
Principles of Interaction of Judicial Power and Prosecution Agencies as Reflection of Objective Regularities of Their Business Cooperation

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Abstract:

This article presents the analysis of principles constituting the legal basis and orienting line for arrangement and ensuring of various interrelations between the judicial power and prosecution agencies.

Key Words: *Analysis of Interaction between Judicial Power and Prosecution Agencies, Independence of the Court and Prosecutor's Office, Joint Actions*

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Introduction

Principles serving as basis for cooperation of court and prosecutor's office are the fundamental principles determining the subject matter, purpose, content and forms of interactions of judges and prosecutors. The meaning and role of interaction principles is determined by the fact that they are the legal basis and orienting line for arrangement and ensuring of various interrelations. This factor predetermines thorough research of principles serving as the ground for the interaction of judicial power and prosecution agencies.

Classification of Interaction Principles

1. The Principle of Legality

The following principles can be determined on the basis of the analysis of juridical literature on this topic and legal practice of the court and prosecutor's office interaction. Interaction is realized firstly on the basis of the general principle of compliance with law. The problems of the court and prosecutor's office interaction are closely connected with the matters of legality because the topic of legality "is a common topic of all scientific researches in various branches of the legal science. It not only stands out as a separate problem among other problems of the state and law science, but also presents a constituent part of all problems of this science, a crucial ingredient of any scientific investigation, any legal problem"³.

Analyzing the problems of legality, the investigators have correctly stated that the "legality is determined as a principle, method, and mode of strict, undeviating observation, fulfillment of legal provisions by all participants of public relations"⁴.

S.S. Alekseev talking about the "inherency of the aspect of general enforceability of the law in the subject matter of the legality determines the most important side of the legality, i.e. the constitutive one. Due to the fact that the law is constituted via the "legislation", a special mode of the social and political life is called "legality"⁵.

Academician S.N. Sabikenov has similar opinion on legality. According to him "legality as a state legal regime within the rightful state means that all legal principles in the civilized society shall be expressed in the law which is a social and legal focus of activity of all state bodies, their public officials, citizens, public unions, and that is why it is subject to the undeviating and strict fulfillment, observation"⁶.

³Strogovich M.S. *Main Issues of the Soviet Socialistic Legality*. Moscow, 1966. P. 3.

⁴Abdrasulov E.B. *Interpretation of the Law and Provisions of the Constitution: Theory, Experience, Procedure*. // Almaty, 2002. P. 165.

⁵Alekseev S.S. *Theory of Law*. Moscow, 1994. P. 188.

⁶Sabikenov S.N. *Legality as the Basis of the Judicial Power Implementation*. Materials of the applied research conference dedicated to 30th Anniversary of Almaty municipal court. Almaty, 2000. P. 35.

In the course of the implementation of the *principle of legality* in the process of interaction, prosecution and court bodies provide enforcement, application, and use of the norms of the national legislation of the Republic of Kazakhstan and international legal norms ratified by the Republic, all entities participating in the interaction between the court and prosecutor's office. Mutual responsibility for solving of joint tasks aimed at intensification of protection of human rights is expressed in the strict adherence of set agreements in the course of implementation of specific measures on strengthening of legality and protection of human rights and freedoms, and rights and freedoms of the citizen in the sphere under study. Implementation of unified purposes and tasks in the process of interaction does not mean subordination of judges and judicial bodies to the prosecutor's office or dependence of the prosecutor's office on the judicial power. In this case we may only speak of the rules of law and conformity of the interacting parties to the legality requirements.

2. The Principle of Independence and Autonomy of the Court and Prosecutor's Office

The issues of independence and autonomy of the court and prosecutor's office arise from general political and legal categories of independence of government authority representing a modern state.

Juridical literature underlines that autonomy is "a crucial constitutional-legal framework comprises basic characteristic of legal status of each branch of power within the system of national statehood"⁷. Speaking of autonomy and independence of the judicial power, it should be noted that "autonomy and independence of the judicial power is manifested with its qualitative and substantive characteristics. Without it is impossible to realise its purpose and place within the check-and-balance system. The content of these principles is not identical – one of them does not merge the other, but rather complements it. Both of them are systematic and mutually reinforcing. In view of this, often autonomy of the judicial power is named among substantive aspects of the independence principle and vice versa: the content of autonomy principle is realised through its independence"⁸. To this end we may also talk about autonomy and independence of the prosecution agencies: "A crucial condition of efficacy of the prosecutor's supervision is a total autonomy of prosecutors in its execution. Any interference into supervision activity may nullify it, leave some offences without appropriate reaction, discharge offenders from liability"⁹.

⁷ Anishin V.I. Constitutional Principles of Judicial Power of the Russian Federation: Formation, Subject and Future Development. Moscow: RAP, 2006. P. 14.

⁸ Burbina E.V. Development of Philosophical and Legal Ideas of Independency of Judges and Autonomy of Courts as a Factor for Establishment of Bodies of the Judiciary // Sotsialno-politicheskie nauki Journal. 2013. No.3. P.65.

⁹ Kozlov A.F. Procuratorial Supervision in RF //

In the context of abovementioned approaches, significant role in interaction between the court and prosecutor's office belongs to realisation of the principle of independence and autonomy which should be understood as realisation of clear-cut powers by abovementioned bodies granted to them by the legislation of the Republic of Kazakhstan. The court and prosecutor's office retain their total autonomy for execution of planned and urgent measures, concerted decisions, recommendations and offers.

Abovementioned principle should be regarded as a total nonintervention into the competence of the other for solutions of issues of strengthening of legality on the basis of considered and mutually agreed actions. In this case we are talking about prohibition on transfer of official powers and duties to other party of interaction. Realisation of the autonomy principle results into total nonintervention into the powers of each party. Also, we may talk of efficient merger of their intellectual and financial capacity for fulfilment of cooperative tasks.

As S.I. Jambulatov truly stated, "the independence of participants of interaction within realisation of activities on detection and redressing of violations of citizens' rights and freedoms is characterised by a real possibility to make important decision without outside interference, with no impessure or other influence, solely on the basis of legal provisions. Independence of interacting bodies intensifies efficiency of activity of both the prosecutor's and the court in their direct tasks. Participants of interaction should know their tasks exactly, as well as have an idea of powers of those bodies with which their activity may meet"¹⁰.

3. The Principle of Parity of Participants of Interaction

Thirdly, the interaction is exercised on the basis of the principle of parity of the court and prosecutor's office as equal parties of interaction within solution of legal matters or raising of qualification, making suggestions, formulation of recommendations and other documents.

The principle of parity means that the court and prosecutor's office in the process of their interaction retain autonomy of the government institution, do not enter into relations of domination and subordination, have equal rights within fulfilment of cooperative tasks. The court and prosecutor's office act independently as to affirmation of proper way of solution of certain problems and are responsible for the results of their activity.

Employees of the prosecutor's office and of the court system should try to avoid charging each other with functions conflicting with their official duties. Otherwise,

http://www.adhdportal.com/book_3734.html

¹⁰Jambulatov S.I. Principles of Interaction of the Prosecutor's Office with Controlling Bodies // *Biznes v Zakone Journal*. 2008. No.8. P. 287.

actions of the employees of prosecutor's office and court aimed at solution of emerging issues by methods and tools not provided within the mechanism of normative-organisational influence shall be considered illegal. As it is stated in juridical literature, "practical implementation of the principle of equality does not allow to impose raised requirements or to stipulate any advantage of one party over the other, eliminates duplication and helps achieve solution of set tasks with the help of reasonable and complex use of various measures"¹¹.

4. The Principle of Compensatory Nature in Interaction of the Court and Prosecutor's Office

A very important principle of interaction of the court and prosecutor's office is the principle of compensatory nature which is often compulsive for activity of all government institutions in the era of new economic relations based on market mechanism. Juridical literature truly states that "if during rendering help in some work within interaction the party bears some financial costs, other party has to reimburse, compensate for it. In case of absence of agreement between parties on reimbursement of financial expenses, it is done at one's own cost and expense"¹². Implementation of the principle of compensatory involves a need for reasonable expenses financial property in order to use it efficiently within common seminars, conferences or studies of current judicial theory and practice by the court and the prosecutor's office.

5. The Principle of Openness and Transparency

One more important principle in interaction of the court and prosecutor's office is a principle of openness for fulfilment of tasks within achievement of common for the court and prosecutor's office purposes – establishment of warranty of legality in the country, defence of rights and freedoms of people, society and state. At this, the principle of openness should not contradict the provisions of law concerning defence of rights and freedoms of people and issues of protection of secrets of state.

Interaction of the court and prosecutor's office should be based on provision of security of necessary concealed information with no disclosure of information on common measures and methods applied, if this information is associated with personal or state interests.

6. The Principle of Regimentation and Conformity of Interaction

¹¹ See Grishin S.P., Avramtsev V.V. Court Marshals for Provision of Fixed Procedure of the Court Activity // Moscow, 2000. P.189.

¹² Grishin S.P. Court Marshals for Provision of Fixed Procedure of the Court Activity // http://adhdportal.com/book_3802_chapter_35__1._PONJATIE,_ZADACHI_I_PRINIPY_V_ZAIMODEJJSTVIJA.html

The principle of conformity should also be mentioned. It presupposes maintaining of coordination of all cooperative measures with the help of operational and strategic planning. Modelling of cooperative activities of the court and prosecutor's office help the subjects of interaction develop consistency and purposefulness of their relations, endure the matters of accumulation of potential of abovementioned government bodies at current problems of provision of legality. In addition, application and implementation of the principle of regimentation are aimed at provision of record and performance of cooperative measures, considered general approach to operation of all the elements of government mechanism for the purpose of achievement of common result. The principle of order in interaction of court agencies and prosecutor's office should be inextricably connected with the matters of maintenance of efficiency and substantiveness, as well as with stimulation of initiative activity of the subjects of interaction. The Strategic Plan of the Supreme Court of the Republic of Kazakhstan for 2014-2018¹³ and The Strategic Plan of the General Prosecutor's Office of the Republic of Kazakhstan for 2014-2018¹⁴ are the examples of regimentation of interaction of the court and prosecutor's office. These documents contain chapters on interdepartmental interaction including interaction between the court system and prosecution agencies.

Conclusion

Thus, legal principles serving as basis for interaction of the court and prosecutor's office are universal, rather mandatory and generally binding. They model in a certain way public relations associated with interrelations, interinfluence and interaction between judicial institutions and prosecutor's office, fill the gaps in legal regulation and are a reference point for development of certain organisational and legal procedures, ensuring efficient interaction of judicial institutions and prosecutor's office.

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¹³ The Strategic Plan of the Supreme Court of the Republic of Kazakhstan for 2014-2018, approved by the decree of the Chairman of the Supreme Court as of 30 January 2014//<http://sud.gov.kz/rus/content/deystvuyushchie-i-razrabatyvaemye-konceptualnye-dokumenty-i-celevye-programmy>

¹⁴ The Strategic Plan of the General Prosecutor's Office of the Republic of Kazakhstan for 2014-2018, approved by the order of the Manager of the Executive Office of the President of the Republic of Kazakhstan No. 01-38.15 as of 10 February 2014 // http://prokuror.gov.kz/sites/default/files/strategy_ru.pdf

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