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State Service in the Prosecutor's Office in the System of State Service in the Law Enforcement Sphere

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Abstract. *Introduction:* the paper analyzes current Russian legislation regulating the functioning of the institute of state service. *Aim:* to study federal legislative acts containing provisions that define the list of state bodies that are classified as law enforcement agencies, and to look into the reasons why the legislator abandons the term "law enforcement service". *Methods:* general scientific and special methods, including comparative legal, comprehensive, logical methods, analysis and synthesis. *Results:* we reveal certain inconsistencies in the regulatory framework that make it difficult to establish common features and specifics of administrative and legal status of such bodies; these inconsistencies also impede further development of the theory of administrative law when studying the institution of state service. *Conclusion:* based on the analysis of the types of functional activities of state bodies, we conclude that the service in the prosecutor's office is classified as the state service related to law enforcement activity; we note its similarity and difference in relation to the service in other state bodies that perform law enforcement functions, including institutions and bodies of the penal system. In line with the methodology of integrative legal understanding, we define the service in the prosecutor's office as the professional activity carried out on behalf of the state by employees holding positions in authorized federal state bodies and empowered by law to apply state enforcement measures aimed at protecting law and order, human rights and freedoms, public and state interests, combating crimes and other offenses, or the professional activity related to the performance of the functions of internal administration and staffing of these bodies. We emphasize that such service is implemented in strict accordance with the rules established by administrative and legal norms, and on the basis of ethical principles and moral principles that form the orientation of employees toward achieving socially useful goals and interests of the state itself. Scientific and practical significance of the article lies in the fact that the conclusions made in it can be used in scientific, educational and law-making activities.

Keywords: state service; law enforcement agencies; law enforcement activities; control and supervisory activities; human rights activities; prosecutor's office agencies; prosecutor's office employees.

12.00.14 – Administrative law; administrative process.

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Introduction

The reform of the public administration system could not but affect the prosecutor's office, priorities in its functioning, administrative and legal forms and methods of work it uses. That is why problems in the development of the prosecutor's service, as well as the institution of state service in general [13] cannot be addressed in isolation from general issues of development of the state and law. Such changes require a rethinking of the goals and objectives of the prosecutor's office, as well as the basic foundations of interdepartmental official relations.

The foundations of the legal status of Russian state servants were laid down by Federal Law 119-FZ of July 31, 1995 "On the foundations of the state service of the Russian Federation". Federal Law 58-FZ of May 27, 2003 "On the system of state service of the Russian Federation" (hereinafter referred to as the Law), which replaced the former, marked the beginning of state service management system [23] and the transition from the structure of categorized positions to the state service of three independent types: state civil, military and law enforcement.

However, the process of forming the state service system was never completed. Paragraph 2 of Article 3 of the Law points to the need to adopt separate federal laws on types of state service in order to ensure the implementation of the principles of building and functioning of the state service system; nevertheless, after a long period of time the law enforcement service has not found its legal consolidation.

In many ways, this was probably due to differences in the specifics of law enforcement agencies themselves, they are characterized by conservatism and they do not want the official activities of their employees to be based on the same regulations as other agencies and lose a centuries-old identity as a result.

The refusal was explained by official reasons such as the lack of the definition of "law enforcement agency", criteria and signs, which it must comply with; the absence of a clearly defined structure of these state agencies; taking into account foreign experience [16], which was formed not so much by the adoption of general laws as by the creation of regulations for each type of law enforcement service [15].

Also, one of the reasons could be the wide range of legal schools that emerged when the Law under consideration was in effect; this fact led to the emergence of different positions of their representatives in determining the content of the law enforcement service, the list of state bodies whose employees are engaged in this type of service [20].

Perhaps the greatest controversy was caused by the attribution of judicial bodies and prosecutor's offices to the sphere of law enforcement service. And if the controversy on the former was resolved in full by the results of the analysis of the current legislation (Item "l" of Part 1 of Article 72 of the Constitution of the Russian Federation divided one of the subjects of joint jurisdiction of the Russian Federation and its constituent entities into the cadres of judicial and law enforcement bodies; positions of judges were classified as state positions of the Russian Federation, which excluded the possibility of their regulation by the Federal Law "On the system of state service of the Russian Federation"), then there were no clear legal basis according to which the service in the Prosecutor's office could be classified as law enforcement service or excluded from it.

Using the legal vacuum that has arisen, some authors have spoken about the unfairness of classifying the prosecutor's office as a law enforcement agency, since prosecutors do not have the authority to initiate and investigate criminal cases, despite the criminal prosecution carried out in court [17]. Others came to similar conclusions, relying on the special status of the prosecutor's office, which excludes their attribution to any branch of government, as well as the primacy of regulating the labor relations of their employees by labor legislation [6; 14, p. 8].

The Federal Law "On the law enforcement service of the Russian Federation", the development of which lasted almost a decade, was designed to dispel the disputes that arose, but the project has never been implemented.

At the meeting of the Commission under the President of the Russian Federation on the Reform and Development of the State Service held on October 10, 2012, for the first time at the official level, it was proposed to abandon the term "law enforcement service" and amend the basic law, specifying that state service includes other types of state service in addition to state civil service and military service. It was proposed that special laws should define differences in other types of service in a particular state body [5].

This issue was resolved only with the adoption of Federal Law 262-FZ of July 13, 2015 "On amendments to certain legislative acts of the Russian Federation in terms of clarifying the types of state service and recognizing as invalid Part 19 of Article 323 of the Federal Law "On customs regulation in the Russian Federation", which included the relevant provisions.

Meanwhile, we cannot draw an unambiguous conclusion that the new version of the Federal Law "On the system of state service of the Russian Federation" has brought sufficient clarity to the definition of possible types of state service. To date, the Law does not contain any concept of state service of other types (in contrast to the previous version, which contained a definition of the concept of "law enforcement service"), which does not allow us to determine in which state bodies it is carried out.

In general, we can say that Federal Law 262-FZ of July 13, 2015 did not divide state service into three types, as previously, but it created the prerequisites for the emergence of an unlimited number of types of service, each of which should comply with a single requirement – it should be established by the corresponding federal law.

Without dwelling on the definition of the entire structure of state service of other types, we note that the provisions of Article 40 of Federal Law 2202-1 of January17, 1992 "On the prosecutor's

office of the Russian Federation" (hereinafter referred to as – the Law on Prosecutor's Office) according to which service in the bodies of the prosecutor's office is classified as federal state service, and prosecutors are federal state servants, fulfilling the duties according to their position in federal state service, and their the legal status and conditions of service are determined by this federal law, allows us without any doubt to conclude that service in the prosecutor's office of the Russian Federation can be classified as state service of the type under our consideration.

However, we should emphasize that one of the features of the Russian prosecutor's office is that it comprises all three types of service: employees of the military prosecutor's office hold positions of military service; specialists of the legal statistics, information technology and information protection units, records management and logistics units hold positions of state civil service; other employees of the agencies and organizations of the prosecutor's office, except for the Prosecutor General who holds the state position, hold the positions of state service of a different type, namely, service in the agencies and organizations of the prosecutor's office.

In the context of a large number of effective regulatory legal acts that distinguish law enforcement agencies as an independent group of state bodies, it cannot be said that since the adoption of Federal Law 262-FZ of July 13, 2015 all the controversy about the attribution of a particular type of state service to law enforcement service has become exclusively theoretical. At the same time, the analysis of such acts still does not allow us to draw an unambiguous conclusion that the prosecutor's office of the Russian Federation is or is not a law enforcement agency.

Article 17.12 of the Code of Administrative Offences of the Russian Federation establishes liability for unlawful wearing of a uniform having badges of rank and symbolism of state militarized organizations, of law enforcement or control bodies, Article 17.13 of the RF Code of Administrative Offences and Article 320 of the RF Criminal Code – for disclosure of information about security measures taken in respect of an official of a law enforcement or control body. By establishing these kinds of liability, the legislator undoubtedly classifies the prosecutor's office as a law enforcement authority, since it cannot be considered a militarized organization or a regulatory authority (in pure form) by virtue of the provisions of other regulations.

A similar conclusion should be drawn from the provisions of Article 2 of Federal Law 45-FZ of April 20, 1995 "On state protection of judges, officials of law enforcement and supervisory bodies" (in the part related to considering prosecutors as persons subject to protection), Paragraph 7 of Part 3 of Article 23 of Federal Law 152-FZ of July 27, 2006 "On personal data" (in terms of granting the authorized body for protection of the rights of subjects of personal data the right to send materials about detected violations "to the prosecutor's office, other law enforcement agencies"), Part 4.1 of Article 17 of Federal Law 77-FZ of December 29, 1994 "On the mandatory copy of documents" (regarding the fact that organizations that centrally distribute the mandatory copy are endowed with the functions of providing information on the state registration of documents and copies of registered documents at the request of "state authorities, judicial and law enforcement agencies"), Parts 5 and 6 of Article 7 of Federal Law 6-FZ of February 7, 2011 "On the general principles of the organization and activities of the control and accounting bodies of constituent entities of the Russian Federation and municipalities" and Part 1.2 of Article 13 of Federal Law 25-FZ of March 2, 2007 "On municipal service in the Russian Federation" introduced by Federal Law 559-FZ of December 27, 2018 (regarding the prohibition foe an individual to be appointed to certain positions in the control and accounting bodies of regions and municipalities if there is close kinship or connection by marriage "with the heads of judicial and law enforcement agencies" located in the relevant territory).

We obtained the same result from the analysis of the norms of Part 3 of Article 80 of the RF Penal Enforcement Code and Paragraph 7 of Item 2 of Part 2 of Article 33 of Federal Law 103-FZ of July 15, 1995 "On the custody of suspects and those accused of committing crimes"; they establish provisions on holding "former employees of the courts and law enforcement agencies" in separate correctional institutions and places of detention, which is fully confirmed by law enforcement practice.

The following regulations: Item 3 of Part 4 of Article 52 of the Air Code of the Russian Federation, and Item 9 of Part 4 of Article 11.1 of the Law of the Russian Federation no. 2487-1 of March 11, 1992 "On private detective and security activity in the Russian Federation" forbid persons "whose powers of the state position were prematurely terminated, or who were dis-

missed from state service, from law enforcement agencies, from the prosecutor's office and judiciary bodies" to be admitted to the aviation security service and to acquire the legal status of private security guard. Thus, contrary to the logic the legislator chose in a number of other legal acts, these regulations separated state service in the prosecutor's office and the service in law enforcement agencies.

Such inconsistency of the legislator can be traced in the wording of the regulation of Item 11 of Part 1 of Article 2 of Federal Law No. 3-FZ of February 7, 2011 "On the police", according to which the activities of the police include state protection of "victims, witnesses and other participants in criminal proceedings, judges, prosecutors, investigators, officials of law enforcement and regulatory bodies, as well as other protected persons". Thus, despite the direct connection of this norm with the above-mentioned provisions of the Federal Law "On state protection of judges, officials of law enforcement and supervisory bodies" and contrary to the concept of the latter, not only prosecutors, but also investigators are excluded from the number of law enforcement officials, thus forming independent categories.

Federal Law 78-FZ of May 7, 2013 "On the commissioners for the protection of the rights of entrepreneurs in the Russian Federation" establishes in Part 3 of Article 5 the procedure for creating working groups to consider the appeals of the commissioner and defines state authorities, law enforcement agencies and prosecutor's offices as three independent groups.

Item 6 of Part 13 of Article 62, and Items 1 and 3 of Part 1 of Article 63 of Federal Law 218-FZ of July 13, 2015 "On state registration of real estate" also bring discord in the question under our consideration. These regulations determine the list of subjects who can receive the information contained in the Unified State Register of Immovable Property and exclude not only the prosecution, but also the authorities conducting intelligence-gathering activity, from the category of law enforcement agencies; apparently, under these regulations, the authorities that conduct preliminary investigation in criminal cases are the only ones that can be defined as law enforcement agencies.

The revealed inconsistency in the regulatory framework of the Russian Federation, in our opinion, does not allow us to reliably determine that certain regulations apply to certain state authorities and thus to identify similarities and specifics of administrative and legal status of the state authorities; this fact, in turn, impedes further development of the theory of administrative law in the direction of research into the issues of the institution of state service taking into account current needs of state and legal development.

Moreover, due to the presence of such inconsistencies in criminal law (Article 320 of the RF Criminal Code), there emerges a logical conclusion about the dangers of a broad interpretation of the term "law enforcement agency" as it may be interpreted by the inquirer, investigator, prosecutor or judge; this is totally inadmissible in criminal law [7, p. 97].

At the same time, the variety of legal acts that interpret the content of the term "law enforcement agencies" in their own way currently makes it impractical to issue a concept document that would contain common requirements and criteria for classifying state bodies as law enforcement agencies. Obviously, the legislator chose that this term should be defined according to the situation in which it is used – in a specific sphere of legal relations regulated by one legal act or by a group them. Using this scheme, in regulations affecting many spheres of public life (for example, the RF Code of Administrative Offences, the RF Criminal Code, etc.), the legislator uses the term "law enforcement agencies" in a broad sense, referring to all state authorities that are involved in the protection of legal relations under the regulations of such acts. In the acts that regulate a specific sphere or a narrower group of public relations, law enforcement agencies are only those that are directly related to this sphere, and therefore these regulatory documents use the notion "law enforcement agencies" in a truncated sense.

However, even this does not explain all the inconsistency of the above norms of individual legal acts; such a situation indicates the need to make adjustments to them.

In the current situation caused by the absence of a single set of terms and definitions in the current legislation, the legislator, for reasons that are not entirely clear, has identified such a type of service in state bodies as the federal state service related to law enforcement activity. It is defined by the same Federal Law 262-FZ of July 13, 2015 and also by some other subsequent laws and regulations.

One would assume that the purpose of these reforms was to determine common features in various types of federal state service, including the system of legal guarantees of their em-

ployees (military personnel of a number of state bodies such as the FSB and the National Guard, the Federal Penitentiary Service of Russia and employees of the state service of other types), given their purpose in the system of public administration and largely similar essence of their work. However, the analysis of normative legal acts that contain these provisions indicates that military service does not belong to this category.

The validity of the proposed changes raises even more doubts, when we look at the fact that the legislator moves away from determining the essence of state service through generic features of state agencies, in which state service is carried out ("law enforcement service"); instead, the legislator defines features of the agency itself through the functional orientation of the service ("bodies in which federal state service related to law enforcement activities is carried out under the legislation of the Russian Federation"). The situation is aggravated by the fact that the legislation contains no direct provisions that would establish a list of such bodies. In addition, to date, the legislator only once directly indicates who carries out the federal state service related to law enforcement activities: it is the Russian Cossacks. However, according to Federal Law 154-FZ of December 5, 2005 "On the state service of the Russian Cossacks", it is not a state body, but only a form of self-organization of citizens – the Cossack community.

In the current legal field, the only normative legal act that reveals the content of the terms "law enforcement agencies" and "federal state service related to law enforcement activities" is the Resolution of the Central Election Commission of Russia no. 170/1398-7 dated July 25, 2018, which states that its adopted methodological guidelines define law enforcement staff as those who carry out federal state service related to law enforcement activities; at the same time the Resolution determines that they include employees of prosecutor's office agencies, employees of the Investigative Committee, internal affairs agencies, customs bodies, institutions and bodies of the penal system, and other bodies whose powers include the implementation of law enforcement functions.

The science of administrative law mentions several other categories of service that have a similar meaning to the one under our consideration.

For example, R.V. Nagornykh distinguishes state service in the law enforcement sphere, which he defines as a multifaceted administrative and legal phenomenon associated with the professional activity of citizens on the positions of state bodies carrying out functions in the field of protection of rights and interests of citizens from unlawful encroachments, combating crime, protection of public order, ensuring personal and public safety, execution of decisions on bringing to legal liability, as well as functions in the field of providing law enforcement agencies with resources and personnel [9, p. 10; 10; 12].

Proceeding from the names of the above categories of service, we can say that their content is determined primarily by establishing the focus of the functional activities – law enforcement, control and supervision and human rights – of a particular employee; as for the fact whether a particular state body is classified as a law enforcement agency, it is not as important now.

Despite the obvious relationship and mutual combination of these functions, each of them has its own features and characterizes specific types of state activities that have a single goal, which consists in regulating existing public relations by identifying violations of legal norms and applying measures of influence to violators.

In this aspect, law enforcement activity consists in the application of state enforcement measures by specially authorized bodies in order to protect the rights, freedoms, and legitimate interests of society and the state [7]. The most important component of its content is its focus on ensuring security, law and order, combating crime, protecting human and civil rights and freedoms, countering terrorism and organized crime [3].

The essence of human rights activity consists in defending personal and collective interests, rights and freedoms of individual citizens and non-governmental associations by a competent authority and with the use of the means permitted by law [2]. In other words, such activities are exclusively individual and are aimed at restoring or contributing to the restoration of the already violated rights of a particular citizen or group of individuals. This activity does not imply that the body, official or other person performing it has the authority to apply any measures of influence. For the most part, it consists in the application of a limited range of legal means.

Control and supervisory activity consists in monitoring the functioning of an object or the activities of a group of persons (state and local

government bodies, organizations, individuals) in order to eliminate deviations from the specified parameters, identify and suppress violations of the law by applying measures of influence (disciplinary, administrative, etc.) [1, p. 286–287; 8, p. 95].

Among the above types of professional activity, the most similar are law enforcement activities and human rights protection, the essence of which, based on the similarity of the formation of these terms, consists in defending the rights, freedoms and interests of individuals and groups of people. The difference between these types of activities lies in the means and methods used to achieve the goals: law enforcement involves the use of coercive measures of influence (including powers in the areas of criminal and administrative jurisdiction), human rights protection is implemented exclusively by applying to the agencies authorized to make legally significant decisions [18]. Taking into account these characteristics, the former can obviously be carried out exclusively by state bodies, the latter – by state bodies and officials and also by other persons, including organizations.

As we can see, each of these three types of activities in varying degrees can be carried out by prosecutor's office bodies (control and supervision – oversight of public authorities at all levels; human rights protection – submission of application to the court to protect the rights, freedoms and legitimate interests of the citizen, who cannot appear in court due to their condition, age, disability, and other reasons (disabled, incapable, minors, the elderly), participation of the prosecutor in judicial proceedings in cases arising from public legal relations [4]; the law enforcement functions – implementation of the functions of criminal prosecution in court, administrative proceedings, coordination of the activities of the entire system of law enforcement, adoption of a set of measures of public prosecutor's response in order to eliminate violations of law identified in the implementation of supervisory measures, and also when considering appeals of citizens and organizations).

Apparently, the features inherent in the prosecutor's office that allow us to classify them as human rights and supervisory state bodies are a reason for ongoing discussions that question their status as law enforcement agencies. Meanwhile, this is what emphasizes the uniqueness of these bodies, because they implement functions in almost all spheres of public relations, which simultaneously requires different forms of such activities and the impact on those who violate law and order. The prosecutor's office is an important guarantor of the rule of law, because it assumes an important role in the fight against impunity and ensures the legality of the actions of the entire country [19, p. 2; 21].

In this part, we should agree with the opinion of K.I. Amirbekov, who believes that the Prosecutor's Office of the Russian Federation carries out law enforcement activities without replacing other state bodies. For these purposes, prosecutors are endowed by law with power-enforcement authorities in the field of both criminal and administrative jurisdiction [2, p. 51].

Conclusions

The conducted analysis allows us to say with confidence that the service in the prosecutor's office is state service related to law enforcement activities, which, in turn, can be defined as a professional activity carried out on behalf of the state by employees who hold positions in authorized federal state bodies and are empowered by law to apply state enforcement measures aimed at protecting law and order, human rights and freedoms, public and state interests, combating crimes and other offenses or related to the performance of the functions of internal management and staffing of these bodies. Such service is carried out in strict accordance with the rules established by administrative and legal norms, and on the basis of ethical principles and moral foundations that form the orientation of employees toward achieving socially useful goals and interests of the state itself.

A more detailed analysis of this type of service allows us to say that there is significant similarity between the legal nature of the status of a federal state servant of the prosecution and the legal regulation of the issues related to the staffing of the prosecutor's office bodies in general with the same elements of state-service relationship in the institutions and bodies of the penal system [11, p. 17–27], as well as other state bodies that perform law enforcement functions to ensure security, law and order, counteract crime, and protect human and civil rights and freedoms.

At the same time, the administrative and legal status of a prosecutor's office employee contains a number of elements that indicate its uniqueness and confirm its special position in the state service system, often revealing similarities with the status of persons holding state positions of judges.

Such elements that distinguish prosecutors, for example, from employees of the penal system are special conditions and procedure for the entry into service in the prosecutor's office bodies, fulfilling the duties, assigning ranks, appointments, termination of service, exclusivity of statutory powers given to prosecutors, specifics of bringing them to administrative and criminal liability.

At the same time, we should recognize that at the present stage, scientific and legislative activities to improve state service in the prosecutor's office are lagging far behind the needs of state and legal development of this sphere of legal relations; such a situation makes it necessary to revise and clarify certain elements of the administrative and legal status of a prosecutor's office employee.

Subsidiarity of the provisions of current legislation in determining the status of prosecutors, and the inconsistency and unnecessary duplication of certain of its provisions do not allow us to form a complete picture of the list of prosecutors' rights and obligations, the system of restrictions and prohibitions related to their activities, and the types of their encouragement and accountability.

The current law-making practice, according to which the bylaws and departmental normative acts regulate main aspects of the legal status of employees, (given the fact that the Law on the Prosecutor's Office contains no respective blanket or reference rules) is at variance with the fundamental provisions of Article 10 of the Federal Law "On the system of state service of the Russian Federation" and Item 1 of Article 40 of the Law on the Prosecutor's Office, according to which the legal status of employees of the prosecutor's office should be determined exclusively by the norms of the federal law on this type of state service.

Such regulation actually replaces norms of the legislative level, thus we doubt whether the provisions established by such acts can be adopted as the aspects of the administrative and legal status of the prosecutor's office employees guaranteed by the state.

For this reason, the Law on the Prosecutor's Office requires significant revision in terms of adding a special chapter on the rights, duties, prohibitions and restrictions for prosecutors.

The comparative analysis of federal laws regulating administrative and working relations in state bodies that perform law enforcement functions, and in institutions and bodies of the penal system as well, suggests that the Law on the Prosecutor's Office should be supplemented with other provisions (distinctive features of an employee of the prosecutor's office – requirements that apply to employees of other state bodies [21, p. 72–73], financial allowance – bonus for the qualification level (class), new types of incentives and holidays, etc.); all this will contribute to the unification of the legal and organizational foundations of state service in the bodies performing law enforcement functions, compliance with one of the key principles of forming and functioning of the state service system – unity of the legal and organizational foundations of state service, improvement of the mechanism for implementing certain elements of the administrative and legal status of the prosecutor's office, ensuring the unique status of prosecutor's office bodies and prosecutor's office employees in the system of the institution of state service as a whole. Such changes will also ensure compliance with the high moral and ethical requirements imposed on this category of employees.

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