

LEGAL NATURE OF PROSECUTOR-CRIMINALIST INSTITUTE

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ABSTRACT

This article discusses the concept of prosecutor-criminalist, its legal nature, functions, role in improving the quality of prosecutorial investigation, views of scientists on this matter, analysis of norms related to the regulation of procurator-criminalist activities in regulatory legal documents. Also, the opinions of national and foreign scientists on the tasks of the prosecutor-criminalist were analyzed and author's definition was developed about this institute, suggestions and recommendations were made in some legislation.

Keywords: prosecutor-criminalist, investigator, expert, specialist, investigator-criminalist, quality of investigation, practical assistance in investigation, introduction of scientifically based methods into investigative practice.

INTRODUCTION

The term "Procurator-criminalist" is a concept derived from the combination of "prosecutor" and "criminalist".

According to Article 143 of the Republic of Uzbekistan, the control over the exact and accurate implementation of laws in the territory of the Republic of Uzbekistan is accomplished by the General prosecutor of the Republic of Uzbekistan and subordinate prosecutors¹.

The main supervision function of the prosecutor is expressed in this constitutional norm.

However, in most legal literature, it is noted that there are three main functions of the prosecutor which are control, investigation and prosecution².

Indeed, in the field of clear and accurate enforcement of law and legislative acts adopted in our country and pre – investigation examination, inquiry and preliminary investigation, these tasks indicate that the prosecutor provides supervision within his competence – supervision function, the prosecutor has the authority to investigate criminal cases-investigative function, participation in supporting state prosecution in criminal courts – prosecution function³.

DISCUSSION

According to Article 56 of the Law of the Republic of Uzbekistan "On prosecutors office", the words "prosecutor", used in various articles of the law, mainly denote the General prosecutor of the Republic of Uzbekistan, all lower-ranking prosecutors, their deputies, heads of general

¹ <https://lex.uz/docs/6445145> Article 143 of the Constitution of the Republic of Uzbekistan

² О.М.Мадалиев. Прокурор назорати: Дарслик Умумий қисм/ З.Ф.Иноғомжонов масъул муҳаррир -Т.: ТДЮИ нашриёти, 2009. -424 бет

³ Note: The prosecutor's powers of procedural supervision over the criminal case, leading the investigation and personally conducting the investigation are defined in Articles 33, 34, 243, 382-388, 558, 589 of the Criminal-procedural Code of the Republic of Uzbekistan, and the power to support the state accusation in court is defined in Article 409 of the Criminal-procedural Code.

departments, departments and heads of departments, senior assistants, assistants, senior prosecutors and prosecutors, lower-ranking and equivalent prosecutors⁴.

It is known that a “criminalist” – collects, examines and analyzes the evidence at the crime scene.

In short, a prosecutor-criminalist is a specialist who has a lot of special knowledge wearing gloves, a mask, an overall, arrives at the destination of the incident and learns every millimeter of it⁵.

A prosecutor-criminalist is a specially educated person who responsibly approaches the disclosure of a crime by assisting an investigator to find traces left by the criminal, to make them official in the appropriate order.

In his activities, the criminalist, having embodied some of the tasks and functions of an investigator, an expert, a specialist, the sequence of actions committed by the criminal, carefully acting as an invisible person to trace the evidence left by the criminal by reconstructing the situation at the place of the incident, is considered his main task.

Russian criminalist scientist A. Volynsky, an employee of the operational-search Department, noted that the functions of the employee forensic expert, an employee who holds the post of expert-criminalist are similar to the prosecutor-criminalist’s function, their main task was not limited to daily assistance to the employees of investigative, operational-search activities in the application of criminalistic-technical means, but also to increase their special knowledge of the application of these scientific-technical means as their task⁶.

The activities of the “criminalist” are undisclosed to the public, and the application of scientific and technical means at the place of occurrence of the incident additionally analyzes the material evidence obtained through his special knowledge in the field of Criminology in *a special criminological laboratory*.

Using scientific and technical means (under a microscope) to find a causal link between the material evidence obtained from the scene of the incident and the criminal, it studies the evidence obtained from the scene of the crime separately.

Directly shows the methods of exposing the crime, advising the investigator on what type of expertise to appoint in the future on the disclosure of the crime.

A criminalist is required to have special knowledge in areas of science such as criminalistics, material and procedural law theory, crime investigation methodology, evidence theory, forensic science⁷.

In particular, a criminalist is required to have special knowledge regarding expertise, experimentation, analysis and research.

⁴ Рахимов Ф.Х., Комилов А.Б. ва бошқа муаллифлар жамоаси Ўзбекистон Республикаси «Прокуратура тўғрисида»ги Қонунига шарҳ. Рисола // Ўзбекистон Республикаси Бош прокуратураси, 2024 й. «Бокманй принт» нашриёти 2024 йил. 332-333-бетлар.

⁵ <https://proektoria.online/catalog/professions/kriminalist>

⁶ Волынский А.Ф. Техничко-криминалистическое обеспечение раскрытия и расследования претуплений: проблемы и пути их решения// Материалы научно-практической конференции.-М.,1994,-С.123

⁷ https://ceur.ru/library/articles/obshhie_stati/item133874/

Legal scholar A.V. Sineokius recognizes the specific acmeological aspects of the profession of prosecutor-criminalist as the basis of the acmeological concept of high emotional (logical-psychological) intensity and complexity of interpersonal communication.

Also, the prosecutor-criminalist shows that the improvement of his professional mission is due to the fact that he has an acmeological character and notes that he must regularly carry out the following tasks.

Firstly, optimizing the level of practical and methodological assistance to the investigators of the prosecutor's office (strategic task);

Secondly, improving the procedural powers of the supervisory prosecutor ensuring compliance with legality at the initial investigative stage (tactical tasks);

Thirdly, the application of innovative technologies in the conduct and investigation of criminal cases and the introduction and extension of scientific methodological recommendations into investigative practice (technological tasks).

V.K. Tolokonnikov and M.A. Bargesians divided the prosecutor-criminalist's activities into three directions:

- to expose extremely serious and complex crimes, to provide direct practical (organizational methodological) assistance in the investigation;
- training and methodological preparation for young personnel (the staff up to 3 years)
- the implementation of analytical work⁸.

National legal scholars have advanced their views on the definition of a prosecutor-criminalist. In particular, the Uzbek legal scientist I. Astanov and A. Turgunov demonstrated the following definition for prosecutor-criminalist:

The prosecutor-criminalist – is a prosecutor who carries out analytical and organizational activities related to practical assistance in organizing the investigation of crimes, the use of modern technical means and the necessary special knowledge opportunities⁹.

Russian legal scholar A.V. Timofeeva, pointing out the duties of the prosecutor-criminalist only on organizational and analytical activities, approved the participation of the investigative actions not by the prosecutor-criminalist, but by the “investigator-criminalist” and denied the participation of the prosecutor-criminalist in the investigation¹⁰.

Russian scientist A.V. Timofeeva noted that the Russian Federation should have an investigative-criminalist position based on the activities of the Investigative Committee, she came to this opinion in connection with the fact that the prosecutor-criminalist position as well as the prosecutor-criminalist state units in the prosecutor's Office of the Russian Federation

⁸ В.К.Толоконников, М.А.Баргесян. Следователь-криминалист – наставник следователя. Вестник Самарской гуманитарной академии. “Право” 2014 №1 (15) с. 143-147

⁹ И.Астанов, А.Тургунов. The role of the forensic prosecutor improving the investigation and ensuring the protection of the rights and freedoms of the individual// Жамият ва инновациялар – Общество и инноватсии – Society and innovations special issue – 02 (2022) п 501. ISSN 2181-1415

¹⁰ Тимофеева А.В.. “Процессуальное положение прокурора-криминалиста и следователя-криминалиста” Пробелы в российском законодательстве. Юридический журнал, но. 2, 2009, с. 143-145.

were transferred to the Investigative Committee established in the Russian Federation in 2007.

A. Gurin, on the other hand, attributes the status of prosecutor-criminalist to the procedural-supervisory function and relates it with the prosecutor's investigative activities¹¹.

V.N. Isaenko attributes the activities of the prosecutor-criminalist to the fact that he is more involved in the investigation. In his opinion, he also notes that "the prosecutor-criminalist – should organize and methodically provide, control and carry out analytical activities for the investigation of undisclosed, serious and extreme crimes"¹².

In our opinion, A.V. Timofeeva considered the position of investigator-criminalist more logical than that of prosecutor-criminalist, considering that most investigators operate in the Russian Federation Investigative Committee. We disagree with the opinion of the prosecutor-criminalist that he should not have the authority to participate in the investigation, conduct investigative actions.

In partial agreement with A. Gurin's statement, in addition to the procedural control function of the prosecutor, the scientist did not recognize the participation of the prosecutor-criminalist as a criminalist, his participation as a specialist in the scene of the incident, the functions of expertise and interaction with the bodies of operational-search activity.

In law enforcement practice, members of the regional prosecutor's office, the head of the regional Ministry of Internal Affairs, his deputies, the prosecutor-criminalist, territorial law enforcement officers, the operational-investigative team go to the scene of the incident on the news of an unreported serious or very serious crime, prosecutor-criminalist helps to conduct unquenchable rapid-investigative actions.

Instructions, assignments and urgent meetings are held to expose the crime, and a number of tasks are assigned to the head of the investigative team. Since it is not possible for leaders to fully participate themselves until the end of the Criminal Investigation, usually employees of the Department of supervision over the activities of investigative networks of the prosecutor's Office of the regional prosecutor's office (prosecutor-criminalist) are involved in organizing a case to ensure the execution of instructions, tasks and assignments issued in the criminal case, ensuring that the investigative actions are carried out qualitatively, in order to continue the proper organization of the investigation.

In law enforcement practice, the prosecutor-criminalist operates in the prosecutor's Office of the Republic of Uzbekistan in the control department over the activities of investigative networks, in the regional and equivalent prosecutor's offices. Currently, they regularly study the legality of the investigator's decisions, using the prosecutor's procedural powers provided by Article 382 of the Criminal-procedural Code of the Republic of Uzbekistan, as well, they are mainly involved in making procedural decisions about the suspension of criminal investigation from action, the termination of criminal proceedings, the initiation of a criminal case, the cancellation of unreasonably accepted decisions about the refusal to initiate a criminal case, giving written instructions on criminal cases in the proceedings of the investigator of prosecutor's office.

¹¹ Гурин А. Процессуальный статус прокурора криминалиста. – Законность. 2008. № 11. с. 45.

¹² Исаенко В. Н. Процессуальный полномочия прокурора- криминалиста. – Законность. 2005. № 7. С. 15 – 19.

In our opinion, it is proposed to create a separate criminalistics department (which has a separate Criminalistics Laboratory) in the prosecutor General's Office of the Republic of Uzbekistan for the activities of prosecutor-criminalists, providing all the necessary conditions for the activities of individual prosecutor-criminalists and specialists in future.

Prosecutor-criminalists are the specialists who are being directly involved in the qualitative conduct of preliminary investigative actions, ensuring the collection, verification and evaluation of evidence on such reports as crimes committed under unknown circumstances, unrepentant murders, missing people, suicide or assassination, bribery, crimes committed in the economic sphere, having the great role in the correct determination of the direction of the investigation of the criminal case, the planning of the investigation, the qualitative conduct of investigative actions, the pre-investigation examination and the achievement of the effectiveness of investigative actions.

In Order No. 243 of the prosecutor General of the Republic of Uzbekistan, certain aspects of the duties of the prosecutor-criminalist are specified, and the law on the prosecutor's office reflects the norms for the appointment and release of prosecutor-criminalists.

It turned out that there are internal normative legal norms that regulate the relationship between the organization of the activities of prosecutor-criminalists, their appointment to office.

In particular, only the Article 15 of the Law of the Republic of Uzbekistan "On the prosecutors office" of the Republic of Karakalpakstan describes the norm on the appointment of prosecutor-criminalists¹³.

Part 7 of the Article 15 of the law "On prosecutor's office" of the Republic of Uzbekistan defines that "assistants of the prosecutor of the Republic of Karakalpakstan, senior prosecutors and prosecutors of departments, prosecutor-criminalists, senior investigators of special important cases and investigators, senior investigators and investigators are appointed and dismissed by the prosecutor of the Republic of Karakalpakstan".

However, the Law "On the prosecutor's office" also does not contain specific provisions on the appointment of prosecutor-criminalists of the military and transport prosecutor's offices of the Republic of Uzbekistan in the prosecutor's office and the prosecutor's offices of the regions and Tashkent City.

However, as a result of the adoption of the decree of the President of the Republic of Uzbekistan "On measures to further strengthen the guarantees of protection of rights and freedoms of a person in judicial and investigative activities" PD-6041¹⁴ of August 10, 2020, within the specified state unit of the prosecutor's office, the position of prosecutor-criminalist was introduced in the system of prosecutor's offices of the Republic of Uzbekistan, the Republic of Karakalpakstan, the regional and Tashkent City Prosecutor's offices.

RESULTS

Therefore, it should be filled with the words "prosecutor-criminalist" in the Part 4 of the Article 12 of the Law "On the prosecutor's office" of the Republic of Uzbekistan after the words

¹³ Article 15 of the Law of the Republic of Uzbekistan "On the prosecutors office". <https://lex.uz/acts/106197>

¹⁴ Decree of the President of the Republic of Uzbekistan "On measures to further strengthen the guarantees of protection of rights and freedoms of a person in judicial and investigative activities" PD-6041 of August 10, 2020 // <https://lex.uz/docs/4939467>

“...Senior assistants and assistants of the general prosecutor of the Republic of Uzbekistan, heads of departments, departments, their deputies, senior prosecutors, prosecutors”, additionally, it is proposed to introduce the paragraph in the following edition: “Senior assistants and assistants of the general prosecutor of the Republic of Uzbekistan, heads of departments, their deputies, senior prosecutors, prosecutor-criminalist, senior investigators for Special important cases and investigators for Special important cases are appointed and dismissed by the general prosecutor of the Republic of Uzbekistan”.

In addition, the term “prosecutor-criminalist” should also be included after the words “senior prosecutors and prosecutors of departments and departments” into the Part 8 of the Article 16 of the Law “On the prosecutor’s office” of the Republic of Uzbekistan.

It is also proposed to introduce separate norms into the law on providing for the appointment of a person from among experienced specialists who have a long career in the field of investigation, the introduction of his new practice of improving legal status and Social Security when appointing to the position of prosecutor-criminalist.

The prosecutor-criminalist studies the decisions of the investigator to initiate a criminal case, to refuse to initiate a criminal case, makes decisions such as reversing a decision made without law, sending the case by relevance.

As the prosecutor-criminalist undertakes his task, of course, there is a need to strengthen the procedural status of his rights and obligations, legal status, participation in the investigation of criminal cases by law.

In our opinion, the fact that the prosecutor-criminalist is considered an official involved in direct investigative actions in the disclosure of crimes, personally performs investigative actions for his participation in the investigative actions of the investigator and the prosecutor, furthermore, he has independent powers related to the issuance of certain procedural documents serves to ensure the quality of the investigation.

The quality of the investigation serves first of all to strictly observe human rights and freedoms, to ensure the norms of the presumption of innocence, to obtain violations of the norms on the acceptability of evidence.

In our opinion, the development of the definition is equal to the fact that the prosecutor-criminalist is a clear subjective participant in criminal-procedural relations, it is appropriate to describe him as an official with a role in improving the quality of Investigation in the policy of struggling against crime, as well as a special position.

The opinions of scientists studied as a result of the study, the analysis of regulatory legal acts showed that the prosecutor-criminalist has the following main directions:

- providing practical assistance in the investigation of serious and extreme crimes;
- introduction of scientific-technical, modern technical-criminalistic means to the practice of investigating and exposing crimes, application of scientifically based methods to investigative practice;
- increase the professional training of the prosecutor-investigative staff.

In our opinion, the fact that the prosecutor-criminalist regularly operates in these areas serves to achieve the following positive results:

- to increase the quality and effectiveness of the investigation;

- to obtain the adoption of illegal decisions that contradict the rights and freedoms of the individual in cases related to the conduct of criminal cases;
- to the fact that the investigation is carried out in all directions, full and impartial;
- to prevent crimes prematurely and ensure their exposure;
- serves an active anti-crime policy.

As a result of the study conducted, the concept of “prosecutor-criminalist” was theoretically given the following author’s definition:

The prosecutor-criminalist is an official of the prosecutor’s office, who has the authority to competently organize, conduct and improve the quality and effectiveness of the investigation of serious and extreme crimes, use modern technical means and special knowledge opportunities of his own and participate in the criminal process.

The duties of the prosecutor-criminalist are as follows:

Providing practical, advice and other assistance from the special knowledge of specialists in improving the qualifications of personnel of investigative bodies, organizing a preliminary investigation into criminal cases, conducting certain investigations and other procedural actions, applying scientific and technical and criminalistic means and methods, preparing materials for conducting complex examinations and ensuring its transfer;

to be aware of the scientific breakthrough in the field of Criminalistics tools and information technology, to have the skills to work with and use programs that provide practical assistance in exposing crime;

introduction of criminalistic techniques and scientific methods of criminal investigation into investigative practice;

to have an interaction of the prosecutor’s office and other law enforcement agencies with criminalistic services, examination and scientific research institutions, institutions of higher legal education;

to study the investigative practices of advanced foreign countries, to develop appropriate measures to improve the existing investigative practices in our country, to analyze the use of criminalism and its capabilities in the investigation process, on this basis, to introduce a positive experience of the investigative work;

development of scientific recommendations on the application of the methods and tactics of the tested investigation;

to ensure control over maintenance, purpose and proper use of technical criminalistics tools, portable criminalistics laboratories and other instrument equipment;

to identify the existing need for technical-criminalistic means, technical materials, organizational techniques for investigators of the prosecutor’s office, making proposals for their purchase and distribution.

The organization of the prosecutor-criminalist activity and the consequentiality of its activities are considered to be factors affecting the effectiveness of the quality of the investigation, improving the level of professional development of investigators, not bringing to book the people who are not guilty and relying on evidence to expose crimes.

Legal scientists and criminalist scholars on the quality of the investigation represent diverse views.

Russian scientist L.Drapkin argued that the effectiveness of investigating and exposing crimes can be known through the use of mathematical methods¹⁵, asserting that the practical results of the activity are evaluated as purposeful efficiency in keeping with the pre-set goal. The main criterion for efficiency is the correlation of the result obtained with the goal set.

Legal scholar F.N.Fatkulin argues that the effectiveness of procedural and legal identification of cases of a crime should be understood as its ability to positively influence social relations at the least cost to social relations in a particular direction.¹⁶

In our opinion, it will be necessary to develop and introduce scientific and organizational and legal methods that will arm interrogators, investigators, procedural people with the authority to conduct investigative actions with specific recommendations for the legal, prompt, comprehensive, complete and objective disclosure of crimes, investigation in improving the quality and effectiveness of the preliminary investigation.

When it is said to develop and introduce the scientific and legal method, we may understand that it is the activities of the prosecutor-criminalists that are envisaged.

A similar close opinion was made by the Russian scientist V.K.Znikin who also argued that the quality and effectiveness of the preliminary investigation can be achieved by introducing separate scientific and legal methods¹⁷.

In our opinion, the effectiveness of the preliminary investigation can be determined from the result of its implementation of the targeted tasks of the criminal process in the pre-trial and judicial stages.

Simply saying, the quality of the investigation is measured with the strict observance of the norms of material and procedural law by the person responsible for conducting the proceedings, regardless of how the case ends from the beginning of criminal proceedings, the result of the unconditional observance of the rules established in the criminal and criminal proceedings by proving the guilt of the offender, the innocence of the person who is not guilty, as a result of the fact that each front acts in compliance with the requirements established by the norms of the law.

CONCLUSION

One of the factors affecting the quality of the investigation is the competence of interrogators and investigators to investigate crimes.

Moreover, an author's definition was developed on the concept of "the quality of investigation" during the research work.

According to the definition, the quality of the investigation – is the consideration of criminal applications and reports, the investigation of crimes, qualification of the actions of a person, strict adherence to the norms of material and procedural law in making legal, reasonable and

¹⁵ Драпкин Л.Я. Целенаправленность деятельности следователя и эффективность раскрытия преступлений // Проблемы криминалистики и доказывания при расследовании преступлений: межвузовский тематический сб. Барнаул: АГУ, 1990. С. 61–72.

¹⁶ Фаткулин Ф.Н. Актуальные вопросы эффективности советского уголовного процесса // Вопросы эффективности советского уголовного процесса. Казань: Изд-во Казан. ун-та, 1976.С. 3–27.

¹⁷ Зникин В.К. Понятие эффективности и качества предварительного расследования // Вестн. Том. гос. ун-та. Право. 2014. №1 (11). URL:<https://cyberleninka.ru/article/n/ponyatie-effektivnosti-i-kachestva-predvaritelnogo-rassledovaniya>

fair decisions, indicators of the level of ensuring comprehensive and impartial conduct of criminal proceedings (lower, middle, upper).

In conclusion, the activity of the prosecutor-criminalist is precisely aimed at improving the quality of the investigation, and he is an official who is unreasonably responsible for preventing the criminal prosecution of a person, so as not to leave the person whose guilt is not subject to prosecution.

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