

RESEARCH ARTICLE

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PROSPECTS OF CRIMINAL PROCEDURAL REGULATION OF A CRIMINALIST PROSECUTOR'S ACTIVITY

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Abstract

This article analyzes issues related to criminal-procedural activities of prosecutor – criminalists, in particular, the views of foreign and national scientists on being the prosecutor-criminalist as the subject of proof and a participant in investigative actions, the experience of procedural activity regulation in the legislation of national and foreign states, as well as the proposals and recommendations for the implementation of this institute to the procedural legislation.

KEYWORDS: Subject of proof, prosecutor-criminalist, special knowledge, heavy and complex investigative actions, collection of evidence, examination, assessment, quality of investigation.

INTRODUCTION

At present the causes that lead crimes not to be exposed are observed by the fact that the investigative activities are not organized competently and correctly, that young investigators do not have sufficient experience in the investigative activities, the powers, duties and functions of the responsible person who can teach the secrets of the investigation are not clearly defined, in particular, the clear rights and obligations of criminal prosecutors, who are entrusted with the task of ensuring the quality investigation of criminal cases related to the investigation of the prosecutor's office, are not defined in the criminal-procedural legislation.

When analyzing some statistics on undisclosed crimes, 104,096 crimes were taken into account in our country during 12 months of 2023, with 290

crimes per 100,000 inhabitants. (71% or 74,202 of the crimes taken into account were committed precisely in 12 months of 2023) 28% (29,145) of the committed crimes was serious and 4% (4,318) was extreme [1].

The number of undisclosed crimes on a Republican scale is 21.5 percent or 12.774, of which 5.624 are serious according to the severity, 474 counts of aggravated assault.

When undisclosed crimes are analyzed according to the types, 10 of them constitute murder, 20 constitute serious bodily harm, 8 constitute violence, 5,792 burglary, 10 robbery, 5 brigandage, 3,185 fraud, 18 extortion, 4 fatal traffic accidents, 35 hooliganism, 6 hijacking crimes.

450 missing people (71.3 percent) were found as a result of the rapid-search and investigative actions

carried out.

The search collection volumes, which were kept against 44 of the missing (7%), were expired, as well as being terminated based on the court's decision to find the person dead.

When analyzing statistics on the activity of detecting missing individuals in 2019-2023, in 2019, 335 of the 1.129 search published individuals (29.70%), in 2020, 436 of the 966 search published individuals (45.10 %), 434 of the 776 search published people in 2021 (55.90%), and 656 search published individuals in 2022 386 (58.80%), and 450 (71.31%) of the 631 search published individuals were found in 2023.

Additionally, 99 (15 of them were listed in 2023) of the unrecognized corpses, 14 (14.1 percent) were identified, while the collected volumes kept against 18 corpses (18.1 percent) were terminated due to expiration [1].

From the above statistics, we believe that if the prosecutor-criminalists for unrepentant crimes had directly been involved in the pre-investigation examination, inquiry, preliminary investigation, its procedural powers regarding the correct organization of investigative activities would have been strengthened by legislation, such figures would be relatively low, and the quality of the investigation would be subject to change for the better.

There is controversy among most scholars over the prosecutorial-criminalist procedural and non-procedural functional powers.

DISCUSSION

On the occasion of the 43rd anniversary of the establishment of the Institute of Procurators-criminalists, the General Prosecutor's Office of the Russian Federation at the "Institute for advanced training of executive personnel" held in 1997 with the participation of Procurators-criminalists, Deputy Prosecutor General of the Russian Federation M. Kayshev mentioned that the prosecutor-criminalists, who had been active since 1954, should have had independent procedural status and procedural powers [2. P.51].

Uzbek scientist I.Astanov proposed that the

Criminal-procedural Code of the Republic of Uzbekistan should include norms that provide for the establishment of the legal status, the clear regulation of procedural rights and obligations of the prosecutor-criminalists [3].

R.Abudllaev, on the other hand, suggested that the "investigator-criminalist" Institute should be included in the current CPC, because of the need to inspect the scene of the incident, carry out other types of Investigation and procedural actions. At the same time, the Criminal-procedural Code noted that the rights and obligations of the investigator-criminalist should also be determined separately [4. P.19].

Furthermore, A. Imamnazarov's [5. P.10] reviews on improving the investigative action, L. Barakaev's [6. P.9] viewpoints in his research work on the criminalistic and procedural aspects of inspection as a way of collecting evidence, mentioned that a prosecutor-criminalist should have a separate procedural position as the head of a structured operational-investigative group, when investigating serious and extreme crimes, as a result of the research work, the position of senior prosecutor-criminalist was introduced in the General prosecutor's office to carry out this activity.

Russian legal scholar A.V.Gorovasky believes that the concept of the development of the Institute of Procurator-criminalists is expressed as follows:

The prosecutor-criminalist is an analyst who correctly directs the opening and investigation of an extremely serious crime in a difficult situation, a specialist who is able to organize the effective use of the investigative bodies, experts and public opportunities to identify, expose crimes and prevent a crime in a particular case, a highly qualified executive who knows how to carry out preliminary research for, embodied as an organizer in achieving truth and justice in the opening and investigation of a particular crime [7].

A.V.Gorovasky promotes the increase in the status of a prosecutor-criminalist, the granting of criminal-procedural powers to him in order to implement the above concept.

Russian criminalist scholar A.Gurin [8] identifies

the procurator-criminalist as a participant in a criminal process that helps analytically and methodically in the investigation of serious and extreme crimes, rather than a supervising prosecutor in the procedural stage. The scientist also distinguishes the different characteristics of the prosecutor-criminalist from the prosecutor overseeing the inquiry and investigation by the fact that he came to the scene of the incident, actively participated in the collection and examination of evidence.

The scientist recognizes that the prosecutor-criminalist is not a classic-looking supervisory prosecutor, but a participant in the investigation, he can only participate in investigative actions based on the assignment of a high-ranking prosecutor or his deputy, it is impossible to conduct investigative actions in an independent criminal case on his own initiative.

Russian scientists A.I.Dworkin, R.M.Safin, Yu.Lekanov, A.Korotkovs stated that the prosecutor-criminalist is not among those subjects who have the authority to conduct independent investigative actions [9. P.51].

During the activities of prosecutor criminalists in the Russian Federation, their procedural activities were controlled on the regulation "On prosecutor-criminalists" of General prosecutor in the Russian Federation in January 23, 1997. According to Paragraph 1 of the regulation, in the criminalistic sections of the prosecutor's Office of the Russian Federation, prosecutor-criminalists are provided for a direct participation in conducting the investigation in every possible way, fully and objectively, investigating and exposing serious and extremely serious criminal cases under investigation by the prosecutor's office.

Russian scientist A. Gurin expressed the opinion that the norms governing the participation of the prosecutor-criminalist in investigative actions should be strengthened in legislation, arguing that his authority in participating in the investigation should be singled out separately.

It is known that in Article 1 of the CPC of the Republic of Uzbekistan, on the territory of the Republic of Uzbekistan, the procedure for

conducting criminal proceedings is regulated by the Criminal-procedural Code.

The established procedure for conducting criminal cases in the criminal code is mandatory for all courts, prosecutors, investigative, investigative bodies, lawyers, as well as citizens [10].

Therefore, the Criminal-procedural Code records the only procedures for the conduct of criminal cases, only the requirements established in this code are equally mandatory for all.

The analysis carried out shows that the law of the prosecutor's office does not specifically regulate the legal status of the prosecutor-criminalist in the Criminal Procedure Code of the Republic of Uzbekistan, the powers associated with his participation in the investigation of criminal cases.

In our opinion, the legal status of the prosecutor-criminalist in the current CPC, the fact that his procedural powers are not established, creates a number of problems regarding the participation of the prosecutor-criminalist in the pre-investigation examination, inquiry, preliminary investigation and limits his participation.

A prosecutor-criminalist may participate simultaneously as both an expert and the head of an investigative team when he or she is in the area of a serious and acute crime incident.

But, as an official who can participate in investigative actions, he cannot participate personally.

If a prosecutor-criminalist participates as a specialist, he takes part in inspecting the scene of the incident, signing a statement and drawing a scheme of the scene of the incident, strictly observing the requirements of the CPC for the identification, retrieval and recording of evidence. Capturing the view of the incident collects evidence related to the case by using the necessary scientific and technical means.

The prosecutor-criminalist can also take part in some procedural actions and perform it directly on his own, in order to conduct preliminary research on the traces left from the person who committed the crime in the existing evidence at the place of the incident.

In our opinion, it is difficult to say that the arguments that the prosecutor-criminalist collected with the result of the implementation of such procedural actions are fully consistent with the requirements of Article 95 of the CPC.

Because, when evaluating each argument, job involvement, acceptability and reliability are evaluated in terms of adequacy to solve the case.

According to Part 3 of Article 95 of the CPC of the Republic of Uzbekistan, the evidence is collected in accordance with the established procedure and it is noted that they will be recognized as acceptable if they comply with the conditions provided for in articles 90, 92-94 of the Code [10].

RESULTS

The procedural status of the prosecutor-criminalist is defined in the General Prosecutor's Order. However, his powers are not legally regulated in the Criminal-procedural Code. Therefore, according to Article 951 paragraph 4 of the CPC of the Republic of Uzbekistan the procedural actions performed in practice by the prosecutor-criminalist will cause the recognition of the procedural action in a criminal case as evidence obtained by a person who does not have the right to carry out this criminal proceedings.

Consequently, statements made during the judicial stage as a result of the participation of the prosecutor-criminalist in the procedural actions may lead to the fact that the evidence obtained is subsequently found to be inappropriate evidence.

The participation of the prosecutor-criminalist in the investigation of a criminal case leads to a controversial question over the legality.

It is proposed to include norms of the following content in the legislation to ensure that in order to ensure that these problematic issues are resolved, first of all, the inclusion of the legal status of the prosecutor-criminalist in the CPC, based on the fact that he is a participant in the proof process, it is necessary to clearly define the scope of the procedural and other actions that he performs their evidence, collected as a result of investigative actions carried out personally by the prosecutor-criminalist, will be recognized by the court as

acceptable evidence in the future.

In our opinion, the rules on the activities of prosecutor-criminalists should also be clearly defined in the law of the Republic of Uzbekistan "On the prosecutor's office" and in the Criminal-procedural Code of the Republic of Uzbekistan.

Chapter 1 of the research work provided an author's definition for a prosecutor-criminalist. Together with this, we consider that the procedural status of the prosecutor-criminalist should also be determined separately in the law.

In the future, it is proposed to fill in Part 7 of Article 56 of the law of the Republic of Uzbekistan "On the prosecutor's office" as follows and establish a clear legal definition of the prosecutor-criminalist with the new Article 341 of the Criminal-procedural Code.

CONCLUSION

This definition should be strengthened as follows: "the prosecutor-criminalist – takes part in the investigation of crimes using the powers established in the Criminal-procedural Code, carries out analytical and organizational activities related to the use of modern technical means and the necessary special knowledge opportunities".

It is also appropriate to include some of the procedural powers of the prosecutor-criminalist in the current CPC:

In the current CPC, the new article 34 is called the "powers of the prosecutor-criminalist" and it is proposed to show that it should have the following powers.

The prosecutor-criminalist has the following powers:

- In order to conduct pre- investigation examination, inspection and preliminary investigative action, it is necessary to request documents, materials and other information about the criminal cases under investigation, crimes committed, inquiry, preliminary investigation process and identification of persons who committed the crime bodies from public authorities, pre-investigation examination, inquiry and preliminary investigation;

– to make a substantiated proposal to a high-ranking prosecutor on the cancellation of illegal and unreasonable decisions of the authority of pre-investigation examination bodies, interrogator and investigators;

– giving written instructions to the investigative body on the investigation of crimes, the implementation of certain investigative actions and the search for persons who committed the crime;

– to hand over the execution of decisions to the inspection bodies on the capture, retrieval, imprisonment, search, seizure, search announcement, implementation of other procedural actions of persons who committed crimes, as well as conducting operational-search activities, taking the necessary measures to open crimes and issuing written instructions to the investigators of the prosecutor's office on the identification of the persons who committed them in the relevant cases;

– directly participate in the preliminary investigation process and, if necessary, to implement in-person investigative actions or full investigation;

– if the person or investigator conducting the preliminary investigation has allowed a violation of the law during the investigation of the case, the high-ranking prosecutor is allowed to make a reasoned proposal to exclude the inquiry and the continuation of the preliminary investigation;

– to make a proposal to a high-ranking prosecutor on the investigation of decisions on suspension or termination of criminal proceedings and the cancellation of illegal decisions;

– implementation of other powers provided for by criminal-procedural legislation.

In addition, the fact that the prosecutor-criminalist is directly involved in organizing the investigation, conducting it, manifests itself as a subject of proof in criminal proceedings. This leads him to further expand the scope of subjects to prove it in Article 86 of the CPC.

Therefore, it is proposed to state Part 1 of Article 86 of the current CPC in the following edition:

“The proof is carried out by the interrogator, investigator, prosecutor, prosecutor-criminalist and the court”

In order to ensure the qualitative conduct of the investigative action, to determine the criminalistic description of the crime, to collect and obtain evidence, to ensure the participation of the prosecutor-criminalist in the investigation, it is recommended to introduce the following norms into the CPC.

It is proposed to supplement Article 91 of the current CPC after Part 2 with the following sentences: “It should be carried out with the participation of a prosecutor-criminalist to inspect the scene of a serious crime, appoint an examination and other examination, conduct interrogation, face-up, seizure, search, conduct an investigative experiment, conduct operational-search activities”

The introduction of such a proposal will serve to expose the crime, identifying all the criminalistic signs of the person who committed the crime in the future.

The prosecutor-criminalist works with the investigator in the scene indicating that a serious crime has been committed, carefully examining the scene to help determine the characteristic of the crime committed by the perpetrator.

When drawing up an algorithm of actions that cannot be delayed, the role of the prosecutor-criminalist who provides practical assistance in indicating the direction of surveying the place of occurrence of an event is believed essential.

Therefore, it is proposed to supplement Part 2 and 3 of Article 354 of the CPC with the following content: “...A prosecutor-criminalist will be involved in the investigation team, which is drawn up in very complex or extremely relevant, acute criminal cases, on the written assignment of a high-ranking prosecutor. In this case, the prosecutor-criminalist directly uses the powers of the head of the investigative group.”

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