

CONCEPT OF INTERACTION LOCAL GOVERNMENT AND PROSECUTION

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Abstract: There is submitted in this work the author's analysis of provisions of the national legislation regulating interaction of local governments and prosecutor's office; the conclusion is drawn on opportunity and need of their interaction; the concept of the organization of such interaction in which basis coordination and the state control are put is offered.

Keywords: local governments, prosecutor's office, supervision, interaction, cooperation, coordination, state control.

КОНЦЕПЦИЯ ВЗАИМОДЕЙСТВИЯ ОРГАНОВ ГОСУДАРСТВЕННОЙ ВЛАСТИ НА МЕСТАХ И ПРОКУРАТУРЫ

Аннотация: В данной работе представлен авторский анализ положений национального законодательства, регулирующих взаимодействие органов государственной власти на местах и прокуратуры; сделан вывод о возможности и необходимости их взаимодействия; предложена концепция организации такого взаимодействия, в

основу которого положены координация и государственный контроль.

Ключевые слова: органы государственной власти на местах, прокуратура, надзор, взаимодействие, сотрудничество, координация, государственный контроль.

МАҲАЛЛИЙ ДАВЛАТ ҲОКИМИЯТИ ОРГАНЛАРИ ВА ПРОКУРАТУРАНИНГ ЎЗARO ҲАМКОРЛИГИ КОНЦЕПЦИЯСИ

Аннотация: Мазкур ишда маҳаллий давлат ҳокимияти органлари билан прокуратуранинг ўзаро ҳамкорлигини тартибга солувчи миллий қонунчилик қоидаларини муаллифлик таҳлили берилган; улар ўртасида ўзаро ҳамжихатлик ва ҳамкорлик қилиш имконияти ва зарурати хусусида хулоса қилинган; мувофиқлаштириш ва давлат назоратига асосланган шундай ўзаро ҳамкорликни ташкил этиш концепцияси таклиф қилинган.

Калит сўзлар: маҳаллий давлат ҳокимияти органлари, прокуратура, назорат, ўзаро ҳамкорлик, ҳамкорлик, мувофиқлаштириш, давлат назорати.

The Constitution of Uzbekistan is the basis of the legal strategy for the development of our state. In this regard, the idea of a constitutional partnership that reveals the basic principles of interaction between state authorities and civil society institutions seems promising.

"Constitutional partnership" means the process and result of a coordinated state policy in legislative activity and law enforcement practice, constructive interaction of all branches and levels of state power in the name of the country's legal development.

Some scientists, based on the experience of the constitutional partnership, proposed to include in this process a local level of power and to introduce the concept of "municipal partnership" into scientific circulation. It is a result of an integrated goal, legislative and / or contractual, indirect cooperation of state authorities in the field with similar and other public bodies to optimize the solution of local issues and representation of their interests at the national and international levels¹.

Taking into account the specifics of the subjects of study under consideration (state bodies in the regions and the prosecutor's office); we consider it advisable to talk not about partnership, but about "interaction" of these bodies. It should be emphasized that the importance of public authorities in the field as one of the levels of public authority is vividly illustrated by the modern interpretation of local authorities in the form of *"the right and real capacity of municipal bodies to regulate a significant part of public affairs and manage it, acting within the law, under their own responsibility and in interests of the local population"*².

Proceeding from this, can be concluded that the activities of state authorities in the field appear, first, as managerial activity. The Law of the Republic of Uzbekistan "On State Power in the Fields," which regulates the activities of representative and executive authorities in the localities, emphasizes the right of the population to address issues of local importance, assuming local power is primarily a form of exercising the power of the people. An analysis of the text of the

¹ Zolotarev M.P. Constitutional and legal framework and factors for development of municipal partnerships in modern Russia: Dis candidate . jurid. science. - Belgorod, 2011. - P. 9.

² The European Charter of Local Self-Government (ETS number 122), adopted in Strasbourg on 15 October 1985 // Diplomatic Bulletin. - 1998. - № 10.

norms of the Law shows that the local government is certainly a kind of managerial activity, moreover, managerial activity at one of the levels of public authority.

As for the prosecutor's office, today their legal status is controversial. There is a heated debate about whether the prosecutor's office belongs to a certain branch of state power, whether it is a public authority. In the literature, judgments are made about referring the prosecutor's office to the executive³, legislative⁴ branches of power, that the prosecutor's office is a separate, fourth branch of power⁵, and also that it does not apply to public authorities at all⁶.

It should be noted that the Constitution of Uzbekistan regulates the status of all major legal institutions and state bodies, among which the prosecutor's office also mentions.

In particular, articles 118-121 of the Constitution on the prosecution authorities establish the system of these bodies, the principles of unity and centralization of the system of prosecution authorities, the procedure for appointing the Prosecutor General and other prosecutors, but nothing speaks about the functions of the prosecutor's office, its position in the system of state bodies authority and specific powers, with the exception of the supervisory function.

According to Part 1 of Art. 119 of the Constitution, the prosecutor's office forms a single centralized system

³ Kolokolov N.A. Urgent problems of protection of the rights, freedoms and legitimate interests of the individual in criminal proceedings: the prism of the monitoring results of 2008-2009 . -M.: Lawyer, 2009.

⁴ Dolezal V. Problems competence prosecutors: Author. dis. ... dr. jurid. Science. - M., 1991. - P. 44.

⁵ Baikin I.M. The prosecutor's office and the judiciary // Russian justice. - 2009. - № 10. - P. 36-37.

⁶ Petruhin IL Public prosecutor's supervision and the judiciary. -M.: Prospect, 2001. - P. 148.

with the subordination of lower-level prosecutors to the higher-ranking and the General Prosecutor of the Republic of Uzbekistan. In accordance with Art. 1 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office" of August 29, 2001, the Office of the Procurator of the Republic of Uzbekistan is a unified centralized system of prosecution bodies headed by the Prosecutor General of the Republic of Uzbekistan.

Article 22 of the said Law contains an exhaustive list of the powers of the prosecutor in exercising supervision over the execution of laws. Based on the legal requirements of this article, the prosecutor, in the exercise of the functions assigned to him, has the right to freely enter the premises and premises of supervised subjects, demand from executives and other officials the submission of necessary documents, materials, statistics, call officials and citizens violations of laws, etc.

Thus, the law grants the prosecutor great powers to carry out supervisory functions. At the same time it is obvious that the prosecutor exercises the will of the state through his powers to implement supervision unquestioningly. At the same time, it seems that there are no obstacles on the part of the supervised subjects, which is due to the awareness, first of all, of the psychological dependence of the subjects under surveillance.

According to some scholars, a different understanding of the powers of the prosecutor (in the sense of the absence of any dependence of the supervised subjects) would lead to widespread failure to fulfill his requirements, and therefore to paralyze the activities of the prosecutor's office and shortly to abolish

this supervisory authority⁷. However, we can not agree with this opinion, since one of the postulates of the activities of the prosecution authorities is contained in Article 23 of the Law, which establishes the inadmissibility of the prosecutor's interference directly in economic and other activities, and the substitution of bodies for departmental management and control. In other words, the supervised subjects are not directly or indirectly dependent on the prosecution authorities. Regarding their psychological dependence, we note that this kind of dependence, unfortunately, takes place, but only as a remnant of the past, immaturity of legal awareness, low legal literacy.

According to the norms of the Law, this hierarchical system of institutions directly implements the will of the state, undoubtedly, exercises state power, and therefore it is a public authority (state body). The law, giving the prosecutor ample powers to eliminate violations of the law, clearly defines the forms of prosecutorial response. These are the following acts: protest, representation, warning, ruling, statement.

An analysis of the legal norms that establish the system of government bodies shows that the prosecutor's office as an integral system of bodies and institutions that provide supervision over the implementation of existing laws in the territory of the entire state is not absorbed by any branch of power. The Prosecutor's Office is a special body of the state that implements in the society such fundamental principles as legality, observance of law and order and protection of the rights of citizens.

⁷ Byvaltseva S.G. Constitutional and legal status of the prosecutor's office: problems and prospects // constitutional and municipal law. - 2011. - № 5. - P. 23-26.

Local authorities, being the closest people to the level of public authority, ensure the protection of the most pressing and close to each person issues that he faces every day. Today, the range of issues addressed by local authorities is determined taking into account the scope and nature of the specific task, as well as the requirements of efficiency and economy. This means that if a particular issue of a public legal nature can be most effectively resolved at the local level, state authorities in the field should be given appropriate public authority to address this issue. This international principle of the organization of local self-government in a sense is reflected in Art. 99 of the Constitution, which states that local government bodies "on the basis of the interests of the state and citizens, resolve issues within their competence".

However, the autonomy of the activities of local bodies is not absolute; there are more than enough points of contact between the republican and local bodies. Thus, the bodies of state power and administration not only create the legal and economic basis for the activities of local authorities, but also explain to the public the state policy in the field of development of power in the localities, help citizens to have a real opportunity to participate in solving local issues⁸.

Nevertheless, as correctly marks O.N. Vaneyev, it is necessary to proceed from the assumption that centralized management and local governance are not just one order phenomena, they rather confront each other, just as the state and civil society are mutually related but essentially opposite entities, since civil society and self-government are not reduced only to the

⁸ Schepachev V.A. On the forms of interaction between local governments and public authorities // constitutional and municipal law. - 2010. - № 12. - P. 45-48.

activities of municipalities, and absorbs other structures and institutions of civil society⁹.

Turning to the interpretation of the term "interaction", it can be seen that in the dictionary of Ozhegov this means mutual support¹⁰. In the legal literature, the category "interaction" is viewed from different perspectives. We should agree with the opinion of V.G. Kartashov, which "interaction is an active, coordinated activity of two or more subjects of the legal relationship, expressed in making decisions and committing actions aimed at achieving a single goal"¹¹.

We believe that the purpose of interaction between the state authorities in the localities and the prosecutor's office is not only the solution of issues of local importance, but also the improvement of the results of the activities of the prosecutor's office and the solution of those tasks that are before it. In fact, this interaction can be reduced to two main forms: coordination and state control. In addition, if coordination assumes a reciprocal, reciprocal relationship between the participants in the relationship, state control presupposes a set of unilateral actions by state bodies in relation to local authorities.

At the same time, taking into account the trend of decentralization, it will be right to talk about the transition from administration methods - management "vertically" to methods of coordination cooperation of all participants in territorial development. Undoubtedly, when solving issues of local importance, it is impossible to build a dialogue between the population and the state

⁹ Vaneev O.N., Spas M.A. City and local government: Theory. -Krasnoyarsk, 2003. - P. 66.

¹⁰ Ojegov S.I., Shvedova N.Yu. The dictionary of Russian. - M., 1995. - P. 75.

¹¹ Kartashov V.G. Cooperation between state authorities of the Russian Federation and local self-government // Constitutional and municipal law. - 2007. - № 19. - P. 34.

only on "vertical" power principles, that is, on the principle of power and subordination.

Relations "horizontally" are relations of a meaningful level, when the subjects participate in public relations as equal parties. At present, there is a tendency to shift the interactions from power-oriented ("vertical") to equal cooperation of all participants in territorial development ("horizontal")¹².

In our opinion, in relation to the stated subject of the research, and also taking into account the specific legal status of the state authorities in the localities and the prosecutor's office, "horizontal" and "vertical" are necessary; imperative and proactive relations in order to meet their mutual interests and achieve a common goal for them.

The functions of the prosecutor's office are realized through the types of activity of the prosecutor's office, which are defined as legally defined ways of implementing the functions of the prosecutor's office by its bodies and institutions in the process of using prosecutorial employees their powers to achieve the goals and tasks facing the prosecutor's office.

Unlike the functions and types of activities that are fixed in the Law and have a relative constancy, the main lines of activity of the Prosecutor's Office are characterized by considerable mobility. At the same time, they are determined by the importance of the tasks facing the state and society at a particular stage of their development¹³.

In each of the main directions, a certain kind of action is being implemented, aimed at solving specific, most urgent tasks for the given time and place. The main

¹² Sergeev A.A., Rosenfeld V.G. Administrative control over the legality of legal acts of local self-government // State and law. -2002 . - № 12. - P. 25-30.

¹³ Prosecutorial Supervision / Ed. prof. AJ Sukharev . - M., 2003. - P.67.

areas can be the fight against corruption, the fight against terrorism and extremism, the protection of property (both public and private), etc. However, the prosecutor's office has priorities that are constant. Among them, first, it is necessary to single out such a direction of activity as the protection of human rights and freedoms.

Between the bodies in question, there are not only imperative forms of interaction, but also initiative ones, since the prosecutor's office has great opportunities to generalize the experience of functioning, including state authorities on the ground (indicating typical mistakes and positive sides). Based on the results of such a generalization, the prosecutor's office proposes a "correct" model for the work of local authorities, excluding the most common violations.

Together, the correctly selected main directions make it possible to ensure not only the completeness of the functions of the prosecutor's office, but also the optimality of its results, the concentration of efforts on solving the most pressing problems. With the consistency of the functions of the Office of the Procurator, the dynamic system of its main directions, adjusted as necessary, makes it possible to purposefully build the work of the bodies and institutions of the Prosecutor's Office, effectively and most effectively use the forces and means at the disposal of the prosecutor's office.

Thus, we note that the interaction of public authorities in the field and the prosecutor's office, from our point of view, is an independent activity of the modern prosecutor's office, including imperative and proactive forms, characterized by various spheres.

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