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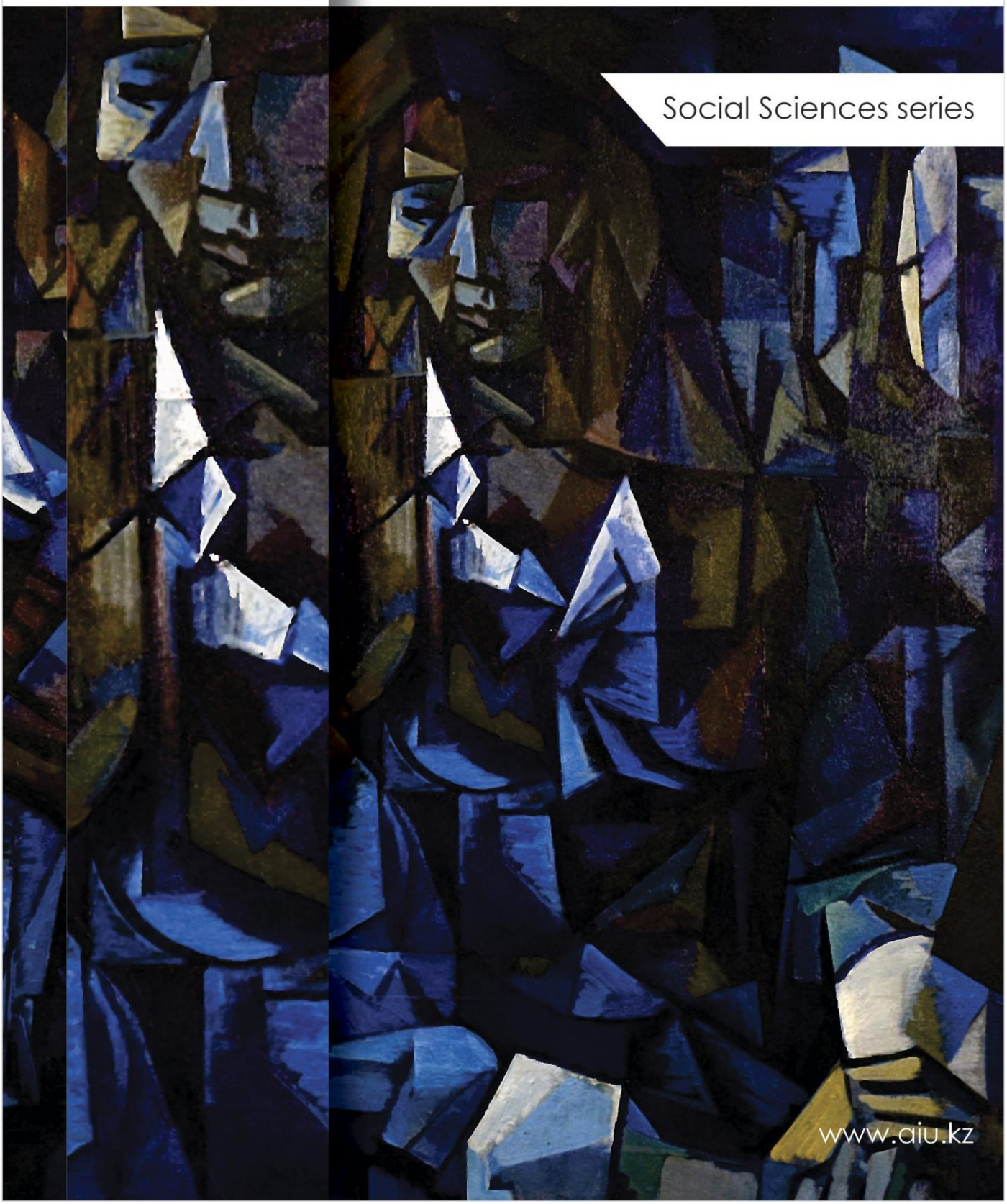

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TO THE QUESTION OF THE CONSTITUTIONAL-LEGAL STATUS OF THE PROCUREMENT BODIES IN THE NORM-CONTROL SYSTEM

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Annotation. The article is devoted to the study of the constitutional and legal status of the prosecution authorities, the analysis of the conceptual apparatus. A comparison is made with other types of control activities in the state that have a common subject - legal acts. It is noted that the normative control activity of the prosecution authorities makes a significant contribution to ensuring the supremacy of the Russian Constitution, the adoption of the principles of the rule of law and the rule of law in the state, ensuring stability and continuing state building. The conclusion about the independence and independence of the Prosecutor's Office as a state body, carrying out normative control over compliance with the Constitution of Russia and the implementation of laws in force on the territory of the Russian Federation, is substantiated.

Key words: state power, the status of the prosecutor's office, normative control, rule-making, prosecutorial supervision, public authority, legal relations, public authority, parliamentary control, constitutional reform.

The most important aspect of the activities of prosecution bodies, especially in the constituent entities of the Russian Federation, is the ensuring of the unity of the legal space, the struggle for the quality of standard-setting activities of public authorities. Despite the enormous work of the courts and the prosecutor's office in this direction, the problem is far from the final successful solution.

«Restoring order" in the existing system of legal acts that is still not fully effective, as «... abound with collisions, ambiguities, and gaps» [4], remains relevant. In this regard, of particular interest is the analysis of the normative control activity of the prosecution authorities, as well as the understanding of its constitutional and legal status as a normative control body.

We turn to the question of analyzing the category of «constitutional legal status». It is necessary to pay attention to a comprehensive encyclopedic definition: «the position of a body, organization, association, official, person drawn up by a regulatory act. Status characterizes their nature, place in the system of public relations and subjects of law, the most important rights and obligations, forms (order) of their implementation and the acts or actions taken at the same time» [2].

We note in the context of the problem of the uncertainty of the category and elemental composition of the constitutional legal status of a public authority, the point of view of I.V. Mukhacheva and M.I. Tsapko, who, analyzing the approaches and features of the study of the category of constitutional-legal status, stated: «Despite a significant number of works devoted to the analysis of the concept and content of the phenomenon of constitutional-legal status, including those performed at the general theoretical level, the range of theoretical questions considered in them is rare goes beyond the following three: formulating a definition, in the framework of an approach that is impressive to the author; resolution of the issue of the abstract and the concrete, the general and the individual in the phenomenon under consideration;

determination of the structure and list of status elements with their subsequent description. At the same time, despite sufficient attention to the question of the relationship between the abstract and the concrete in the constitutional legal status, even a confident and unambiguous answer to it remains beyond the framework of the determination of the status structure. Often there is not only a mixture of elements that reflect the abstract and the concrete, but also the inclusion in the composition of the elements of independent legal phenomena that are not correlated with the constitutional status as a part and whole, but are a condition for the status to arise (this statement concerns, first of all, the discussion correlation of constitutional legal status and legal personality)» [3].

Thus, the problems of the constitutional-legal status of a public authority continues to be a debatable topic in state studies.

The term itself can mean quite diverse phenomena, or, on the contrary, can be considered as a single complex structural phenomenon.

It seems that it is necessary to agree with the argument of L.B. Soboleva, showing the conventionality of such a distinction, especially in connection with the etymological identity of the Latin term “status” and the Russian term «position», which, in general, is unconditionally recognized by all researchers considering these categories. We agree with L.B. Soboleva, in the following: «... giving different meanings to the same term in different languages can hardly be considered appropriate» [6, p. 19].

We believe it possible to agree with the assertion that «... with the legal characteristics of the subject of law, in any case, the contents of both the legal status and legal status are disclosed» [6, p. 19]. Thus, in the case of a category of status (position), it is more correct to carry out contamination rather than demarcation of concepts.

Thus, in the science of constitutional law, this category of «status» was initially interpreted as a complex and complex, sometimes a dichotomous phenomenon that went beyond the framework of the summarized system of legal rights and freedoms and legal duties and implemented a set of structural elements, for the list and grouping of which, a lot of controversy arose and arises. So, as an example of disputed elements, we point out, including, such as legal capacity, legal capacity, tort, guarantees of the exercise of rights and powers, etc.

Subsequently, a demarcation of the terminological meaning between the categories of «legal status» and «legal status» was proposed. At the same time, within the meaning of this proposal, the category of «legal status» was a simple conjunction of the rights and obligations of the subject, on the contrary, the «legal status» was a broader category and combined «all existing legal features and qualities of the subject of law», while status was a kind of core of the legal status of the subject of legal relations. Nevertheless, a certain convention of such a categorical distinction was further shown, especially in connection with the etymological identity of the Latin term «status» and the Russian term «position», which, in general, is unconditionally recognized by all researchers considering these categories.

So, the legal status of a state body essentially represents the normative and actual position of the body in the public law sphere, its role in fulfilling the functions of the state, its place and appointment in the state apparatus, its competence, which acts as a complex entity, combining objects of competence, authority and responsibility of a state body; as well as guarantees for the activities of a state body.

The constitutional and legal status of a state body, therefore, is a normative provision established by the norms of constitutional legislation and realized through participation in constitutional and legal relations, the actual position of a state body in the public law sphere, its role and place in the power relations system, its competence, which acts in as a complex education, combining the objects of competence, authority and responsibility of a state body; as well as guarantees for the activities of a state body.

Among the elements of the constitutional and legal status of a public authority that we have listed, with regard to the prosecution authorities, the most controversy is the place in the public authority system.

Numerous publications have been devoted to this issue, where the prosecutor's affiliation to various branches of government is proved very reasonably: the executive, the legislative, the judiciary, and the special, fourth, control.

Also, it is argued arguably: not belonging to any branch and even the conclusion that the very existence of «... bodies that do not fit into the separation of powers into legislative, executive and judicial, indicates that in these countries there is no separation of powers at all, either it is fundamentally violated» and there is a «insufficiently developed statehood» [6].

In this case, the traditionally debatable issue is the determination of the nature of the prosecutor's power and the position of the prosecutor's office in the system of separation of powers, since the Russian Constitution does not give an unambiguous answer to this question.

As a result, the point of view that the prosecution authorities can not be attributed either to the legislative, to the executive, or to the judicial branch of power prevailed in a relative degree [7, p. 589].

This situation sometimes gets a sharply negative assessment: «the existence in countries with underdeveloped statehood of such bodies that do not fit into the separation of powers into legislative, executive and judicial, indicate that in these countries there is no separation of powers at all, or it is fundamentally violated» [5].

However, such a harsh conclusion about «underdeveloped statehood», for example, of Russia is far from fair in everything. A certain discussion and specificity of the prosecutor's office in the system of separation of powers is a feature not only of the Russian state.

It is quite difficult to determine exactly the position of the prosecutor's office in the system of separation of powers in Russia at this stage. The most radical solutions to this problem in general may require the adoption of a new Constitution of Russia. Thus, taking into account the importance of the functions of the prosecutor's office in the future during the constitutional reform, it is necessary to clarify the position of the prosecutor's office in the system of separation of powers and the nature of the prosecutorial authority. It seems that this will necessitate a certain correction of the interpretation of the principle of separation of powers (Locke Montesquieu), which is reflected in the current Constitution of Russia.

Thus, we can talk about the presence of a full range of points of view on the prosecutor's office belonging to one of the branches, or not one of the branches of government. However, in the context of examining the constitutional legal status of the prosecutor's office as a whole, and in particular the place of the prosecutor's office in the public authority system, it's much more important, it seems, to determine not «network» affiliation, but to strictly observe the principle of independence of the prosecutor's office from any other public authorities.

Moreover, the ongoing controversy about the place of the prosecutor's office in the public authority system indicates, albeit indirectly, that the prosecution authorities are sufficiently independent in the exercise of their powers.

In this situation, consideration of the functions, place in the public authority system, competence, nuances of the order of establishment (appointment), transformation, liquidation (release) within the framework of the cumbersome legal structure of unspecialized constitutional and legal status will be formally true, but from a research point of view it is uninformative.

We believe that it will be much more efficient to isolate functional subsystems from a single system of constitutional and legal status in relation to those public authorities that carry out several significant functions. For example, for a legislative body it can be lawmaking, parliamentary control, etc., and thus, one could study the constitutional legal status of the legislative body as a legislative body, constitutional legal status of a legislative body as a parliamentary control body, and so on.

Of course, it is obvious that we are talking about the separation of the legal structure based on the function, but this is justified and only makes sense when the function is co-scaled in complexity, value, implementation of a large group or system of functions. In the above example, the legislative function or the function of parliamentary control is just that.

The hypothesis of this study is the adoption and further argumentation of the thesis that the normative control function of the prosecutor's bodies is significant in terms of the volume of its corresponding powers and the place in the system of functions of prosecutorial activity, which suggests that it is possible to distinguish between the constitutional legal status of the prosecutor's functional and normative subsystems. The basis for constructing a theoretical model for the analysis of normative control activities of the prosecutor's office will be the allocation of normative control from the general array of supervision over the implementation of legislation.

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Law is a living organism, and life is always more diverse than schemes. Moreover, the ongoing controversy about the place of the prosecutor's office in the public authority system indicates, albeit indirectly, that the prosecution authorities are sufficiently independent in the exercise of their powers.

The constitutional and legal status of a state body is its normative established by the norms of constitutional legislation and realized through participation in constitutional and legal relations the actual situation in the public law sphere. Note that, depending on the nature of the activities of the public authority, the analysis of its constitutional and legal status can be carried out either as a functionally unified, or with the allocation of certain aspects of the activity, if the activity has a multifaceted nature.

Of course, in the latter it is possible to carry out a comprehensive study that has its advantages, but the benefits of a distributed analysis of the function, especially if the specified function refers to a functionally complex system that includes other significant subjects of legal relations (for example, courts will act as such for normative control).

In this situation, consideration of the functions, place in the public authority system, competence, nuances of the order of establishment (appointment), transformation, liquidation (release) within the framework of the cumbersome legal structure of unspecialized constitutional and legal status will be formally true, but from a research point of view it is uninformative.

We believe that it will be much more efficient to isolate functional subsystems from a single system of constitutional and legal status in relation to those public authorities that carry out several significant functions. For example, for a legislative body it can be lawmaking, parliamentary control, etc., and thus, one could study the constitutional legal status of the legislative body as a legislative body, constitutional legal status of a legislative body as a parliamentary control body, and so on.

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The basis for constructing a theoretical model for the analysis of normative control activities of the prosecutor's office will be the allocation of normative control from the general array of supervision over the implementation of legislation.

As indicated by Yu.G. Arzamasov, there is internal normative control, interdepartmental, intraorganizational control, self-control in the rule-making sphere and external, «... which is carried out by control bodies and certain interested institutions of civil society» [1, p. 20-27].

Normative control itself can be defined as a system of constitutional and legal relations regarding the bringing of normative legal acts in accordance with the Constitution, as well as other normative acts having the highest legal force, improvement of normative legal acts, elimination of conflicts, elimination of legal and technical defects and, as a result, improving enforcement.

The specified normative control activity is carried out both by judicial contestation of the regulatory legal acts brought into conformity, by protesting by the prosecution authorities, by proposals to improve legislation, including in the framework of legislative activities.

The main conclusion of this study is the adoption and further argumentation of the thesis that the normative control function of the prosecution authorities is significant precisely in terms of the volume of its corresponding powers and the importance of the place in the system of functions of prosecutorial activity, and, therefore, it is possible to distinguish functional and constitutional status of the prosecutor's office in the system - normative control subsystem.

Based on the foregoing, it can be stated that when analyzing the constitutional and legal status of the prosecutor's office as a body carrying out normative control activities, a group of functions corresponding to the indicated activity is determined, the position of the prosecutor's office in the system of regulatory control bodies, the corresponding part of competence, the list of competencies and powers, guarantees for the implementation of regulatory control and liability for violation of standards on regulatory control.

The above elements will form the system of the functional constitutional and legal status of the prosecutor's office as an organ of normative control. Similarly, for research activities, a model of another group of functions related to the general (generic) supervisory function and so on can be formed.

Determining the position of the prosecutor's office in the system of separation of powers in Russia at this stage is quite difficult. The most radical solutions to this problem in general may require the adoption of a new Constitution of Russia. Thus, taking into account the importance of the functions of the prosecutor's office in the future during the constitutional reform, it is necessary to clarify the position of the prosecutor's office in the system of separation of powers and the nature of the prosecutorial authority. It seems that this will necessitate a certain correction of the interpretation of the principle of separation of powers (Locke Montesquieu), which is reflected in the current Constitution of Russia. However, the ongoing controversy about the place of the prosecutor's office in the public authority system indicates, albeit indirectly, that the prosecution authorities are sufficiently independent in the exercise of their powers.

References

1. Arzamasov Yu.G. Constitutional normative control over departmental normative legal acts // Constitution, constitutionalism, constitutionalization of legal systems: an actual correlation of concepts and trends. A collection of articles on the materials of the International scientific-practical conference dedicated to the twentieth anniversary of the Constitution of the Russian Federation, Tver, May 17-18, 2013. Tver: Tver State University, 2013. S. 20-27.

2. Constitutional law: Encyclopedic dictionary / Otv. ed. S. A. Avakyan. M.: Publishing. NORMA-INFRA-M, 2001. 668 s.

3. Mukhachev I.V., Tsapko M.I. The constitutional and legal status of legal science in a situation of conceptual uncertainty // Society and Law. 2012. No. 5 (42). S. 66-71.

4. Normography: theory and technology of rulemaking: a textbook for undergraduate and graduate programs / Yu. G. Arzamasov [et al.]. Ed. SOUTH. Arzamasova. M.: Publishing house Yurayt, 2019. 460 s.