 5) appeal against the laws and other legal acts contradicted the Constitution and Republic laws; 6) represents the state's interests in court and also; 7) in cases using procedures and within the limits established by law, is responsible for criminal prosecution; 8) forms of the state legal statistics with a view to ensuring the integrity, objectivity and the adequacy of statistical indicators, conducts special surveys, carries out the supervision over the implementation of laws in the area of legal statistics and special accounts.

The specificity of the supervisory authority gives a basis to identify the state-legal institution as outside the scope of the audit activities. Moreover, the feature of public prosecutor's supervision lies in the fact that prosecutor's office on behalf of the state shall exercise supervision over the legality in the activities of other controlling bodies and empowered to contribute to the prosecution of persons responsible for violation of the laws. By maintaining a close relationship with the regulatory authorities the prosecutor's office can not shirk its responsibilities for oversight of enforcement of their laws. In this sense, public prosecutor's supervision acts in the role of control over control, carried out by supervisory bodies. As a form of Supreme state control of the prosecutor's supervision is a non-departmental and universal (except in very rare cases, stipulated by the law), which, as it has priority over all other control including the supervisory authority bodies [3; 176].

In its political and legal nature of the public prosecutor's supervision is the main view of the Supreme state control over the execution of laws of the participants of legal relations, applies to representative bodies of power, all the organs of Executive power of the courts (in a specific form). It is logical that departmental, inline control is complemented by the highest state control over the execution of laws, and subject of the monitoring is the public prosecutor's office, which is designed according to the Constitution to exercise the highest supervision over exact and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the Republic. The literature notes that the prosecutor's supervision in one form or another is carried out at different levels of any of the system of state bodies [4; 6].

The office of public prosecutor works closely with all the government structures and is virtually element of the system of checks and balances, balance branches of power [5; 56]. The supervisory function of the prosecuting office in respect of the executive power is manifested in the fact that the it exercises supervision over the execution of the Constitution of the Republic, the current laws of the ministries, committees, agencies, councils, thus are in this aspect, the factor of deterrence of executive power. However, the prosecuting attorney supervision bodies, separated structurally from the system of management bodies, administrative authorities do not have, and does not, therefore, have the right to use the resource of the administrative legal means of the supervisory authority influence on the activity of the controlled object which are authorized to use bodies of administrative supervision.

Prosecuting attorney is an important element of the mechanism for responding to violations of the laws by the courts [6; 16]. Considering the problem of the correlation of judicial review and public prosecuting attorney supervision, it should be made the difference in accordance to the forms of activity (judicial control is exercised only in special procedural forms, and the prosecuting supervision - both in the administrative and in the procedural forms) and on the subject of activities (judicial control is exercised with a view to consideration and resolution of their cases, the verification of the legality, validity and equity made by judicial decisions, observance of the constitutional rights, freedoms and legitimate interests of citizens through the implementation of justice).

Unlike other types of state control the prosecuting attorney supervision was at all stages of the historical development of political sciences, now it is the appropriate body adapted to the conditions of state-building. Therefore it is quite reasonable opinion of those researchers who consider that it is necessary to allocate the norms, regulating the legal status of organs of the prosecutor's office, into a separate section of the Constitution. We believe that it would be advisable also to foresee in a constitutional provision the right to appeal the General Prosecutor of the Republic of Kazakhstan to the Constitutional Council on issues of the constitutionality of laws and other normative-legal acts, expanding the circle of the subjects of circulation in the body of constitutional control.

Public prosecuting attorney supervision in comparison with other types of supervision and control is characterized by the following features: it is representative, for performed on behalf of and on the instructions of higher bodies of state authority; on purpose, it is strictly specialized, which is expressed only in the supervision over the observance of the rule of law, as prosecutors do not manage, but only oversee the implementation of laws; the supervision has broad scope because it applies to all regulated by the law social relations, there is a certain limitation of the powers of public prosecutors in performing supervisory functions. Revealing violations of the law, they often are not authorized to eliminate them independently, and therefore have to turn to competent bodies with the request to take appropriate measures. Only in the form of a special exception, when supervising the execution of laws by bodies of inquiry and preliminary investigation, prosecutors have the right to cancel the illegal resolution of the investigator or inspector of the investigation [7; 73].

There is an incorporated function of control over legality of state administrative acts in public prosecuting attorney supervision, which are obligatory for executing. Supervising the performance over the laws and the congruence with the law of those acts, which are issued by state authorities and control authorities, representative (legislative) authorities, the prosecutor authorities do not substitute them and do not interfere in their business-operative activities. Aside from main supervision functions, public prosecutor fulfills the following functions: law explaining; coordination of law enforcement agencies against crime; investigation against the police officers and judges; legal monitoring; international collaboration [8; 145].

The analysis of theoretical resources and practical material shows that control over law compliance is fruitful with the effective interaction between public prosecutor authorities and other enforcement state authorities. As it seems, for provisioning interaction between public prosecutor authorities and control authorities, the principal original positions are consistent with that for each of subassembly. There are tasks which are coincident with the task of contiguous system. The effective functioning of state control under conditions of constitutional principles of separating authorities, mainly depend on the degree of legislative regulation of the interacting control mechanisms; ought to remark underdevelopment of these mechanisms legal base.

Public prosecutor activity, as an independent direction of state authorities instantiation, consists in creation of legitimacy regime on the state's territory, which allows to provide adherence and compliance of the Constitution, performance of laws, and also to form constructive mechanism of protection of human and citizen's rights and freedom, protected by law the interests of society and the state [9; 199]. During the process of public prosecutors supervision implementation tasks of providing the unity of legal space in state through achievement of uniformity and accuracy performance of current legislation; rights and freedom of human and citizens guaranteed on the whole state territory [10].

Among public prosecutor's specific features as enforcement authority it should be marked its directivity only towards to verify compliance with the rule of law, with an exception of interference into business-operative activities of objects under surveillance. When the other types of state control may evaluate activities of controlled structures not only from the law position, but also an effectiveness and appropriateness. And also include in itself the possibility of implementation of administrative activities expressed in the cancellation of a regulatory act, imposition of the duties of an action and etc.

In the system of authority separation the public prosecutor's authorities are legal means of the President of the Republic of Kazakhstan in arsenal of a mechanism to ensure the functions of the Constitution guarantor, legality and respect for rights and freedom of human and citizen, which basically mean implementation of head of state's control for legality of state's authorities' activities. According to p. 4 article 44 of the Constitution of the Republic of Kazakhstan, President appoints and removes the post of Kazakhstan Republic General Prosecuting Attorney with the agreement of the Senate. According to article 1 of the Law of Republic of Kazakhstan from the 30-st of the June 2017 № 81-VI «About Prosecutor's Office», The Prosecutor's Office of the Republic of Kazakhstan - the state body responsible to the President of the Republic of Kazakhstan exercising supreme supervision over observance of the law in the territory of the Republic of Ka-

zakhstan, represents the interests of the state in court and carries out criminal prosecution on behalf of the state. And also over legality of operative-searching activities, inquest and investigation of administrative and executive proceedings. It is clear from the meaning of the legislation of Prosecutor's Office, that it is not included into any of authorities branches and it is presidential structure. As it has remarked in the judicial literature, public prosecutor's office is a part of the presidential authority, and it is basic element of checks and counterbalance mechanism [11; 63]. The specificity of the supervisory authority provides a basis to characterize this state as a legal institution beyond the control of activity. Moreover, the feature of public prosecuting supervision is that the prosecutor's office on behalf of the State shall supervise the legality of the activities of other regulatory authorities and is authorized to prosecute those guilty of violating the law. Taking into consideration the nature of the organizational and legal status of the regulatory authorities, the prosecution is building such relationships, which would provide mutual exchange of information on detecting and correcting violations, raising the question of carrying out activities aimed at identifying and addressing violations of the law [12; 148].

The public prosecutor's office interacts closely with all authorities and is almost part of the system of checks and counterbalances, balance, balancing branches.

Among the forms of interaction between prosecutors and the legislative (representative) authorities, it can be marked a range of collaborative activities: definition of priorities in the sphere of fight against crime; preparation activities for projects of normative acts about questions with fight against crime, habituation with projects of normative acts, accepted by authorities; consistent development, acceptance and performance of complex programs about fights against crime and etc. The General Prosecutor's Office, which is not endowed directly into the legislative initiative, but is not lacking possibility to initiate the introduction of the agenda of the parliamentary committee hearings of the Chambers of Parliament of topical issues of legal regulations of social relations, which can then be put to the meeting and addressed the deputies of the Chambers of Parliament in legislative work. As for the Parliament, it in turns, sends the legislation to the General Attorney Office for legal inspection, that the prosecuting experts, having studied the draft, have given the certificate of compliance of the draft Constitution, and the ratio of its compatibility with the existing legislation with the norms and principles of international law and establishing the quality of the legislation in terms of the rules of legislative technique. Given conclusion is that Members of Parliament appeal to the prosecuting authorities with requests about law enforcement, state law and crime, etc.

The participation of prosecuting authorities in the law-making, thus manifests itself in various forms:

- participation in preparation of legislative acts projects;
- conducting of legal inspection of rights and legislative acts projects;
- provision of consultations to the Members of Parliament, and project developers in the process of law-making on legal questions;
- submitting proposals to the legislature authorities to abolish the existing acts or making changes in them.

It is important to bear in mind that feasibility's position of detection of gaps and mistakes in the current legislative acts, give prosecutors reason to use not only the right but the duty to make proposals to abolish, change or accept new laws and other regulations: actions of prosecutors focused on performing tasks, regulated by law on the prosecution - to strengthen the rule of law, protecting human and citizens rights. The specificity of prosecutor's participation takes the form of law-making agreement, a joint publication with other state authorities regulations as a method to monitor the compliance of the legal requirements of the law validated instrument [13; 105].

The public prosecution supervision function is manifested in that the prosecutor's authorities supervise the execution of the Constitution, existing laws by ministries, committees, agencies, mayors - are thus in this aspect of executive power as a deterrent. As for the executive power authorities, vested with control and supervisory powers, which have non-departmental in nature, they are pursuing the task of ensuring the rule of law in the administration.

Prosecutorial supervision is also an important element of the mechanism to respond violations of the law courts. Considering the problem of the relation between judicial control and the public prosecuting supervision, it should be identified two distinct state-legal institutions of forms of activity (judicial control is executed only in special procedural forms, and the public prosecuting supervision - in both administrative and procedural forms) and on the subject (judicial control is performed to review and resolute the cases, verification of the legality, validity and fairness of court decisions, constitutional rights, freedoms and lawful interests of citizens through the implementation of justice). Judicial control is a statutory hierarchy is carried

out directly in the judicial system, it is strictly limited in the object of control, all control functions are carried out under consideration of the particular case.

Thus, the above is confirmed by the available scientific literature in the point of view, that «the main task of the prosecutors is that in no way to substitute judicial authorities, executive agencies, regulatory authorities, whose role in this sphere is dominant, and effective use of special powers of the prosecutor for the rapid suppression of violations of human rights and freedoms» [14; 4].

Strengthening the public prosecuting supervision, constitutional recognition of the status of the prosecution authorities as an important element of the structure of government in general, and state authorities in particular, has great importance for strengthening the national integrity, improvement of the efficiency of the state control.

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## Қазақстан Республикасында мемлекеттік бақылау жүйесіндегі прокурорлық қадағалау

Мақала авторы Қазақстан Республикасы прокуратурасының мәртебесінің негіздерін конституциялық-құқықтық талдау арқылы Конституцияны жаңғырту жағдайында прокурорлық қадағалаудың даму негізінде конституциялық талаптарды жүзеге асыру барысында оның күрделі аспектілерін айқындады, оны конституционализациялау қажеттігін дәлелдеді. Прокурорлық қадағалаудың ерекшелігі – аталмыш мемлекеттік-құқықтық институтты бақылау қызметі шегінен тыс шығатын институт ретінде қабылдауға негіз береді. Прокурорлық қадағалау құқықтық қатынастарға қатысушылардың заңды орындауды қадағалайтын жоғарғы мемлекеттік бақылаудың негізгі түрі ретінде сипатталады, үкіметтің өкілдік органдарына, атқарушы билік барлық органдарына, соттарға (ерекше түрде) таралады. Мақалада прокуратура органдары құқықтық мәртебесін реттейтін Қазақстан Республикасы Конституциясының бөлімін жеке шығару қажеттігі туралы мәселе жандандырылды. Конституциялық бақылау органына жолданушы субъектілердің шеңберін кеңітіп, заңдардың және басқа да нормативтік

құқықтық актілердің конституцияға сәйкестігі жөніндегі мәселе бойынша Конституциялық кеңеске Қазақстан Республикасы Бас прокурорының жолдану құқығын конституциялық заңнамада қарастыру ұсынылды.

*Кілт сөздер:* прокуратура, Қазақстан Республикасы, прокурорлық қадағалау, мемлекеттік бақылау, Конституция, ерекшеліктер, мемлекеттік құқықтық институт, конституциялық заңнама.

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## Прокурорский надзор в системе государственного контроля Республики Казахстан

В статье на основе анализа конституционно-правовых основ статуса прокуратуры Республики Казахстан, развития прокурорского надзора в условиях модернизации Конституции выявлены имеющиеся в процессе реализации конституционных требований его проблемные аспекты, обоснована необходимость его конституционализации. Специфика прокурорского надзора дает основание характеризовать данный государственно-правовой институт как выходящий за рамки контрольной деятельности. Прокурорский надзор охарактеризован как основной вид высшего государственного контроля за исполнением законов участниками правовых отношений, распространяется на представительные органы власти, на все органы исполнительной власти, на суды (в специфической форме). В статье актуализируется проблема необходимости выделения в отдельный раздел Конституции Республики Казахстан норм, регламентирующих правовой статус органов прокуратуры. Предлагается предусмотреть в конституционном законодательстве право на обращение Генерального прокурора Республики Казахстан в Конституционный Совет по вопросам конституционности законов и иных нормативно-правовых актов, расширив тем самым круг субъектов обращения в орган конституционного контроля.

*Ключевые слова:* прокуратура, Республика Казахстан, прокурорский надзор, государственный контроль, Конституция, специфика, государственно-правовой институт, проблема, конституционное законодательство.

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