

**PROSECUTORIAL SUPERVISION OVER THE OBSERVANCE OF THE LEGISLATION
AT THE STAGE OF EXECUTION OF THE SENTENCE**

KATSIARYNA CHYZHYK, VALENTINA BIBILO
Polotsk State Universty, Belarus

The article deals with the analysis of the characteristics which determine the prosecutorial supervision over the observance of the legislation at the stage of execution of the sentence as an independent branch of prosecutorial supervision. The author researches the object and subject of supervision, its specific tasks, the powers of the prosecutor and the means of the prosecutor's response to the detected violations.

Principle of legality is one of the constitutional principles which is the ground for the protection of the legal order and the provision of the rule of law in the state [1]. Obviously, there is the necessity to guarantee the realization this principle. There is a set of issues which The Prosecutor's Office of the Republic of Belarus has to solve. They are at first the provision of the rule of law, legality and the legal order, secondly the protection of the legal rights and interests of citizens, organizations and the state interests. All of these are solved through the implementation of functions. The most important of which is supervisory function [2, p. 97]. Also, according to the Law "On Prosecutor's office of the Republic of Belarus" the prosecutor's office as a government body executes supervisory function which includes five branches. They are named the branches of prosecutorial supervision [3].

According to the criminal proceeding rules criminal proceeding includes the stages. One of the main stages is the stage of execution of the court sentence [3]. Court and other participants of criminal proceeding turn the sentence to execution and decide the issues which emerge during the execution of the sentence and after this. High-quality execution of the sentence upgrades its effectiveness and contributes to the forming of citizens' beliefs in the inevitability of punishment [5, p. 340]. According to the Art. 4 of the Law "On Prosecutor's office of the Republic of Belarus" prosecutorial supervision of compliance with the law of judicial sentence and compliance with the law at the stage of execution of the sentence is enforced [3].

According to the theory of prosecutorial supervision the branches of prosecutorial supervision are comparatively separate types of the action of the Prosecutor's Office which has its own object and subject of supervision, specific issues, prosecutor's powers and prosecutor's response tools to the law violations [2, p. 7–23; 6, p. 9–15; 7, p. 298–299]. Thus, prosecutorial supervision at the stage of execution of the sentence as a specific branch of prosecutor's office' action has its own object and subject, issues, prosecutor's powers and prosecutor's response tools.

The object of the prosecutorial supervision is the legal boundary of Prosecutor's office's power demands. We are sure it is right to think that the object of the prosecutorial supervision over the observance of the legislation at the stage of execution of the sentence is bodies, institutions and officials exercising the function of execution of the sentence [7, p. 302].

The subject of prosecutorial supervision over the observance of the legislation at the stage of execution of the sentence is the compliance with law of legal acts, decisions, actions (inaction) of bodies and officials who realize the court sentence and other executive documents. The subject of prosecutorial supervision is defined by Art. 32 of the Law "On Prosecutor's office of the Republic of Belarus" [3].

Specific issues which are decided by the Prosecutor's office during the prosecutorial supervision over the observance of the legislation at the stage of execution of the sentence are clarified by common issues. According to the Constitution of the Republic of Belarus [1], the Law "On Prosecutor's Office of the Republic of Belarus" [3] and other legal acts the deciding of these issues is the prosecution function. Thus, it is possible to name these issues. They are the protection of rights, freedoms and legitimate interests of citizens, the interests of society and the state; compliance by the objects of prosecutor's supervision with the legislation at the address of a sentence to execution and also resolving issues arising during the execution of the sentence, as well as after its execution.

Prosecutor's powers in the field of supervision are those legal instruments which are aimed at identifying law violations that allowed during execution of the sentence, and the elimination of violations. Application of

instruments of public Prosecutor's reaction is pointed to elimination of allowed violations of the law and the circumstances accompanying them, restoration of the violated rights, and also on prevention of new violations.

According to Art. 402 of Criminal Proceeding Law the issues connected with the execution of the sentence are decided by the judge individually in a court session. Pay attention that the participation of the prosecutor in the court session is mandatory. In the case of his absence, the judge adjourns the session [4]. We are sure this condition is fair and reasonable. It guarantees the compliance with legislation at the stage of execution of the sentence. The compulsory participation of the prosecutor ensures the decision of the issues assigned to the Prosecutor's office. After examining the documents available in the case the court hears the conclusion of the prosecutor. It contains a reasoned conclusion about resolve of the consideration issues. The fact that the prosecutor is the last, it gives him the opportunity to evaluate opinions collected in the case [8, p. 963]. The issues that emerge during the execution of the sentence form an independent type of relations that concerns neither charge nor sentence. Therefore it is rather difficult to determine the nature of prosecutor's activity at the stage of execution of the sentence.

As noted by many researchers, the function of prosecutorial supervision doesn't extend to the court and judicial activities. Especially the object of the prosecutor's supervision is neither the work of the court nor the court itself, but the state of law at the court session. We are sure it determines the content of the prosecutor's activity at the stage of execution of the sentence [9, p. 42; 10, p. 60].

It is fact, opposition, discrepancy of material and legal interests of participants of criminal proceeding, as well as procedural equality of the participants are the features of the classic trial. In other words the process is adversarial, the parties are equal. However, the principle of adversarial proceedings and equality of parties is fully implemented in the trial stage. The prosecutor takes the position of the public Prosecutor, at the same time he guarantees the compliance with law by all participants in the trial [4].

Describing the court session, in which the issues connected with the execution of the sentence are resolved, it is difficult to speak about the adversarial process. Although there is the psychological setting of participants to the dispute [11, p. 89]. Some researchers determine the prosecutor's activity at the stage of execution of the sentence as human rights protection [12, p. 63]. This point is confirmed by the fact that the prosecutor can't be recognized as a party of the case, because he pursues neither substantive nor procedural interest. It is connected with the simplified nature of the proceedings [9, p. 44–45]. However, the prosecutor has the right to make applications and challenges, enforce the compliance with the proceeding rules of the court session, take measures to ensure rights of proceedings' participants. These powers are linked with supervisory responsibility. Thus, at the stage of execution of the sentence, the prosecutor protects the interests of the state, society, as well as interests of the participants of proceedings. The prosecutor acts more as an assistant in the court's decision, while at the same time being a person exercising supervision, the object of which is determined not by the activities of the court, the court, but the state of law.

In that way, prosecutorial action at the stage of execution of the sentence is comparatively separate type of prosecutor's office' action which is connected with the supervision. This activity has its own subject of regulation and specific content. Also it is pointed to the protection of the interests of the individual, society and the state at the stage of execution of a sentence. It is the protection of human rights.

REFERENCES

1. Конституция Республики Беларусь 1994 года : с изм. и доп., принятыми на респ. референдумах 24 нояб. 1996 г. и 17 окт. 2004 г. – Минск : Амалфея, 2005. – 48 с.
2. Шостак, М.А. Прокурорский надзор : ответы на экзаменац. вопр. / М.А. Шостак. – 3-е изд., перераб. – Минск : ТетраСистемс, 2012. – 288 с.
3. О прокуратуре Республики Беларусь [Электронный ресурс] : Закон Респ. Беларусь, 8 мая 2007 г., № 220-3 : в ред. Закона Респ. Беларусь от 18.07.2016 г. // ЭТАЛОН. Законодательство Республики Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
4. Уголовно-процессуальный кодекс Республики Беларусь [Электронный ресурс] : Закон Респ. Беларусь, 11 янв. 1999 г., № 295-3 : в ред. Закона Респ. Беларусь от 08.01.2018 г. // ЭТАЛОН. Законодательство Республики Беларусь / Нац. центр правовой информ. Респ. Беларусь. – Минск, 2019.
5. Бибило, В.Н. Проблемы правоведения : избр. тр. / В.Н. Бибило. – Минск : Право и экономика, 2011. – 356 с.

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6. Прокурорский надзор : учебник / Ю.Е. Винокуров [и др.] ; под общ. ред. Ю.Е. Винокурова. – 3-е изд., перераб. и доп. – М. : Юрайт-М, 2001. – 352 с.
7. Сенько, А.С. Прокурорский надзор за соблюдением законодательства при исполнении приговора / А.С. Сенько // Право и демократия : сб. науч. тр. – Минск : БГУ, 2014. – Вып. 25. – С. 297–311.
8. Научно-практический комментарий к Уголовно-процессуальному кодексу Республики Беларусь / Н.И. Андрейчик [и др.] ; под науч. ред. М.А. Шостака. – Минск : Акад. МВД, 2014. – 1230, [2] с.
9. Воронин, О.В. Прокурорское уголовное преследование в различных стадиях и производствах отечественного уголовного процесса / О.В. Воронин // Вестн. Томск. гос. ун-та. Право. – 2013. – № 1 (7). – С. 42–45.
10. Качалов, В.И. Об участии прокурора в стадии исполнения итоговых судебных решений в уголовном судопроизводстве России / В.И. Качалов // Вестн. Акад. Генер. прокуратуры Рос. Федерации. – 2017. – № 4 (60). – С. 59–64.
11. Бибило, В.Н. Конституционные принципы правосудия и их реализация в стадии исполнения приговора / В.Н. Бибило. – Минск : Унив., 1986. – 160 с.
12. Гуцин, В.З. Правозащитные функции прокуратуры в постсоциалистическом государстве / В.З. Гуцин, А.В. Чурилов // Гос-во и право. – 1998. – № 5. – С. 59–67.