

Role of Criminal Prosecution in the System of Criminal Procedural Institutions

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ABSTRACT

The article reveals the concept of the legal institution of criminal prosecution in criminal proceedings, analyzes the definition of the subject and method of legal regulation of criminal prosecution, the subject composition and the object of criminal prosecution. The author considers the rules governing the institution of criminal prosecution, which originates from the general category of a claim in law. The article contains proposals for the development of the theory of criminal prosecution as a criminal procedure institution from the standpoint of identifying its system-forming properties, legal nature, and various degrees of its effectiveness for the criminal process.

Keywords: criminal procedure law, criminal procedure institute, criminal prosecution, criminal claim, publicity, subjects of criminal prosecution, object of criminal procedure relations, suspicion, accusation, criminal prosecution

The diversity of norms in the modern law presupposes more criteria on which the structural units of a particular field of law can be classified. Taking into account the real possibility of grouping and classifying them according to some common basic principles is also important, because it could help to arrange all the norms, institutes and to bind them logically within the scope of the law's system⁷⁸. This condition is actual according to the field of criminal procedure law as well. The problem of criminal procedure institutes takes one of the important "instrumental positions", according to which it is possible to analyze the condition of criminal procedure system, to predict the optimal mechanism of legal regulation in this field⁷⁹. Exactly law institutes in criminal law, their system and developing nowadays need to be carefully studied and the conception of them need to evolve. According to M.V. Dukhovskiy, "the criminal procedure law is the "pure science", when it discovers the laws, which rule the development of the criminal procedure institutes in connection "with the culture", and its applied goal is to bound a system in accordance with all the requirements of present"⁸⁰.

It must be mentioned, that the definition's problem of the concept, features, kinds of criminal procedure law institutes remain unexplored until now, although this concept is rather common. So, proof, investigative actions, arrest, criminal procedure constraint, rehabilitation, judicial review, procurator's supervision etc⁸¹. are considered to be criminal procedure institutes. In connection with this, and taking into account the social purpose, goals and objectives, fundamental points of criminal process, the common institutes in criminal procedure law must be defined on the first stage. And the criminal prosecution is such a necessary and obligatory law institute.

The criminal prosecution plays the role of "basic" institute, which is the foundation of the criminal procedure system and ensures its progressive motion in a criminal case⁸². The criminal prosecution is an essential part of the crime procedure action, what is an initial component of the action about the defense from accusation, and of considering of a criminal case on the merits⁸³. This law construction preserves its primary meaning for all models of criminal legal procedure, on every stage of criminal process and in every state.

At the same time, in national systems can be used very different means, methods and forms, which can be expressed in organization and functioning of the considering law institute.

Although lawmaker defined the concept and the content of criminal prosecution in Article 3 of the Code of Criminal Procedure of Russian Federation, there are severe defects in the law construction and regulation. So, in the Code of Criminal Procedure of Russian Federation the criminal prosecution is defined in different meanings: a) criminal procedure activity; b) criminal procedure function and c) proceeding of a criminal case.

In our opinion, in order to normative concretization of the legal character and to consider the criminal prosecution as procedural activity against a concrete person, it is necessary to add appropriate amendments and additions to certain

⁷⁸ Umarova, A. A. Institute of Legal Restrictions: General Theoretical Research: Abstract Dis. ... Candidate of Legal Sciences: 12.00.01. Kursk, 2018.

⁷⁹ Ckatuayeva V.V. Criminal Prosecution: training manual for students of Universities. M.: Urait, 2021.

⁸⁰ Duckovsky M.V. Russian Criminal Proceeding. SPb, 1902. Pp. 5, 6.

⁸¹ Volodina, L. M. Actual Problems of Criminal Proceedings. M.: Jurlitinform, 2020.

⁸² Baev, O. Ya. Criminal Procedural Investigation of Crimes: System and Quality. M.: Yurilitinform, 2007. Pp. 69–71.

⁸³ Talalaev, K. A. Criminal Prosecution: The Problems of Definition. 2020. V. 6. No.4. Pp. 142–143.

clauses of the Code of Criminal Procedure of Russian Federation. Particularly, the most reasonable is adjust the contains of the Article 3 of Code of Criminal Procedure of Russian Federation in accordance with mentioned interpretation of criminal prosecution.

Because of ambiguity of this concept it is difficult to define the meaning of criminal prosecution in criminal procedure law⁸⁴. That is why it is necessary to define the concept and juridical character of this legal phenomenon, special features of this criminal procedure institute, to set goal, content and stages of criminal prosecution, the subject and object of this version of procedural activity as well as to define their juridical significant results⁸⁵.

The main signs of a criminal prosecution as an criminal procedure institute are the following.

- The institute of criminal prosecution is a structure part of law sector, is formally detached and is outwardly expressed in different sections.

So, the Article 5 Code of Criminal Procedure of Russian Federation defines the matter of this concept , Article 3 Code of Criminal Procedure of Russian Federation contains norms about kinds of criminal prosecution, duties of execution of criminal prosecution by officials, the rights of victims and their legal representatives to participation in criminal prosecution, and possibility of criminal prosecution on application of an commercial or other organization as well.

- The contain of criminal prosecution compiles the complex of homogenous law prescriptions (for example, the initiation of criminal prosecution, notification about suspicion, accusation and criminal prosecution, application of preventive measure before indictment, the ending of investigation by the indictment act or resolution, termination of criminal prosecution etc.)
- Relative independent, primary, basic principles are typical for the institute of criminal prosecution, which are logically concluded from relevant normative- and law-prescriptions, or which are directly fixed in particular articles in normative acts. For example: a) principles of criminal procedure law — legality, publicity, presumption of innocence, the principles of criminal law — justice, humanism; b) the institutional principle “non bis in idem” etc.
- The criminal prosecution is the most developed institute of criminal procedure law, characterized by certain unity and integrity of its rules and appropriate forms of their expression and fixing, and which has the common part and a special part as well.

So, in the Articles 21, 21, 27 Code of Criminal Procedure of Russian Federation and in others contains the fixed general provisions of crime prosecution institute; foundations, conditions and procedural order of their realization are detailed in Articles 146, 171, 175, 210, 212, 220, 223.1 Code of Criminal Procedure of Russian Federation.

Beside procedural, criminal prosecution has also criminal-legal content. So, the judicial construction of a crime determines the construction of subject of proofing, and the existence of certain criminal-legal circumstances defines the base for termination of criminal prosecution or criminal case. The conception of sanity or insanity of the person, which is being brought to criminal responsibility, affects the order of application of forced medical measures; the age affects the order of application of pedagogical measures. The categories of criminal responsibility in the criminal law are also closely bound. Criminal responsibility is the consequence of committing a crime in the form of punishment, and criminal prosecution is considered as a consequence of committing a crime in form of an action aimed detection of the incident and exposure of persons committed it.

- Institution of criminal prosecution has its subject of legal regulation, that is activity and particular variety of public relationship, influenced by norms composing this institute.

The subject of legal regulation of concerned institute is activity of authorized bodies and persons concerned to exposure a person at committing a crime or socially dangerous act and to establish the measure of criminal liability of this person and public relations related to this activity. In such a way, the institute of criminal prosecution fixes these relations and stimulates their development in the interests of the state and in the private interests of a person.

Admitting the regulative character of the institute of criminal prosecution, it is necessary to trace its close connection with criminal-procedural legal relationship. Legal relationship, developed within the criminal prosecution, is also an procedure institute; in other words, it is an certain institutional system. The legal norms regulation at criminal proceeding means first of all endowing all parties with appropriate rights and duties, and it is a significant institutional factor.

- Existence of legal means and methods of impact on public relationship, which are specific according to other institutes (for example, means and measures of legal impact on the participants are different at an inquiry production and at preliminary investigation, suspension of proceeding in the case presence of specificity in regulating of proceeding of rehabilitation of a person illegally suspected to criminal prosecution).
- As a rule, law institutes have specific concepts, terms, and judicial constructions. For institute of criminal prosecution the following terms are typical: “suspicion”, “suspect”, “prosecution”, “involvement as an accused”, “termination of criminal prosecution” and others.

⁸⁴ Mazyuk, R. V. The Institution of Criminal Prosecution in the System of Russian Criminal Procedure Institutions: monography/ scientific supervisor Smolkova I.V. M.: Uritinform. 2009. Pp. 78–80.

⁸⁵ Dikarev I. S. The Prosecution: Clarification of the Notion // Russian Justice. 2013.№9. P.23.

The mentioned features characterize criminal prosecution institute as a rather independent subsystem of a legal branch and a legal structure as whole. It possesses such degree of judicial norms, that without some these norms the regulation of such kind of public relationship is impossible.

The research of the legal nature of criminal prosecution has to be begun with starting positions and destination of this institute in the law. In this case, the mentioned legal phenomenon gets a social background and becomes a concept with a definitive, precisely expressed practical meaning in the system of criminal-law and criminal-procedural regulation.

According to this fact, it is impossible not to agree with R.V.Masyk, who, evaluating the legal nature of criminal prosecution in Russian criminal legal proceeding, believes, that the only one method of cognition of the entity of mentioned category is the definition of its practical meaning through the institute of termination of criminal prosecution⁸⁶.

So, the original legal category for institute of criminal prosecution, the significant legal factor, the "starting point" is a criminal claim. The etymology of the word "claim" is closely bound with the concept of requirement, application, appeal to authorized states bodies with the purpose of protection and establishing of liability for a criminal act and for damage caused. At the same time the damage or harm is caused to the most important and significant things for the subject of appeal.

In theoretical meaning the claim, the argument about violation of right is bound with usage of procedural mechanism, which can be concluded either in different kinds of self-regulation the argument as a disagreement, or in inclusion of a third party in a particular legal relationship, who is endowed with the right to consider and to resolve it ("There is no judge in the own house").

Beside this, the dispute implies a potential possibility of a force for realization the criminal liability. But in criminal procedure field the "status" of the act is not only restricted with the interest of a private individual, but also goes beyond this borders, gets a public meaning, the degree of "social danger" (this concept is used nowadays in criminal law at assessment of encroachments). According to I.J. Foinitskiy, "the history of criminal proceeding begins with the domination of private origin... Little by little, the public origin of a criminal proceeding is being developed; it becomes a social, state case... The concept of claim in civil procedure is responds to the concept of prosecution in criminal procedure. It is considered to be the demand of judicial recognition of the right of the state for punishment. Therefore, the prosecution al a claim as well..."⁸⁷.

Realizing the right to establish criminal liability measures, the state delegates duties to official bodies to begin criminal proceeding, and — if the information about the involvement of certain persons exist — to begin the process of criminal prosecution against them. Beside this, on the first stage of the activity its goal is — to ascertain the circumstances about the fact of criminal act (if it is absent, criminal prosecution has no sense). After this, there is the second goal -to ascertain the person, who committed crime. That way, in such a case the following fact is emphasized: criminal prosecution does always address a recipient (to prosecute means to follow, to go after someone's steps). Since the moment when the involvement of a person or a group of persons would be proved with a certain degree of probability, the criminal prosecution becomes a specific character, expressed in the expansion of subject and limits of proving (the guilt of the person, its characteristics, age and health conditions, mitigating and aggravating factors and others), raising and justification of suspicion, possible application of measures according to involved persons, and manhunt if necessarily). At the next stage, if the in the information about crime committed by a certain person is proved, the "legalizing of criminal prosecution" occurs, and it is being expressed in a judicial evaluation, formulation and If indicting. If the reasons are available, criminal prosecution is stopped and the absence of the reasons for indicting is being stated⁸⁸.

Criminal prosecution (indictment as well) determines the procedural status of the process' parties, the degree of possibly state coercion, elements of publicity and dispositivity. The indictment's function is considered to be as procedural activity of authorized bodies, aimed at incrimination of a person at committing a crime in order to assure to judge a guilty person and to apply a fair punishment⁸⁹.

The concept of prosecution, fixed in part 22 Article 5 Criminal Code of Russian Federation is considered as a statement about an act, committed by a certain person and forbidden by Criminal Code and being demanded by Criminal Code of Russian Federation. That way, prosecution is considered as a procedural decision with followed prosecution.

In this meaning the prosecution has a) a volume, those are describing of actual circumstances of a crime, with mentioned time and place, and also other actual circumstances, necessary according to Article 73 Criminal Code of Russian Federation: means, reasons, goals, consequences of crimes and other circumstances, which matter for this criminal case (part 3 paragraph 3 Article 38, part 4 paragraph 2 Article 173 and part 3 paragraph 1 Article 220); b) criminally-legal formulation of the indictment, with mentioning of the part, paragraph and article of Criminal Code, which prescribe the liability for this crime

⁸⁶ Mazyuk, R.V. The Institution of Criminal Prosecution in the System of Russian Criminal Procedure Institutions //Siberian Law Herald. 2012. №2(57). P. 141.

⁸⁷ Foinitskiy, I. Ya. Criminal Procedure Course // ed. by A.V.Smirnova. SPb.: Alfa. 1996. Part 2. P. 3.

⁸⁸ Endoltseva, A. V. Exemption from Prosecution: From a Theoretical Discourse to De Lege Ferenda // Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia. 2016. №6. Pp. 56–58.

⁸⁹ Strogowitch M.S. Course of Criminal Procedure. M., 1968. P. 190. Elkind P.S. The Entity of Soviet Legal-Proceeding Law. M., 1963. P. 60.

(part 4 paragraph 1 Article 220). In the law there is also a concept "charge point" (part 2 Article 220), taking its beginning from seven charge points (points of indictment) in Roman law, which is equal to the concept "charge volume" (part 1 paragraph 2 Article 221).

The division of criminal prosecution into stages, forms and kinds helps to detect the main features of this kind of state activity and create a theoretical basis for the further solution of problems, emerged while criminal prosecution at different stages of criminal proceeding.

According to C.I. Vectorsky, three stages of criminal proceeding are highlighted: 1) initiation of criminal prosecution, 2) preliminary investigation, 3) exposing the guilty in the court⁹⁰.

M.S. Strogonowitch highlights similar stages of criminal prosecution: 1) initiation of criminal prosecution, 2) criminal prosecution at the stage of preliminary investigation, 3) criminal prosecution in the court⁹¹.

In this case, when assessing criteria for dividing criminal prosecution into stages, we apply the criterion for staging of criminal proceedings in accordance with criminal pursuit. However, at the same stage the form of realization of criminal prosecution can differ significantly.

In other case, equal volume of prosecution can pass the stage consistently.

That is why beside this criteria the form of criminal prosecution should be used, which depends not on stages and in which frames they are being realized, but on volume and stage of the concreteness of proofs, which are expressed in different procedural acts certain procedural actions⁹². So, M.P. Kan offers three forms of criminal prosecution: 1) criminal prosecution in form of suspicion; 2) criminal prosecution in form of indictment; 3) criminal prosecution in form of preceding of a case about application of compulsory measure of medical ground⁹³.

In judicial literature, the question about content of activity for implementation of criminal prosecution and resulting law relationship is being widely discussed and this dispute remains controversial until now. So, according to goal setting of this kind of activity and understanding of entity considered law category, the following law measures of have to be included in content of institute of criminal prosecution, which regulate: 1) initiation of criminal prosecution (initiation of criminal case against a certain person, notification of suspicion, procedural arrest by suspicion of committing a crime, involvement of a person as an accused, making an indictment and indicting; 2) proving of participation of an suspect to committing a crime ascertaining the reasons of accusing a person for committing a crime; 3) proving guilt of a defendant in committing crime; 4) manhunt of a hidden suspect and accused; 5) application to the suspect and accused measures of criminal procedural coercion, including preventive measure; 6) endorsement of the indictment by a prosecutor and referral the case in the court; 7) maintaining the prosecution in court by a state prosecutor or by a private person on private prosecution cases; 8) termination of criminal prosecution (in pre-trial and judicial proceedings).

The unsubstantiated extension of this field of activity, realized by some lawyer, complicates the final definition of concepts and contents of institute of criminal prosecution in the theory of criminal proceeding and in criminal-proceeding law, as well as certain issues of law application⁹⁴.

In our opinion, the following means don't have to be included in procedural means: appeal of a verdict by parties from the prosecution in the cassation order on the basis of inconsistency of court's conclusions to actual circumstances of a case (R.V. Masyk); the jurisdiction of the criminal case, the termination of criminal proceeding, the regime of serving a sentence (Z.D. Enikeev⁹⁵); conclusion of pre-trial agreement about cooperation between suspect, accused and prosecutor (V.F. Krukov). However, the most lawyers don't include the manhunt of a hidden suspect and accused in content of criminal case.

It has to be mentioned, that beside such element of institute of criminal prosecution as activity, an important characteristic is the character of law relationship in this dynamically developed activity as well as their interrelation with other institutes of criminal-procedural law. At the same time such signs of law relationship have to be used as object and subject of law relationship, their procedural power and procedural status.

So, criminal prosecution is one of the most common institutes of criminal law, which regulate the activity of authorized persons, which goal is to ascertain the fact of existence of criminal-law conflict and its solution according to fixed procedural function, expressed in legal reasonable formulating of indictment according to a certain person (or group of persons), or approval the fact of absence of reasons for criminal liability (solution of a criminal-law conflict). The results of solution of a criminal-law conflict can also be another law mechanism as an alternative for criminal prosecution.

⁹⁰ Vectorsky, S. I. Russian Criminal Procedure. M., 1997. Pp. 235–242.

⁹¹ Strogovitch M.S. Criminal Prosecution in Soviet Criminal Proceeding/ ed. By M.M. Grodzinsky. M.: AN USSR Publishing House, 1951. P. 56.

⁹² Zhuk O.D. Disputes about Forms and Kinds of Criminal Prosecution. // "Black Holes" in Russian Legislation. 2004. №2. P.334.

⁹³ Kan M.P. The Function of Criminal Prosecution and Power of Prosecutor // Abstracts from reports at the theoretical conference of postgraduates of Institute of State and Law AN USSR and Judicial Faculty of M.V. Lomonosov Moscow State University. M.: AN USSR. 1986. Pp. 144–145.

⁹⁴ Currently Problems of Criminal Proceeding: Ways of Solution. Materials of International Scientific Conference. Ufa, September, 24th, 2020./ed. A.U. Tereckova. Ufa: JU MIA of Russia. 2020.

⁹⁵ Enikeev Z.D. Mechanism of Criminal Prosecution. Ufa. 2002.

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