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The aspects of legal regulation on staffing of procuratorial authorities of the Russian Federation and the Republic of Kazakhstan

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Abstract

This article considers the issues of improving the legal regulation of the staffing of procuratorial authorities of the Russian Federation and the Republic of Kazakhstan into account the views of leading Russian lawyers, scientists and materials practical activities of state bodies. This article discusses some aspects of the admission and service in bodies and organizations of Prosecutor's office, such as requirements for individuals appointed to positions of prosecutors of the limitations, prohibitions and responsibilities connected with work in bodies and institutions of Prosecutor's office, powers of appointment and dismissal procedure for certification of public prosecutors.

Keywords: prosecutor's office, staffing, legislation, public federal service, law-enforcement.

Aspectos de la reglamentación jurídica sobre el personal de las autoridades de procuraduría de la Federación Rusa y la República de Kazajistán

Resumen

Este artículo considera algunas cuestiones para mejorar la regulación legal en la dotación de personal de las autoridades de la fiscalía de la Federación Rusa y la República de Kazajistán considerando las opiniones de los principales abogados rusos, científicos, y actividades prácticas con materiales de los órganos estatales. Se analizan algunos aspectos de la admisión y el servicio en órganos y organizaciones de la Fiscalía, como los requisitos para personas designadas para cargos de fiscales de las limitaciones, prohibiciones y responsabilidades relacionadas con el trabajo en órganos e instituciones de la Fiscalía, poderes de designación y procedimiento de despido para la certificación de fiscales.

Palabras clave: fiscalía, dotación de personal, legislación, servicio público federal, cumplimiento de la ley.

1. INTRODUCTION

The Russian state, as well as the Republic of Kazakhstan, is interested in the strong, independent, effectively working systems of bodies of the procuratorial authorities, capable to oppose to crimes and offenses in all areas. Public prosecutor's supervision, owing to its universality, generality and efficiency, is intended to promote not only strengthening of legality in the country, but also to increase in the authority of law-enforcement activity in the opinion of the population (ALEXANDROV, 1999). The need of its existence is proved by today's reality and it is accompanied by unsatisfactory work of the state control

bodies of both countries, obliged to provide legality. Besides, the effective prosecutor's office, guarding bases of the political system and integrity of the state, is capable to provide the purposeful reforms, directed to improvement of quality of the population life. Together with it, productive performance of the functions, assigned to procuratorial authorities of the Russian Federation and Kazakhstan, are impossible without the competent and professional organization of management at all levels of the specified system. The modern calls, caused by many both external, and internal factors, demand increase in efficiency of the organization of all directions of public prosecutor's activity, first of all due to improvement of staffing of the procuratorial authorities, and more effective use of an organizational factor.

The suspense of many problems, connected with strengthening of intra structural centralization of management, doesn't allow to designate the place of managements of the Prosecutor General's Office of the Russian Federation in federal districts in the system of the prosecution authorities and, therefore, doesn't contribute to the development of the organizational interaction, necessary for achievement of the most effective result of diversified activity the prosecutors. Besides, current legislations about prosecutor's office of both countries, we believe, demand further improvement in the sphere of the regulation of questions on staffing and intra organizational administrative activity (CARTER, 2004). Thus, the relevance of the theme of the present article is caused by need of studying and the analysis of legal problems on the organization of management of personnel process for procuratorial authorities of Russia and Kazakhstan, their organizational interaction with other state bodies (first of all - law enforcement authorities). On the basis of stated there is a need for the

research of legal regulation of staffing of the procuratorial authorities of Russia and Kazakhstan, and also search of effective forms of the legal mechanism for the administrative relations of the procuratorial authorities with their participants.

All this predetermined the choice of the theme, character and the direction of our research, in which there is made the attempt to state own vision of some administrative and legal aspects, connected with legal regulation of staffing on the procuratorial authorities of both countries. The extensive analytical material was used, devoted to legal aspects of the organization and activity of the procuratorial authorities of Russia and Kazakhstan, which is contained in works of the modern scientists.

2. METHODOLOGY

The methodological principles of this article were made by the system (accepted in jurisprudence) of the principles of knowledge of social reality and social and legal institutes in their interrelation and interconditionality. The approved general scientific and special methods are widely used. The general scientific *dialectic method* gave the chance to consider the intra organizational legal relationship, developing in the procuratorial authorities, from the point of view of variability their regulation at each level of three-unit system, to prove merits and demerits of various approaches to the solution of the matter, to show change in the mechanism of regulation of these relations depending on set of the internal and external factors influencing it. *Formal-legal methods*: the description, comparison, classification, the analysis and synthesis allowed to

characterize the mechanism of legal regulation of the intra organizational administrative relations from the position of their concrete normative content. Besides, thanks to these methods of scientific knowledge, it was succeeded to conduct the research of current legislation regarding its compliance of real-life model the legal regulation of complete system the bodies, which are carrying out all-supervising functions, to reveal a number of legal gaps and to make suggestions on their elimination. *The system and structural method* provided studying of the procuratorial authorities as system, gave the chance to reveal its basic elements, and to show objectively existing interrelation between them (SIEVERS, 2002).

The comparative and legal method was used at determining structure and sequence of the process of management development in the procuratorial authorities, by comparison of various approaches to the organization of these or those activities of prosecutors, at comparing a number of institutes of the administrative and labor law (for example, concerning passing of public service by the prosecutors and public servants, who are carrying out professional activity in the prosecution authorities) and also at studying components of staffing of management in the procuratorial authorities. The legal analysis of the Federal act “On the Procurator’s office of the Russian Federation”, and the Law of the Republic of Kazakhstan “On prosecutor’s office” were carried out and also the logical and legal analysis of other legal acts were done.

For writing this article the extensive analytical material was used, devoted to legal aspects of the organization and activity of the Russian’s and Kazakhstan’s procuratorial authorities, which is contained in works of modern scientists.

3. RESULTS

Thus, we received the following results based on the analysis of some aspects of legal regulation of staffing on the procuratorial authorities of the Russian Federation and the Republic of Kazakhstan, in particular mentioning the questions of intra organizational administrative activity, the admission order, service, and interaction of the procuratorial authorities with higher education institutions:

1. In article 1 of the Federal act “On the Procurator’s office of the Russian Federation”, it is directly reflected that for ensuring rule of law, unity and strengthening of legality, protection of the rights and freedoms of the person and citizen, and also protected by the law of interests of society and state – the prosecutor’s office of the Russian Federation carries out supervision of respect for the rights and freedoms of the person and citizen, the federal executive authorities, Investigative Committee of the Russian Federation, and a set of other commercial and non-profit organizations; and it is also given authority on coordination of activities of law enforcement agencies for fight against crime. Certainly, the above demonstrate that the service in prosecutor’s office has specific signs, and it needs to be interpreted as the special type of federal public **law-enforcement** service, where we believe necessary to make changes and additions to part 1 of article 40, the Act on prosecutor’s office of Russia, having stated it in the following edition: “1. The service in the bodies and organizations of prosecutor’s office is federal public **law-enforcement** service”, and further similarly under the text of the law.

2. In our opinion, the legislation on the prosecutor's office, both in Russia and in Kazakhstan, unfairly allocates and isolates service in the bodies of the military prosecutor's office of Russia and the main military prosecutor's office of Kazakhstan in relation to service in the inter-city district prosecutor's offices, gives to it the militarized character and, the most important, breaks the unity and integrity of the prosecution authorities, showed in article 1 and 4 of the Law On prosecutor's office of Russia and in paragraph 1 of article 35 of the Law of the Republic of Kazakhstan "On prosecutor's office". We would like to bring the suggestion to reconsider the organizational-legal status of the bodies of the military prosecutor's office of Russia and the main military prosecutor's office of Kazakhstan.

3. For the accomplishment of the basic principles of anti-corruption, namely publicity and transparency, system and complex use of anti-corruption measures, priority application of measures for prevention of corruption, we believe expedient to provide and approve in the Kazakhstan's legislation the list of diseases, interfering for admission in law-enforcement service of the Republic of Kazakhstan or its service, as the conclusion of the military-medical commission about eligibility or ineligibility of this or that employee cannot always have objective character.

4. According to the Prosecutor General's Office of Russia during the period from 2002 to 2009, 3 897 persons were employed in bodies of prosecutor's office of the Russian Federation who were directed for training to target places, and it makes only 13% of the total number of the employees who were admitted for service to the

procuratorial authorities during the considered period. It demonstrates that so far the most part of young employees of Russia prosecutor's office is made by graduates of "no specialized" higher education institutions of the country. In this regard, we consider necessary to note that the Russian State spends the considerable sums from budget for the maintenance of higher education institutions at the Prosecutor General's Office of Russia which are obliged to complete fully with the necessary personnel of "employer", and the entrants (potential future prosecutors) at admission have to pass the strict selection in the conditions of the high competition that it is hard to say about other higher education institutions. So, we consider that it is very important to use this potential effectively, and HR departments of Prosecutor's office of Russia have to be concentrated on the target training of specialists.

5. We consider expedient that it is necessary for the Prosecutor General's Office of the Republic of Kazakhstan to strengthen interaction with profile higher education institutions of the country, including by means of the conclusion of the contracts with them for training of specialists for creation of the effective mechanism for improvement of vocational training quality and retraining of personnel, where there will be no place of ordinary formality which often occurs in practice; at the same time, it is very important to take part on the system basis in development of the national mandatory education standards, standard model education curricula. These steps, eventually, will promote further strengthening of close connection of practical and educational activities, on the one hand the level of responsibility of

prosecutor's office for training will increase, and with another - the higher education institutions of the country will improve quality of the provided educational services.

4. DISCUSSION

The questions of recruitment and placement of personnel in the procuratorial authorities are a kernel not only all system of resource support for activity of the investigated departments, but also basis on which is based performance of the tasks for providing the rule of law in the country. The efficiency of implementation of supervising functions and also authority of prosecutors in society depends from the level of the organization of work with cadre, use and education of the prosecutors. Considering the aspects, connected with effective administration in the studied system, we will note their close connection with activities for staffing of the public prosecutor's structure by the persons, who are most meeting the qualifying standards to appointment of vacancies. This activity, considering legislatively established subordination of lower-level prosecutors to their superiors, is directly administrative. Therefore improvement of management in the system of the procuratorial authorities directly depends on quality of personnel work and clearness of its organization.

The modern prosecutor's office is the specialized public authority, possessing a wide range of powers to ensure the rule of law and restoration of the violated rights and freedoms of the person and citizen. Realizing them in daily activity, the prosecutors are given special legal

status which connects them with public service. So regarding part 1 article 40 of the Federal Act “On Prosecutor’s office of the Russian Federation”, it is fixed that the service in bodies and the organizations of prosecutor’s office is federal public service. Prosecutorial employees are federal civil servants performing duties on the post of the federal civil service, taking into account the requirements of this Federal Act. The legal status and conditions of service of the public prosecutor’s workers are determined by the present Federal Act (SHTERIN and RICHARDSON, 1998). In turn article 48 of the Law of the Republic of Kazakhstan “On prosecutor’s office” establishes service in the procuratorial authorities – as a type of the law-enforcement service which is carried out by prosecutors according to the Constitution, the present Law and other legislation. The order and features of the order of service in the procuratorial authorities are determined by the Law of the Republic of Kazakhstan “The law-enforcement service” (CSERES, et al., 2006).

Proceeding from these legislative provisions, it is possible to draw a conclusion that staffing in this department both Russia, and Kazakhstan is implementation of standards of the noted statutory act in relation to the persons appointed to public prosecutor’s positions. The specified norms outline a circle of operation of Laws on prosecutor’s office concerning operational structure, i.e. persons, directly work in supervising and other measures. There is no direct indication of other officials (state civil servants) and citizens, performing work under an employment contract in the analyzed Laws. In our opinion, in this case, the legislative approach is quite understandable, since it presupposes the division of the normative regulation of official (labor) relations in relation to certain subjects. Professional activity of the public civil servants (accountants, registrars,

experts, etc.) who are in the staff of prosecutor's office of Russia is regulated by the Federal law of July 27, 2004 #79-FA "On the public civil service of the Russian Federation", labor activity of technical personnel (drivers, lifters, storekeepers, electricians, etc.) is carried out in compliance with provisions of the Labor Code of the Russian Federation. In Kazakhstan activity of support personnel is regulated by the Labor Code of the Republic of Kazakhstan of November 23, 2015 #414-V LRK. We consider that it is necessary in more detail to consider personnel questions concerning the persons, involved in law enforcement for work organization of operational structure of the procuratorial authorities. Scientific interpretation of essence of the public prosecutor's and office relations and, as a result from it, finding of optimum ways of improvement of personnel work assumes determination of the service place in bodies, departments, institutions and the organizations of prosecutor's office in the system of public service. Consideration of this question is represented to us as very important, as far as it is closely connected with a role of the prosecution authorities in the system of public authorities of Russia and Kazakhstan, which predetermines existence and character of the intra organizational relations in all links of the studied system. The stated above part 1 of article 40 of the Federal Act "On Prosecutor's office of the Russian Federation" refers professional activity of prosecutors to federal public service, without determining at the same time its functional accessory. The Federal law of May 27, 2003 #58-FA "On the system of public service of the Russian Federation" (MANNING and PARISON, 2004), regarding part 1 article 2, establishes that the system of public service includes the public civil service, military service and public service of other types. This normative act does not contain any references to the service in the organs and institutions of the Russia's

prosecutor's office. In this case it is remarkable that the Constitutional court of the Russian Federation in determination of May 12, 2003 #167-O (MANNING and PARISON, 2004) in the considered aspect stated the position very relevant today, according to which on the sense of article 129 of the Constitution of the Russian Federation and articles 1 and 40 of the Federal Act "On Prosecutor's office of the Russian Federation" the service in the procuratorial authorities of the Russian Federation, making the integrated federal centralized system, represents the special type of federal public service; and the prosecutors on behalf of the Russian Federation and for ensuring rule of law, unity and strengthening of the rule of law, protection of the rights and freedoms of the person and citizen, protected by the law of society interests and state, carry out the supervision of observance of the Constitution of the Russian Federation and execution of laws, criminal prosecution and coordination of activities of law enforcement agencies for fight against crime. It causes the right of the Legislator to establish the certain guarantees, corresponding to the status of the prosecutor.

Thus, the Constitutional Court of the Russian Federation, proceeding from mission of the procuratorial authorities in society and character of the tasks which are carried out by it, allocated public service in supervisory authority in the special type and focused attention to its law-enforcement contents. The Kazakhstan's Legislator, in article 3 of the Law of the Republic of Kazakhstan "The law-enforcement service" referred to law enforcement agencies, the procuratorial authorities, internal affairs, the anti-corruption service and service of economic investigations which are carrying out the activity according to acts of the Republic of Kazakhstan (KEMBAYEV, 2012).

In jurisprudence the question of criteria of reference of these or those bodies to law-enforcement is debatable. So, A.P. Kopylova notes that the idea of differentiation of federal public service on three types, put in the Law on system of public service, assumes streamlining of functions of the rights and freedoms of citizens in all current state formations. In view of scale of legislative work which needs to be carried out for these purposes, and also reduction of departmental acts in strict compliance with the division established by the law, now determination of the circle of departments, which are law-enforcement, is the difficult task (HOWE, 1938). L. Mälksoo speaks that the greatest complexity, both in the theory, and in practice is represented by differentiation of federal public civil service and law-enforcement specialized activity as many of executive authorities are endowed with functions on protection of life and health of the citizens, guaranteed by the Constitution of Russia (MÄLKSOO, 2015). Agreeing with this position, we will note that the structure of the state apparatus provides existence of law-enforcement mechanisms in each sphere of public life, which activity not only is inherent in the nature of executive power and promotes implementation of provisions of the Basic Law, but also it is closely connected with the embodiment in reality of the wide range purposes, which are put at the creation and functioning of this or that department. At the same time the functional orientation of public authority and legislative determination of service can be different in it. For example, the Labor Code of the Russian Federation, in Article 354, establishes the activities of the Federal Labor Inspectorate, which, according to article 356 of the Labor Code of the Russian Federation, carries out the federal state supervision of observance of the labor legislation and other regulations, containing standards of the labor law by means of checks, issues of instructions, obligatory for execution, about

elimination of violations, drawing up protocols on administrative offenses within powers, preparation of other materials (documents) on involvement of guilty persons for responsibility, according to federal laws and other regulations of the Russian Federation, conducts according to the legislation of the Russian Federation hearing of cases about administrative offenses. The sense of the specified norm testifies to the law-enforcement content of activity of the state work inspectors, which direct problem is protection of labor rights of citizens. Together with it, the Provision on Federal Service for Labor and Employment determines the status of these officials as public civil servants (MÄLKSOO, 2008).

FRANCK (2012) points that the functional nature of activity of executive authorities cannot be considered as criterion of division of the public civil and law-enforcement service, as continuous reforming of administrative apparatus as at the federal, and regional level promotes double interpretation of the result of activity of the structures, vested with power over enforcement of legislative acts, as the unchanged phenomenon which we can observe – is the constant substitution of common goals and tasks with private, connected with the solution of internal organizational issues and elimination of constantly coming up contradictions. The lack of real result necessary for society from performance of law-enforcement functions is lowered the authority of the security services and creates an aureole of declarative nature of this kind activity. Together with it, the author indicates the need of systematization of public service of Russia which can be promoted by adoption of the Federal Act “The Law-enforcement Service”. At the same time FRANCK (2012) has different opinion, according to which, adoption of the similar act will not solve the available problems, but also will strengthen delimitation of the public

authorities, guarding the rights of citizens. At the end of the way of legal formation of the official status for the officials, it becomes clear that there is a need for the clear division of service in all departments into state civil and law enforcement by drawing up and fixing in appropriate laws the names of bodies, which on certain signs belong to law-enforcement. The similar step will cause many complaints and will create the basis for shaking of administrative apparatus at the federal level. Besides, accurate systematization of bodies, in which the service can be recognized as law-enforcement, will demand increase in social and material guarantees for the persons, passing public service, and it, in turn, can negatively affect the rights and the interests of the public civil servants, appointed on the various positions in other authorities (FRANCK, 2012). EL Spektor and Yu P Rassadkin suggests creating the circle of government institutions in which service can be carried to law-enforcement, on the basis of their power and compulsory impact on the persons neglecting the law. The researcher points to importance of the scientific analysis on functioning of the departments, possessing the wide range of functions on coercion to uniform performance of the law (SPEKTOR and RASSADKIN, 1971). Recognizing validity of this judgment, we will note that breadth of coverage by law-enforcement functions of the one body of the certain sphere of the public life and its ability to reveal by own forces and means of the various violations of legality, to bring to justice, established by law, and to help prevent their further, is the system-forming factor, which can be the basis for determination of service in this body as law-enforcement. In our opinion, federal public service in the Russian prosecutor's office completely keeps within this framework. Reasoning this position, we will note the number of legislative provisions of the Russian Federation. First, performance of the state function by prosecutor's office on

implementation of supervision of strict observance of the law by all bodies of the public, municipal and public administration, as well as all legal and natural persons (article 1 of the Federal Act “On Prosecutor’s office of the Russian Federation”) assumes separation of this security agency among other bodies and its isolation as the integrated and centralized law-enforcement system. It demonstrates about existence of certain features in office activity of the public prosecutor’s workers, not inherent in other public servants. Secondly, the administrative-command form of management of all links, which are the part of the procuratorial authorities system, is based on independence of prosecutors from other authorities. At the same time impact in any form on the employee of prosecutor’s office, with the purpose to influence the decision made by him or hindrance in any form of its activity, involves established by the law responsibility (article 5). Thirdly, an arsenal of law-enforcement measures of public prosecutor’s reaction where only prosecutors had the right to apply for identification of violations of legality, restoration the violated rights and interests of citizens and acceptance of preventive measures (article 21-34). Fourthly, the vesting of prosecutor’s office with powers on coordination of activities of the interested departments for fight against crime (article 8). The specified principles of law demonstrate that the service in prosecutor’s office has the specific signs, caused by special functional purpose of this body in the state. So, it needs to be interpreted as the special type of federal public law-enforcement service and to fix this provision in article 40 of the Act on Prosecutor’s office of Russia.

Having decided on the fundamental aspects, connected with the place and role of the prosecutor-office activity in the system of public service, having important value for disclosure of numerous features on

staffing of the studied system of bodies, we will consider a ratio, concerning the standards of service of the Federal Act “On Prosecutor’s office of the Russian Federation” and branch legislation. The legislation on the system of public service is special in relation to labor legislation, and therefore provisions of the last is applied to regulation of the questions for passing of federal public civil service of Russia in cases of their misrelating by the norms of the special. If the ratio of the Labor Code of the Russian Federation and the Federal Act “On Prosecutor’s Office of the Russian Federation” looks more or less transparent in this context, then it is not possible to interpret unambiguously the value of part 3 of article 40 of the Act On prosecutor’s office of Russia according to which the order of service by military prosecutors is regulated by the present Federal Act, the Federal Act “On the Military Conscription and Military Service Act” and the Federal Act “Status of Members of the Armed Forces”. The same picture emerges in the Kazakh legislation, so in paragraph 2) of Article 47 of the Law of the Republic of Kazakhstan “On the Prosecutor’s office”, it is stipulated that the labor relations of the servicemen of the Prosecutor’s Office are regulated by the Labor Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On Military Service and Status of Servicemen”. The indication in these standards of the normative acts, regulating of the passing on military service, in fact, establishes their priority in relation to the Law on prosecutor’s office of Russia and Kazakhstan, in view of the fact that the status of the serviceman in compliance with article 2 of the Federal Act “On the Status of the Military Personnel” and paragraph 1 of article 5 of the Law of the Republic of Kazakhstan “On military service and the status of the military personnel” is primary in relation to the status of the public prosecutor’s worker, as it is got by the citizen before taking service with

the bodies, investigated by us. We will note that article 1 of the Federal law “On Prosecutor’s Office of the Russian Federation” and paragraph 1 of article 3 of the Law of the Republic of Kazakhstan “On Prosecutor’s Office” consolidates unity of the purpose and tasks of prosecutors at implementation of professional activity , and the section V of the Russian law and chapter 7 of the Kazakhstan legal act, establish the general conditions of passing the public prosecutor’s service for all persons, and also the status, powers and guarantees of activity for the prosecutor, so in this case it is expedient to talk only about differences of employees of Russia’s military prosecutor’s office and the main military prosecutor’s office of the Republic of Kazakhstan, from the officials, who are occupied in the general system of prosecutor’s office, expressed in existence of military ranks and specialized social material support.

At the same time, considering provisions parts 2 and 3 of article 40 of the Act “On Prosecutor’s office of the Russian Federation”, we will pay attention to their inconsistency among themselves. As we had already noted, part 2 of article 40 establishes subordination in legal regulation of the office relations of public prosecutor’s workers: the labor relations of employees of bodies and organizations of prosecutor’s office are regulated by the legislation of the Russian Federation on Labor and the legislation of the Russian Federation On public service, taking into account the features, provided by the present Federal Act. The indication on the Labor Code of the Russian Federation is unreasonably absent in relation to military prosecutors in part 3 of this article. The same inconsistency can be noted also between paragraphs 1) and 2) of article 47 of the Law of the Republic of Kazakhstan on prosecutor’s office. For example, in paragraph 1) of article 47 the Legislator governs the Labor relations of staff for

prosecutor's office by the Labor Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On public service of the Republic of Kazakhstan" with the features, provided by the Law of the Republic of Kazakhstan "The law-enforcement service"; whereas in paragraph 2) of article 47 at legal work regulation of the military personnel of prosecutor's office the Legislator uses only the Labor Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan "On Military Service and the Status of the Military Personnel" and he does not refer any more to the Laws of the Republic of Kazakhstan "On the Public Service of the Republic of Kazakhstan" and "On The Law-enforcement Service", that should be eliminated, according to our opinion (CARTER, 2004).

The similar legislative position of both countries, in our opinion, unfairly allocates and isolates service in bodies of Russia's military prosecutor's office and the Kazakhstan's Main Military public prosecutor's office in relation to service in the inter-city district prosecutor's offices, gives it the militarized character and breaks the unity of public prosecutor's department, reflected in article 1 and 4 of the Law On prosecutor's office of Russia and in paragraph 1 of article 35 of the Law of the Republic of Kazakhstan On prosecutor's office. The analyzed Russian's Law contains the open list of the special legislation which can be applied to employees of bodies and institutions of Russia's prosecutor's office. In view of this, it is possible to amend the legal norms, devoted to separate aspects of service of the public prosecutor's workers and bringing them in line with government regulations, aimed at improving the state apparatus. For example, the Federal law of December 25, 2008 #280-FA article 40-2 of the Federal Act "On Prosecutor's office of the Russian Federation" is supplemented with the provision, in

accordance with which, the officials of the procuratorial authorities have the restrictions, bans and duties, established by the Federal Act “On counteraction of corruption”. At the same time, norms of the special legislation cannot and should not have the dominant position in regulation of separate aspects of prosecutors service in relation to the Law On prosecutor’s office, as the purpose of inclusion the references to them in the considered statutory act consists in need of carrying out the organization of passing service in the prosecutor’s office in compliance with dynamically developing democratic directions in office activity of the officials of executive authorities. Systematic implementation of the special laws is possible without introduction of the order and conditions of their corresponding execution, which is carried out at the level of the Prosecutor General of the Russian Federation. So, for example, the Order of the Prosecutor General’s Office of the Russian Federation of March 25, 2010 #126 “About the adoption of the provision on the procedure for submission of information on incomes, property and liabilities of property nature in the bodies and institutions of the Prosecutor’s Office of the Russian Federation” is devoted to practical aspects of execution of requirements on the anti-corruption legislation of the procuratorial authorities system.

The main norms, devoted to the organization of personnel work and passing of service in the studied department, are concentrated in the Act on Prosecutor’s office of Russia and Laws of the Republic of Kazakhstan “On prosecutor’s office” and “The law-enforcement service”. There are included: procedures of employment, appointment to higher positions, certifications, encouragement, disciplinary responsibility, dismissal of public prosecutor’s workers and also the social guarantees,

provided to them by the state. Regarding 1 article 40-1 of the Law of Russia it is noted that the prosecutors can be the citizens of the Russian Federation, having the higher legal education got in educational institution of higher education, having the state accreditation, and possessing the necessary professional moral qualities, capable of fulfilling the official duties assigned to them according to their health. These conditions designate general requirements for persons wishing to enter the service of the supervisory authority; moreover, Part 2 of Article 40-1 establishes the number of restrictions for applicants for this vacant position. They are: the presence of citizenship of the foreign country, criminal record, the close relationship, a disease incompatible with execution of functions, and the judgments about recognition of the person incapacitated concern them or the refusal to undergo the procedure for admission to information constituting the state secret. The Kazakhstan's law on prosecutor's office in article 48 determines by the Law of the Republic of Kazakhstan "The law-enforcement service" the order and features of the order on passing service in the procuratorial authorities, where articles 6, 7 and 8 prescribe the conditions for admission, the selection of candidates and admission to the law enforcement service, in particular Article 6, paragraphs 2, 3, 4 and 5 of the last law determine the restrictions and determine the conditions for admission to the law enforcement service to the procuratorial authorities. These restrictions also interfere with further passing by the citizen of public service in prosecutor's office. Their legal fixing is intended to promote attraction in prosecutor's office of the persons, having high moral, strong-willed and ethical characteristics of the personality, capable due to a state of health to bear the increased workload, connected with non-standard working days. However, actually it is quite difficult for personnel divisions to check compliance of

applicants to these requirements. First, it is not resolved the question about diseases, interfering service in the procuratorial authorities in legal relations. Now it is determined only the List of the diseases, interfering admission to the public civil service of the Russian Federation or its passing (it was approved by the order of the Ministry of Health and Social Development of the Russian Federation from December 14, 2009 #984n). In this regard, it is not clear, whether this normative act can be applied to public prosecutor's workers whole or in part.

Besides, there is one more condition which is formally interfering admission to service and is not reflected in provisions of the specified article. In compliance with the point "b" in part 1 of article 43 of the Law On Prosecutor's office of Russia, the public prosecutor's worker can be dismissed at the initiative of the head of body or the organization of prosecutor's office in case of violation of the Oath of the prosecutor, and also commission of the offenses discrediting honor of the public prosecutor's worker. According to article 40-4 of the Federal Act "On Prosecutor's office of the Russian Federation", violation of the Oath is incompatible with further stay in the procuratorial authorities, therefore the persons cannot be employed in supervising departments who were earlier working in the procuratorial authorities and dismissed for violation of the Oath. We called this basis formal for the following reasons. Dismissal of the public prosecutor's worker under any circumstances will be carried out in compliance with requirements of the Labor Code of the Russian Federation. In point 16 of the Rules of keep and retain of the labor record books, production of forms of the labor record book and providing employers by them, it is fixed that there is made the record in the labor record book about dismissal at cancellation of the employment

contract at the initiative of the employer (termination of the employment contract) with reference to the corresponding paragraph of article 81 of the Labor Code of the Russian Federation. In this norm there is no such basis of cancellation of the employment contract at the initiative of the employer as violation of the Oath by prosecutor (investigator). So, as a rule, it is made the record in the labor record book of the person, dismissed for commission of the offenses, discrediting honor and dignity of the public prosecutor's worker, with the indication on paragraph 14 of article 81 of the Labor Code of the Russian Federation (other cases). Also commission by the public prosecutor's worker of the actions, contradicting provisions of the Oath, can be regarded in some cases by the management of personnel divisions of prosecutor's offices of federal entities as violation of labor discipline and other related normative acts, which is unambiguously difficult for correlating to any paragraph of article 81 of the Labor Code of the Russian Federation. It is not possible to HR and other departments to provide direct and exhaustive proofs (in certain cases) in view of their faults, which expose the public prosecutor's worker in commission of offense not compatible to his further stay in bodies of prosecutor's office. Taking into account these circumstances, this person, as a rule, in an imperative form is asked to write a letter of resignation at his own request on the basis of Article 80 of the Labor Code of the Russian Federation.

Thus, the persons, dismissed on the basis of the articles of the Labor Code of the Russian Federation noted above, have no obstacles (formally) at the next employment in the procuratorial authorities. In this case primary activity on conducting necessary checks and making decision on appointment of these applicants for vacant public prosecutor's

positions lays down on shoulders of personnel divisions. They require and study the personal records, containing data on passing of service, in which there cannot be appeared the exhaustive data on unworthy behavior of the citizen or these data can be interpreted in other context later. The specified norm cannot differentiate persons, requested for employment in bodies and institutions of prosecutor's office for the first time or repeatedly, as it is established in the part 4 article 32 of the Constitution of Russia that citizens of the Russian Federation have equal access to public service. Therefore only competent and professional work of personnel departments (managements) in prosecutor's offices of federal entities and prosecutor's offices, equated to them, can promote high-quality selection of the persons, worthy to be prosecutors of Russia. The "specialization" of the legal education is very important in solving the problem of selecting worthy personnel for operational positions. It is known that now the prosecutor's office has opportunities of target training of the specialists. The corresponding institutional structure was formed by a Decree of the Government of the Russian Federation of July 8, 1996 #787 "On creation of the institutes of prosecutor's office of the Russian Federation as a part of the Moscow State Law Academy, the Saratov State Law Academy and the Ural State Law Academy". The Prosecutor General's Office of Russia, in pursuance of this normative act, signed the contracts, providing the target training of specialists of the legal specialization and their employment in the procuratorial authorities with the listed academies. Besides, now the specialists are trained in the prosecutor's office in Moscow's, St. Petersburg's and Irkutsk's Law Institutes of the Prosecutor General's Office Academy, and also it is on the basis of contracts in the number of others higher educational institutions of the legal profile. According to the data of the Prosecutor General's Office of Russia,

between 2002 and 2009, more than 30,280 employees were recruited into the service of the Russian authorities, which were considered by us (with the exception of transfers from other prosecutors and other law enforcement agencies). During this time 17213 persons were recommended for target places, from which 4 846 entrants were admitted to the organizations, including to the Institutes of prosecutor's office – 2413. So, 3897 persons were admitted for work in the procuratorial authorities from earlier directed to study as target places, that makes only 13% of the total number of the employees, who admitted for service to the procuratorial authorities during the considered period. Thus, so far the most part of young employees of prosecutor's office of Russia is made by graduates of “non-core” higher education institutions of the country.

It was adopted the Decree of the President of the Republic of Kazakhstan of May 4, 2015 #15 about creation of the Kazakhstan's Academy of Law Enforcement Agencies at the Prosecutor General's Office of the Republic of Kazakhstan, with assignment of the special status of the education organization, where the main activities were determined the following directions: increase in professional level of the law enforcement officers, including their consisting in the Presidential reserve of law enforcement officials of the Republic of Kazakhstan; coordination and carrying out of the interdepartmental scientific research in the sphere of law-enforcement activity; implementation of the programs on postgraduate education. At the same time, as it is noted in the Concept of personnel policy of law enforcement agencies of the Republic of Kazakhstan, approved by the Decree of the President of the Republic of Kazakhstan of December 31, 2013 #720, despite obvious need, the undertaken initiatives on reforming of the separate aspects of law-

enforcement system do not give the expected effect. Facing the low administrative level, unwillingness of introduction the innovations and changes of the habitual state of affairs, ultimately, the begun transformations reduced to various structural transformations without essential change of quality and effectiveness of the work.

At the present time there is a number of the current problems peculiar to law-enforcement structures: 1) lack of accurate system of planning and placement of personnel, randomness and disorder of the staff movements (on average each 2 years the employee changes the working place); 2) poor quality of studying of candidates for service, staffing with incompetent personnel (every tenth young employee leaves the bodies within the first year of service, from them every fourth for negative motives); 3) lack of accurate criteria for evaluation of working results of the employee that entails the formalism of attestation, low motivation, protectionism in the promotion of personnel (according to the results of the extraordinary attestation, one third on the top level management of law enforcement agencies was updated); 4) superficial approach to vocational and physical training of employees, the stereotyped nature of advanced training (only every fourth division is equipped with educational and material resources for carrying out office and physical training of employees); 5) ineffective organizational and staff work, duplication of functions, mechanical increase in the number of staff without taking into account the actual workload (for the last 3 years in law enforcement agencies there are carried out more than hundred organizational and staff reorganizations, while the number of staff members has remained unchanged); 6) insufficient educational work, growth of negative tendencies among employees (for the last 3 years 1591 criminal cases

were initiated against law enforcement officers and this figure is increased annually).

Today it is necessary to increase high-quality improvement of activity for the law enforcement agencies by system change of human resource management, introduction of effective personnel policy. The purpose of personnel policy is formation of the highly professional personnel structure, capable to solve competently the problems of law enforcement agencies. There are put forward the number of tasks for achievement of the specified purpose, and they are: introduction of effective methods on planning and staffing competent and morally stable personnel, ensuring transparency and objectivity of selection processes, attestation, placement of personnel; modernization of the departmental system of training and retraining of personnel, the introduction of the systematic approach to increasing professionalism throughout the service [26]. Taking into account the data given above for creation of the effective mechanism on improvement of quality on vocational training and retraining of personnel, we consider expedient that the Prosecutor General's Office of the Republic of Kazakhstan needs to strengthen interaction with profile higher education institutions of the country, including by means of the conclusion of contracts with them for training of the specialists, without reducing it to ordinary formality, as it often occurs in practice; at the same time based on the norms of article 45-1 of Law of the Republic of Kazakhstan "On education" which provisions provide the social partnership in the field of professional education, focused on increase in results of activity of the education system, achievement of the level of personnel training, taking into account the needs of economic sectors and employers, strengthening the links of

training with production, including by introduction of dual training. The main directions of interaction for partners in the field of professional education, according to the Law On education along with others, is participation of the employers in development of the national mandatory education standards, standard model education curricula and programs; the organization of professional practice for students, who are trained with use of technological base of enterprises, internships for the teachers of special disciplines and specialists.

5. CONCLUSION

The criterion of "sovereignty", although in the long period in its home country, France had a great deal of influence, but was largely ousted in the late nineteenth century due to supremacy and controversy, or to a large extent moderated in parallel with other criteria. The given results, obtained during the conducted research in scales of the present article, allow drawing the conclusion on existence of problems in the legal organization of management which was developed in the procuratorial authorities of Russia and Kazakhstan. At the same time except the features investigated above on service in the system of prosecutor's office, it is different from service in other public authorities in the specific legal and organizational bases, connected with its financial support, therefore, in our opinion this issue requires further studying and understanding. It is represented that the received author's results on the one hand can expand borders of scientific knowledge of this area, will promote improvement of organizational legal status of public prosecutor's department, with another – to serve as a starting point for further studying of the specified

problematic. It was established that the procuratorial bodies did not receive any complaint about threats of the use of torture against Aleksei Sokolov. We believe, it is also necessary in the Kazakhstan legislation to provide and approve the similar list of diseases in the order established by the legislation, as the conclusion of the military medical commission cannot be always objective. Secondly, the analysis of the Code of ethics for the public prosecutor's worker of the Russian Federation and the Concept of educational work in the system of prosecutor's office of the Russian Federation and also the Code of honour for the staff of prosecutors office of the Republic of Kazakhstan, allows to draw the conclusion that these departmental acts work in the relation of the persons, who are already appointed to positions in the inter-city district prosecutor's offices and they do not treat the citizens undergoing the procedure of employment in the considered bodies.

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