European Proceedings of
Social and Behavioural Sciences
EpSBS

www.europeanproceedings.com
e-ISSN: 2357-1330

DOI: 10.15405/epsbs.2021.05.02.43

MSC 2020

International Scientific and Practical Conference «MAN. SOCIETY. COMMUNICATION»

EVOLUTION OF THE PROSECUTOR'S ROLE IN CRIMINAL PURSUIT IN RUSSIAN EMPIRE

Georgy Zhukov (a)*
*Corresponding author

(a) Division of Criminal Trials, Public Prosecutor's Office of the Novgorod Region, Veliky Novgorod, Russian Federation, St. Petersburg Law Institute (branch) of the University of the Prosecutor's Office of the Russian Federation, Saint Petersburg, Russian Federation, Yaroslav-the-Wise Novgorod State University, Veliky Novgorod, Russian Federation, hagen5@yandex.ru

Abstract

The relevance of the research topic is associated with the ongoing processes of reforming the judicial and law enforcement systems in modern Russia, as well as disputes about the role of the prosecutor in criminal proceedings and the search for a reasonable balance between the prosecutor's powers in the field of criminal pursuit of crimes perpetrators and his supervisory powers with the corresponding powers of the body head of the preliminary investigation and the investigator. Despite the fact that the function of criminal prosecution, which should be implemented by the prosecutor at both the pre-trial and judicial stages of criminal proceedings, is one of the traditional areas of activity of the prosecutor's office in modern Russian realities, the criminal procedural powers of the prosecutor are weakened and are in dire need of improvement. Researchers who previously addressed the issues under consideration generally underestimated the real potential of a prosecutor in pre-revolutionary Russia as a "criminal prosecutor". The most common point of view, according to which, before the judicial reform of 1864, the prosecutor's role was limited to overseeing the implementation of laws by the authorities, while the function of criminal prosecution was not realized, and in the post-reform period he was already becoming a public prosecutor with an emphasis on prosecuting in court proceedings. The author makes an attempt to refute this position established in science and defends the concept of an evolutionary rather than revolutionary process of forming the prosecutor's role in the field of public criminal pursuit.

Keywords: Criminal pursuit, prosecutor's office, prosecutor's powers, prosecutor's role in criminal process, Russian legislation

https://doi.org/10.15405/epsbs.2021.05.02.43
Corresponding Author: Georgy Zhukov
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

The evolution of the tasks and powers of the prosecutor in the field of criminal pursuit in Russia in the XVIII – early XX centuries. was not subjected to a deep complex analysis and was previously studied fragmentarily, while the rich experience of the functioning of the prosecutor's office during the study period can be used to improve prosecutorial supervision and criminal prosecution at the present stage in conditions of a very low quality of preliminary investigation and the simultaneous expansion of the use of the institution of jurors when considering district courts of criminal cases on especially grave crimes, as well as reforming the judicial system and legal proceedings in connection with the beginning of the functioning of the district cassation and appeal courts.

At the same time, idealization or blind copying of historical experience is unacceptable, since it can lead to a repetition of mistakes and miscalculations made in the organization of prosecutorial activities at previous stages of historical development. In this regard, it seems necessary to thoroughly and comprehensively study the entire path of evolution of the prosecutor’s powers in the field of criminal persuit in order to identify both positive and negative aspects in the activities of the prosecutor's office that weaken the effectiveness of its functioning.

2. Problem Statement

The purpose of the study is to examine the evolution of the prosecutor’s role in Russia in the field of criminal prosecution during the XVIII - early XX centuries, as well as an attempt to identify the aspects of the organization and implementation of the relevant activities of the modern Russian prosecutor's office that need improvement.

3. Research Questions

In the process of research work, a number of questions had to be answered:

to identify the prerequisites for the emergence of the function of the Russian prosecutor's office in criminal prosecution during the period of its formation and formation;

to highlight trends in changes in the scope of powers of the prosecutor in the Russian Empire in criminal proceedings in the pre-reform period;

to analyse the system of normative legal regulation of the tasks and powers of the prosecutor in criminal prosecution, the practice of their implementation in Russia after the reform period of 1864-1917.

4. Purpose of the Study

To solve the set tasks, the traditional research methodology was used, including the historical (retrospective), legal and comparative legal methods. The author analyses both pre-revolutionary and Soviet and modern literature on the issues under study, the regulatory framework, archival sources and memoirs of practicing lawyers. The last two sources, being the empirical main research, are especially important for assessing the effectiveness of the practical implementation by prosecutors of the powers granted to them by law.

https://doi.org/10.15405/epsbs.2021.05.02.43
Corresponding Author: Georgy Zhukov
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

5. Research Methods

To solve the set tasks, the traditional research methodology was used, including the historical (retrospective), legal and comparative legal methods. The author analyses both pre-revolutionary and Soviet and modern literature on the issues under study, the regulatory framework, archival sources and memoirs of practicing lawyers. The last two sources, being the empirical main research, are especially important for assessing the effectiveness of the practical implementation by prosecutors of the powers granted to them by law.

6. Findings

Researchers of the history of the prosecutor's office usually proceed from the assumption that at the stage of formation of the Russian prosecutor's office, the prosecutor did not perform the function of criminal prosecution (Goryachkovskaya, 2001; Kazantsev, 1993; Murav`yev, 1889; Poznyshev, 1913; Ryapolova & Strukova, 2019).

However, an analysis of the normative legal acts, among which the Emperor's Decrees of April 27, 1722 should be noted, allows us to trace the prosecutor’s role in the field of criminal pursuit since the XVIII century (Complete collection of laws of the Russian Empire. Assemblage 1. Volume III. (1689-1699), No 3979, 3981).

At the same time, the participation of the prosecutor in this procedural activity was mainly mediated. Thus, exercising supervision over the consideration of criminal cases by the courts and protesting against illegal court decisions, the prosecutor thereby contributed to the exposure of the persons guilty of committing crimes. There are some examples of the real influence of court prosecutors on the course of criminal investigation. For example, in 1724 the prosecutor of the Moscow court V. Gagarin challenged the inaction of the judicial body in the Senate and achieved an investigation into the murder of two peasants, due to the red tape in which one of the accomplices in the crime died while in custody (Veretennikov, 1915). The involvement of prosecutors in criminal prosecutions was also manifested in their leadership of fiscal authorities authorized to solve crimes (Gradovskiy, 1899).

Finally, the role of the Russian Prosecutor General in the field of criminal prosecution extended far beyond the tasks and powers enshrined in the main legislative acts regulating prosecutorial activities.

So, in March 1722, by order of Peter I, Prosecutor General P.I. Yaguzhinsky and the Prosecutor of the Military Collegium E.I. Pashkov were empowered to investigate the case against the Yaroslavl provincial fiscal S.F. Poptsov (RGADA, n. d. p. 2). In fact, a separate subdivision headed by the Prosecutor General was formed in the Senate, endowed with a wide range of powers: to bring charges against persons convicted of criminal acts, summon them for interrogations, arrest them, interrogate, seize documents and carry out other investigative actions. As a result of the investigative activities of the Senate Prosecutor's Office, evidence was collected confirming the involvement of ober-fiscal A.Ya. Nesterov, who created a system of levies from subordinate fiscal officials (RGADA. n.d. p. 700-707, 711, 716-718).

At the same time, despite the existing in Russia of the XVIII century the search model of the criminal process, which allowed the use of torture against the accused and did not recognize his right to defence, carried out by the Prosecutor General and his subordinates, the criminal prosecution was not devoid of

https://doi.org/10.15405/epsbs.2021.05.02.43
Corresponding Author: Georgy Zhukov
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

elements of competitiveness and protection of individual rights. So, there is evidence that P.I. Yaguzhinsky, after the main defendant had challenged him and other prosecutors due to their lack of impartiality, filed a petition for their permission to the Senate, which acknowledged A.Ya. Nesterov was unfounded and confirmed the legitimacy of the actions of the Prosecutor General (as cited in Veretennikov, 1915).

Following the investigation, prosecutor E.I. Pashkov summarized his results in the final procedural documents, which were a kind of prototype of the post-reform indictment (or the modern indictment). They reflected the plot of the case, the qualification of the incriminated acts and proposals as punishment. Of particular interest it is the proposal of the prosecutor addressed to the court to take into account the active assistance in solving crimes on the part of the accused S.F. Poptsov, which can be considered the forerunner of the institution of pre-trial cooperation agreements. In January 1724, the case entered the Supreme Court and was resolved by passing convictions (as cited in Serov, 2015).

This experience of prosecutorial criminal pursuit could not be ignored in the further reform of the prosecutor's office. Adopted in 1767 by Catherine II "Order of the Commission On the Preparation Of a Draft New Code" provided for the expansion of prosecutors' powers in the criminal law sphere. The Empress pointed out the need to empower prosecutors "to seek and carry out all silent cases" (Complete collection of laws of the Russian Empire. Assemblage 1. Volume XVIII, 1767-1769, No 12949). One of the key acts of rule-making of Catherine II was the adopted in 1775 legislative act - "Institutions for the Management of the Provinces of the All-Russian Empire." (Complete collection of laws of the Russian Empire. Assemblage 1. Volume XX, 1775-1780, No. 14392). The positions of prosecutors and lawyers subordinate to them established by him were introduced under the governor or provincial government and judicial bodies - the upper zemstvo court, the provincial magistrate and verhnyaya rasprava (the upper punishment). The solicitors of state affairs initiated criminal prosecution on the facts of commission of official and state crimes, embezzlement of state funds. In turn, the solicitors of criminal cases initiated the prosecution of crimes for which the victim was absent. In the event that a case was initiated on the initiative of a solicitor, he was endowed with a certain set of procedural powers: to demand a summons to the court of the defendant against whom the charge was brought, to take him into custody, to apply to the court with petitions for the conduct of judicial investigative actions, to transfer the case from lower instances to higher , to appeal the decision.

The empowerment of prosecutors to initiate criminal pursuit had a beneficial effect on the state of legality, which is confirmed by the study of archival materials. Thus, with the consent of the Novgorod provincial prosecutor, the solicitors initiated a criminal case on charges of crimes against the judges of town Staraya Russa I. Lzhanin and M. Prudinovsky, considered by the Novgorod chamber of court and punishment in 1793-1800. The basis of the criminal case was the testimony of the merchant S. Kokovkin, who was summoned to a verbal court, where the judge rudely demanded that he confess "to the sale of spoiled wine and to the measurement during the sale". Similar false charges were also brought against the merchant Krutikovsky. The case against the merchants was initiated in collusion with some officers of the Moscow grenadier regiment, stationed in Staraya Russa. As a result, the solicitor was able to expose the false accusations against the merchants, and the verbal judges themselves were prosecuted for illegal detention of the accused and knowingly false charges. (GANO, n. d. pp. 1-23).

https://doi.org/10.15405/epsbs.2021.05.02.43
Corresponding Author: Georgy Zhukov
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

The Code of Laws of the Russian Empire in 1832 and its subsequent editions in 1842 and 1857 retained the powers of solicitors to initiate criminal cases and at the same time strengthened their supervisory powers over inquiry and investigation (Code of laws of the Russian Empire, 1857-1868).

Thus, the solicitors of police cases operating in St. Petersburg and Moscow were specialized assistants to the prosecutor for the supervision of criminal procedural activities. They were charged with the duty to supervise the investigation carried out by the police, including the legality of the arrest of the suspect, in connection with which their competence included the presence at all investigative actions, "auditing" the cases of private bailiffs and quarterly supervisors, protesting illegal decisions of police officials and agreeing investigative and executive cases by bailiffs of acts on detention and their release from custody (Complete collection of laws of the Russian Empire. Assemblage 2. Volume XXVIII, 1853, No. 27796; Complete collection of laws of the Russian Empire. Assemblage 2. Volume VIII, 1833, No. 6264).

According to the memoirs of Meshchersky (2005), who was a police solicitor in 1858 in the Rozhdestvenskaya unit of the St. Petersburg police, the practical implementation of the powers of police solicitors boiled down to the following: to be present during the inspection of the crime scene, search, interrogation and in case of violation of the law during the investigation by the investigative bailiff to file a protest, upon rejection of which by the police, the solicitor appealed to the higher assistant prosecutor; be present at the arrest and body search of a suspect and assess the legality of the application of this preventive measure and the conduct of appropriate procedural actions. According to the memoirist, the right of a police solicitor to protest in writing against the arrest of a suspect was not an empty formality and was of great practical importance and factual force (as cited in Meshcherskiy, 2005).

The empowerment of solicitors to directly participate in the activities of commissions of inquiry on especially important cases, as well as to carry out, on behalf of the provincial government, investigation of criminal cases of malfeasance became an important innovation of the first half of the XIX century. The relevant procedural rules were contained in Book II of Volume XV of the Code - Laws on Judicial Proceedings in Cases of Crimes and Misdemeanors (Code of laws of the Russian Empire, 1857-1868).

In this capacity, prosecutorial officials were endowed with the scope of powers characteristic of an investigator: to apply procedural coercion measures to a person brought to criminal responsibility, to interrogate the accused, witnesses and conduct confrontations between them, to conduct a general search, to obtain testimony from knowledgeable people, to demand written evidence, to examine traces of the crime and the things that preserved them. At the end of the investigation, the criminal case with all the evidence collected and attached to it was sent for consideration to the appropriate judicial authority. The solicitors who carried out the investigation were prohibited from checking the legality of judicial acts during the performance of their duties as a prosecutor (Complete collection of laws of the Russian Empire. Assemblage 2. Volume XX, 1845, No 19064). In practice, the possibility of forming commissions of inquiry was widely used to investigate official and state crimes, acts of terrorism and other cases of increased public importance or complexity.

In other cases, the governors assigned criminal lawyers to investigate crimes in the event of police inaction or abuse. In 1835, the head of the Simbirsk province, having received from the district court an investigation into the disappearance of a merchant selling wine, drew attention to the incompleteness of the

https://doi.org/10.15405/epsbs.2021.05.02.43
Corresponding Author: Georgy Zhukov
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

investigation and contradictions in the materials collected by the rural police. In this regard, the governor urgently instructed the attorney of criminal cases to go to the place and carry out an additional investigation. The solicitor established that the wine merchant did not just disappear without a trace, but in the course of a fight with the attorney servant received a strong blow from him with a damask in the head area. As the solicitor established, the sotsky did not file a report on this fact with the Zemstvo court, drawing up a report on the incident under the dictation of another official (Zhirkevich, 2009).

The judicial reform of 1864 introduced fundamental changes to the legal position of the prosecutor in criminal proceedings, turning him into an active prosecutor – a central figure in the fight against crime. (Kazantsev, 2003). Those individual elements of pursuit by the prosecutor, which were, as it were, exceptions from the general supervision of the prosecutor's office, on the contrary, became the key rule for the post-reform criminal process on the mandatory participation of the prosecutor in all its stages. Those individual elements of pursuit by the prosecutor, which were, as it were, exceptions from the general supervision of the prosecutor's office, on the contrary, became the key rule for the post-reform criminal process on the mandatory participation of the prosecutor in all its stages.

The prosecutor is empowered to initiate criminal pursuit, to carry it out at the pre-trial stage by directing the police inquiry and monitoring the preliminary investigation, to participate in bringing the accused to trial and in court proceedings directly support the accusation in court, to challenge illegal sentences (Complete collection of laws of the Russian Empire. Assemblage 2. Volume XXXIX, 1864, No. 41476). An absolute novelty was the empowerment of the prosecutor to draw up an indictment based on the results of the investigation and support the state accusation in court, which were justified by the fact that in order to achieve his tasks, it was not enough for the prosecutor to initiate a criminal investigation and supervise it progress. He must, “as a defender of the interests of the government and the whole of society, continue to prosecute this [guilty] person, accuse him before the court itself, explain to the court the reasons for recognizing this person as guilty and try to expose his guilt when the case is being considered in court” (RGIA, n.d. pp. 235-236).

As we can see, some important achievements of the reform in modern Russian legislation have been lost. Meanwhile, such powers of the prosecutor as initiating a criminal case and directing its investigation by contacting the investigator with proposals to conduct investigative actions were integral components of the legal position of the prosecutor in the criminal process, which proved their effectiveness in practice, and were not regarded as a threat to the independence of the preliminary investigation.

7. Conclusion

The legal and scientific community has repeatedly voiced a reasoned thesis that the reform of the preliminary investigation and prosecutorial supervision carried out in the Russian Federation in 2007 did not lead to a fair and effective balance of power in the criminal procedural field. Based on the results of our research, we can state that the weakening of the role of the prosecutor in the criminal process contradicts the centuries-old historical experience of law making and law enforcement in our country. In recent years, a certain trend in Russia has become the preservation of historical memory and the restoration of positive practices that existed in the Tsarist and Soviet times. In our opinion, such absolutely correct tendencies

should be extended to the restoration of the lost experience of criminal procedural activities of the prosecutor, whose powers in the sphere of criminal prosecution are in dire need of improvement.

References

Goryachkovskaya, Yu. M. (2001). *Prosecutor's office and prosecutor's supervision in Russia in the 18th and early 20th centuries,* (Doctoral dissertation). Belgorod University of Consumer Cooperation.

GANO. (n.d.). *Gosudarstvenny arhiv Novgorodskoj oblasti* [State archives of the Novgorod region]. F.529. Inventory 3.

Gradovskiy, A. D. (1899). *Collected works in 9 volumes. Sankt-Petersburg*, 1899-1904, *1*.

Kazantsev, S. M. (1993). *The history of the tsarist prosecutor's office.* Sankt-Petersburg.

Kazantsev, S. M. (2003). Prosecutor's Office of the Russian Empire: historical and legal research (Doctoral dissertation). St. Petersburg State University.

Meshcherskiy, V. P. (2005). *My memories.* SPbSU.

Murav'yev, N. V. (1889). *Prosecutor's supervision in its structure and activities. A guide for the prosecution service.* T. 1. Prosecutor's Office in the West and in Russia. University Typography.

Complete collection of laws of the Russian Empire. Assemblage 1. Volume III. (1689-1699). http://nlr.ru/e-res/law_r/coll.php?part=13

Complete collection of laws of the Russian Empire. Assemblage 1. Volume XVIII. (1767-1769). http://nlr.ru/e-res/law_r/coll.php?part=78

Complete collection of laws of the Russian Empire. Assemblage 1. Volume XX. (1775-1780). http://nlr.ru/e-res/law_r/coll.php?part=87

Complete collection of laws of the Russian Empire. Assemblage 2. Volume VIII. (1833). http://nlr.ru/e-res/law_r/coll.php?part=339

Complete collection of laws of the Russian Empire. Assemblage 2. Volume XX. (1845). http://nlr.ru/e-res/law_r/coll.php?part=500

Complete collection of laws of the Russian Empire. Assemblage 2. Volume XXVIII. (1853). http://nlr.ru/e-res/law_r/coll.php?part=604

Complete collection of laws of the Russian Empire. Assemblage 2. Volume XXXIX. (1864). http://nlr.ru/e-res/law_r/coll.php?part=800

Poznyshev, S. V. (1913). Elementary textbook of Russian criminal procedure. Typo-lithography t / d "Ya. Dankin and Ya. Khomutov".

RGADA. (n.d.). Rossiyskiy gosudarstvennyy arkhiv drevnikh aktov [Russian State Archive of Ancient Acts]. F. 248. Book 274.

RGIA. (n.d.). Rossiyskiy gosudarstvennyy istoricheskiy arkhiv [Russian State Historical Archives]. Fund 1B.

Ryapolova, Y., & Strukova, V. (2019). Legal status of initial stage of criminal proceedings in Russian criminal legislation. *The European Proceedings of Social & Behavioural Sciences, LXXVI*, 2701-2705. https//:doi.org/10.15405/epsbs.2019.12.04.363

Serov, D. O. (2015). Investigation under Peter I: The Investigation Office of the Prosecutor General's Office and the Investigation Office of the Higher Court. *Russian investigator,* 7. Inform legal system “ConsultantPlus”.

Code of laws of the Russian Empire. (1857-1868). Tip. Vtorogo Otdeleniya Sobstvennoy Ye.I.V.Kantselyarii.

Veretennikov, V. I. (1915). Essays on the history of the Prosecutor General's Office in Russia before Catherine's time. Khar'kov.

Zhirkevich, I. S. (2009). *Notes of Ivan Stepanovich Zhirkevich. 1789-1848.* Moscow: “Kuckovo Pole”. Military memoirs.