



CONCEPT OF PROSECUTORIAL SUPERVISION ON THE INVESTIGATION OF CRIMES FOR THE LEGALIZATION OF INCOME DERIVED FROM CRIMINAL ACTIVITY, THE SCIENTIFIC AND THEORETICAL FOUNDATIONS OF ITS SUBJECT AND OBJECT

Nasrullaev Saidmurod Rashidovich

An independent applicant of the
Law Enforcement Academy of the Republic of Uzbekistan
Uzbekistan, Tashkent city

Article history:	Abstract:
Received: 14 th November 2024 Accepted: 10 th December 2024	The article presents the scientific-theoretical foundations of the concept, subject, and object of prosecutor's supervision over the investigation of crimes related to the legalization of proceeds from criminal activities. The theoretical views of scholars who conducted scientific research are analyzed, and the relevance of prosecutor's supervision in the initial stages of investigation into these types of crimes is discussed. Scientific concepts regarding the concept, subject, and object of prosecutor's supervision are provided.

Keywords: crimes related to the legalization of proceeds from criminal activities, investigative and initial investigation authorities, prosecutor's supervision, concept of prosecutor's supervision, oversight of the implementation of the Constitution and laws, offences, procedural activity.

MAIN PART

The concept of prosecutorial supervision over the preliminary investigation is considered to be a direction of activity carried out in order to ensure the legality and validity of the preliminary investigation, below we will analyze the essence of prosecutorial supervision over the investigation of the legalization of proceeds from criminal activity.

One of the main stages of criminal proceedings in the Republic of Uzbekistan is the preliminary investigation, which is the activity of collecting evidence before the trial.

During this period, evidence is collected, examined and evaluated on all circumstances relevant to resolving the case, the issue of the guilt of a particular person in committing a crime is resolved, and it is this evidence that is of great importance for the subsequent trial. That is why many scholars consider

the preliminary investigation to be the most basic, developed and reliable form of criminal proceedings.¹

There are different definitions given to the concept of prosecutor's control in the scientific literature. However, most of them are given general explanations as the sphere of state activity, law enforcement activities, and the form of prosecutor's authority.²

In our opinion, since the concept of prosecutorial control is inextricably linked to the activities of the prosecutor, it is appropriate to study this concept first. In this regard, Yu.E. Vinokurov expressed the scientific view that "prosecutorial control is manifested as the activities of the prosecutor's offices to monitor the implementation of the Constitution and laws."³

In our opinion, we cannot say that this definition given to the prosecutor's control is complete,

¹ Якубина Ю.П. Актуальные вопросы совершенствования форм предварительного расследования. Дисс....канд. юрид. наук. Южно-Уральский Гос. Университет. –Хабаровск, 2010. – С. 220.; Бурнос Е.Н. Теоретические и правоприменительные вопросы совершенствования предварительного расследования. Дисс....канд. юрид. наук. Кубанский государственный аграрный университет. –Краснодар, 2008.– С 210.

² Воронин О.В. К вопросу о содержании современного прокурорского надзора // Вестник Томского государственного университета. – 2011. – № 346. – С. 96.; Мельников Н.В. Прокурорская власть и личность: Правовые средства обеспечения конституционных прав и свобод граждан России. – М. : Изд-во «Юрист», 2003. – С. 152.

³ Прокурорский надзор: Учебник / Винокуров Ю.Е. [и др.] ; под общ. ред. Ю.Е. Винокурова. – 6-е изд., перераб. И доп. – М. : Высшее образование, 2005. – С. 9.



because it is evaluated only as the implementation of control over the execution of laws, without covering all aspects of the prosecutor's control, which is a special form of the prosecutor's activity.

Most scholars, in addition to the above general definition, have included the definition of law violations and their legal evaluation into the concept of prosecutor's control.⁴

Summarizing the above scientific views, it can be concluded that prosecutorial control over the investigation of crimes of the legalization of the income from criminal activities is the prosecutorial control exercised on behalf of the Republic of Uzbekistan, which includes the following:

- verification of compliance by the preliminary investigation bodies with the Constitution and the laws in force in its territory during the investigation process;

- monitoring the legality of the decisions made by them;

- identification of cases of non-compliance with the Constitution and violation of the requirements of the law by the preliminary investigation bodies;

- establishing the guilt of officials of the preliminary investigation bodies;

- taking measures to eliminate violations and restore the violated rights of the participants in the process, as well as to eliminate the causes of violations and the conditions that enable them;

- ensuring that guilty officials of the preliminary investigation bodies are held liable in accordance with the law.

As stipulated in Article 34 of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC),

the prosecutor shall exercise the powers stipulated in Articles 243, 382-388, 558, 589 of this Code at the stages of inquiry and preliminary investigation.

In particular, the prosecutor shall exercise the following control over the implementation of laws by inquiry and preliminary investigation bodies, as well as bodies carrying out pre-investigation checks:

- requests documents, materials and other information from the bodies of inquiry and preliminary investigation and from the bodies carrying out pre-

- investigation or search activities for the purpose of checking cases, on the progress of search, investigation, preliminary investigation cases on committed crimes;

- checks at least once a month the extent to which the requirements of the law on the reception, registration and resolution of applications and information on committed or planned crimes are being implemented;

- canceling unlawful and unfounded decisions of the bodies of inquiry and investigators, as well as officials of the body carrying out pre-investigation;

- investigate crimes, select, change or cancel a measure of restraint, issue written instructions on determining the nature of the crime, involving the accused in the case, performing certain investigative actions and searching for persons who committed the crime;

- submit a petition to the court for the application of a measure of restraint in the form of arrest or house arrest or for the imposition of an additional restriction (restriction) on house arrest, or agree to the petition, or submit a petition to the court for the extension of the term of detention in custody or house arrest;

- submit a petition to the court for the removal of the accused from his position, for the placement of a person in a medical institution, or agree to the petition, or submit a petition to the court for the extension of the term of the accused's stay in a medical institution;

- submit a petition to the court for the refusal to initiate a criminal case under an amnesty act or for the termination of a criminal case;

- submits a petition to the court for the exhumation of a corpse, for the seizure of postal and telegraphic items, or agrees to a petition;

- submits a petition to the court for the suspension of the validity of a passport (travel document) or agrees to a petition;

- submits a petition to the court for the preliminary recording of the testimony of witnesses and victims (civil plaintiffs);

- concludes a plea agreement with the suspect or accused in accordance with the procedure established by this Code;

⁴ Каранг.: Муравьев Н.В. Указ. соч. С. 501; Савицкий В.М. Очерк теории прокурорского надзора в уголовном судопроизводстве. М. : Издательство «Наука», 1975. – С. 27; Тадевосян В.С. Прокурорский надзор в СССР: учебное пособие / В.С. Тадевосян. – М. : Издательство «Знание», 1968. – С. 15;

Чеканов В.Я. Прокурорский надзор в уголовном судопроизводстве. М. : Издательство Саратовского университета, 1972. – С. 103-106; Прокурорский надзор в Российской Федерации : учебник для бакалавров / Е.Р. Ергашев [и др.] ; под науч. ред. Е.Р. Ергашева. – М. : Издательство Юрайт, 2011. – С. 18.



issues instructions to the bodies carrying out pre-investigation or operational-search activities on the execution of decisions on the detention, forced surrender, search of persons, the execution of a court ruling on the application of a precautionary measure in the form of arrest or house arrest, as well as on taking the necessary measures to solve crimes and identify persons who committed crimes in cases under the control of the prosecutor or investigator of the prosecutor's office;

participates in the inquiry, preliminary investigation and, if necessary, personally performs certain investigative actions in any case in accordance with this Code or carries out the investigation in full;

to conduct searches, to intercept telephone and other telecommunications devices and to obtain information transmitted through them, to conduct search operations that restrict the right to privacy, correspondence, telephone and other communications, postal, courier and telegraph messages transmitted through communication networks, and to obtain information about communications between subscribers or subscriber devices, as well as, in cases provided for by law, to allow other actions of the official of the body conducting the pre-investigation check, the inquiry officer and the investigator;

to extend the terms of the preliminary investigation and inquiry in the cases and in the manner established by this Code;

to return cases to the inquiry and preliminary investigation bodies with their instructions on conducting additional investigations;

transfer a criminal case from one investigator of the prosecutor's office to another, and in the cases and in the manner established by this Code, from one preliminary investigation and inquiry body to another preliminary investigation and inquiry body;

remove an inquiry officer or investigator from continuing the investigation or preliminary investigation if they have committed a violation of the law during the investigation of the case;

initiates or refuses to initiate criminal cases, terminates or suspends the proceedings; in cases provided for by law, gives consent to the termination of the case by the investigator or inquiry officer; approves the indictment, indictment or decision, and sends the cases to court.

The Order of the Prosecutor General of the Republic of Uzbekistan No. 129 dated February 22, 2016 "On effective ensuring of the rule of law and protection of the rights and freedoms of the individual in the fight against crime, inquiry, preliminary investigation and

operational search activities" states that one of the main tasks of the prosecutor's office in combating crime is to control and coordinate the activities of the bodies carrying out pre-investigation checks, inquiries, preliminary investigation and operational search in this regard.

The order also states that the establishment of daily control over the pre-investigation inspection, inquiry or preliminary investigation by supervising prosecutors and the full implementation of control measures, the timely application of prosecutorial control documents to eliminate violations are among the main criteria for assessing the activities of prosecutors.

One of the main concepts that should be studied is the issue of the form of prosecutorial control, which is given various definitions in theory. In particular, some authors consider the form of control over the legality of the investigation to be a set of legal powers granted to the prosecutor to ensure that the investigative and investigative bodies comply with the rules for investigating crimes in the performance of their tasks in criminal proceedings.

According to S.N. Babayev, the main feature that allows different forms of prosecutorial control to be distinguished from each other is the powers of the prosecutor established by law.

In our opinion, the form of control over the preliminary investigation by the prosecutor should be understood as the law enforcement activity carried out by him in order to fulfill the functions assigned to him, that is, to ensure the legal and justified conduct of the investigation of criminal cases,

to implement the goals and objectives established by law in order to protect the rights of participants in the criminal process.

The procedure for considering and resolving applications and reports on the commission of a crime, the conduct of an investigation established by this Code, the legality of the decisions made are the sphere of control over the implementation of laws by the bodies of inquiry and preliminary investigation.

The concept of prosecutorial control is closely related to determining its object and subject.

Theoretically, there is no single solution to this problem. This is due to various factors, namely the development of legislative technology and science, the prevailing legal doctrine, among others.

In the legal literature, according to the analysis of the definitions given by the scientists to the object of the prosecutor's control, their views can be divided into the following groups:



- the objects of the prosecutor's control are bodies, organizations and officials⁵;
- relations in ensuring the inviolability of legality;
- activities of bodies, organizations and officials;
- object of prosecutorial supervision – legality of activities of bodies, organizations and individuals.

In particular, according to the scientific views of A.A. Popov, the object of prosecutorial supervision is the activities of bodies and individuals conducting preliminary investigations regarding compliance or non-compliance with the Constitution and laws, the rights and freedoms of citizens, implementation or non-implementation of laws, as well as compliance with them.⁶

R.V. Zhubrin, on the other hand, put forward scientific views that the object of prosecutorial control in the investigation of criminal cases related to illegal entrepreneurial activity is the procedural activities of the bodies conducting the inquiry and preliminary investigation into these crimes.⁷

We, agreeing with the scientific views of these scholars, express the opinion that the procedural activities carried out by the bodies conducting the preliminary investigation into crimes of the Criminal Procedure Code are considered an object of control.

In this regard, in accordance with Article 342 of the Criminal Procedure Code, the preliminary investigation is conducted by investigators of the prosecutor's office, internal affairs bodies and the state security service.

In addition, prosecutors may also conduct the preliminary investigation.

If, during the investigation, a new crime related to the investigation of another preliminary investigation body is identified, the preliminary investigation body conducting the case may complete the investigation in full only with the consent of the relevant prosecutor.

In accordance with Article 320³ of the Criminal Procedure Code, the investigation of a criminal case is

carried out in the form of an inquiry or preliminary investigation.

Article 321 of this Code stipulates that the investigator, investigator, prosecutor, and the official of the pre-investigation body should initiate a criminal case in all cases where there are reasons and sufficient grounds that a crime has been committed within the scope of their powers.

From the analysis of the legal norms, criminal cases on the legalization of income from criminal activities may be initiated or a preliminary investigation may be conducted by the preliminary investigation, inquiry bodies or the prosecutor.

In conclusion, we express the opinion that the bodies conducting the preliminary investigation into criminal offenses on the legalization of income from criminal activities, that is, the investigative and inquiry bodies conducting the preliminary investigation, as well as the procedural activities conducted by them, are considered objects of control.

It should be emphasized that during the preliminary investigation of this type of crime, the investigator, within the scope of his powers established by Article 38 of the Code of Criminal Procedure, has the right to issue written instructions on the implementation of operational-search measures in cases under his control, to entrust the execution of decisions on the detention, forced surrender, and search of persons to the bodies carrying out pre-investigation inspection or operational-search activities, and to require them to assist in conducting certain investigative actions. The authors proposed separating control over operational-search activities from control over the legality of the inquiry and investigation, emphasizing that each of these areas of control has its own subject, goals, and objectives, and the specific features of the powers exercised by the prosecutor in exercising the relevant control.⁸

⁵ Попов А.А. Организация прокурорского надзора за исполнением законов при производстве предварительного следствия. Специальность 12.00.11 – Судебная деятельность, прокурорская деятельность, правозащитная и правоохранительная деятельность. Дисс. ... канд. юр. наук. – М. 2020. –С 46.

⁶ Попов А.А. Организация прокурорского надзора за исполнением законов при производстве предварительного следствия. Специальность 12.00.11 – Судебная деятельность, прокурорская деятельность,

правозащитная и правоохранительная деятельность.

Дисс. ... канд. юр. наук. – М. 2020. –С 46.

⁷ Жубрин Р.В. Проблемы теории и практики прокурорского надзора за исполнением законов при расследовании незаконного предпринимательства. Дисс. ... канд. юр. наук. – М. 2005 – С 20.

⁸ Кожевников О.А. О направлениях деятельности прокуратуры // Российский юридический журнал. – 2016. –№ 1; Дытченко Г., Никитин Е. Проблемы организации надзора за законностью оперативно-розыскной деятельности // Законность. – 2008. – № 10.



I.V. Litvinova also supported these views.⁹

Agreeing with this point of view, taking into account the specificity of the subject, tasks and goals of prosecutorial control over the investigation, we consider prosecutorial control over the activities of bodies carrying out operational-search activities as a separate direction.

V.G. Bessarabov, on the other hand, considers prosecutorial control over operational-search activities, compliance with the law by the bodies of inquiry and preliminary investigation to be a single direction of activity, and continues his views with the opinion that from a legislative point of view it is not advisable to separate prosecutorial control over operational-search activities into a separate direction of activity.¹⁰

Indeed, investigative activities are inextricably linked to the preliminary investigation, as investigative activities ensure the initiation of a criminal case and help to consolidate primary evidence. However, they differ from each other in terms of their purpose, methods and techniques used.

On the issue under study, we put forward the views that the activities of bodies carrying out operational-search activities are considered an object of control only in cases where they are related to the instructions given by the inquiry and investigation bodies on crimes of the legalization of income from criminal activities.

Next, we will dwell on the subject of prosecutorial control in conducting investigative actions on these crimes.

A.G. Khaliulin assesses the subject of control as ensuring legality in all areas of the activities of the inquiry and investigation bodies. Here, the author puts forward views on the legality of not only the investigative process, but also the entire procedural

activity, since operational-search activities are also carried out by the inquiry bodies.¹¹

Legal scholar R.D. Kurbanov believes that the prosecutor's control includes not only the procedural activities of the inquiry and preliminary investigation bodies, but also the legality of the activities of other participants in the process.¹²

However, A.R. Mikhailenko¹³, later Jubrin¹⁴ objected to these views, and made a reasonable conclusion that individuals are not considered objects of control, not only from a legal point of view, but also from the point of view of not being considered objects of prosecutor's control.

In our opinion, the prosecutor should not control the actions of individual citizens, because this situation harms the rights and freedoms of citizens. Rather, the prosecutor should establish strict control over the procedural activities of inquiry and investigation bodies, because this activity is often associated with the application of procedural coercive measures against them and the restriction of their personal freedom.

Because, if the prosecutor, during the process of controlling the procedural activities of inquiry and investigation bodies, detects violations of the law by state bodies, individuals, officials, in order to eliminate them, he may apply the prosecutor's control documents established in Article 37 of the Law "On the Prosecutor's Office". Article 382 of the Code of Criminal Procedure stipulates that the prosecutor shall exercise control over the implementation of laws in conducting inquiry and preliminary investigation actions.

Therefore, the prosecutor oversees the implementation of laws by the bodies of inquiry and preliminary investigation, the established procedure for considering and resolving applications and reports on the commission of a crime, the legality of the decisions

⁹ Литвинова, И.В. Прокурорский надзор за соблюдением прав и свобод человека и гражданина при осуществлении оперативно-розыскной деятельности: дис ... канд. юрид. наук / И.В. Литвинова. - СПб, 2001. - С. 10

¹⁰ Бессарабов, В.Г. Прокурорский надзор: учеб. / В.Г. Бессарабов. - М.: ТК Велби, Изд-во Проспект, 2007. - С. 233.

¹¹ Халиулин А.Г. Прокурорский надзор за исполнениями законов органами дознания и предварительного следствия. Российский прокурорский надзор. - М. 2002. - С. 228-229.

¹² Курбанов Р.Д. Автореф. дисс. ... канд. юрид. наук. Прокурорский надзор за исполнением законов досудебном производстве по уголовным делам о

незаконной добыче водных животных и растений. - М. 2002. - С.13.

¹³ Михайленко А.Р. К вопросу о сущности предмета и объекта прокурорского надзора. В кн. Актуальные проблемы теории, практики и преподавания прокурорского надзора в свете основных положений СССР и Закона о прокуратуре СССР. М. 1981. - 88.

¹⁴ Жубрин Р.В. Проблемы теории и практики прокурорского надзора за исполнением законов при расследовании незаконного предпринимательства. Дисс. ... канд. юр. наук. - М. 2005 - С 17.



made. In our opinion, the application of prosecutorial control over the accused and defense counsel in criminal proceedings is contrary to the principle of adversarial proceedings. In conclusion, the subject of prosecutorial control in the investigation of crimes of the criminal code is the legality of the procedural activities of the bodies of inquiry and investigation in criminal cases of this type.

REFERENCES:

1. Якубина Ю.П. Актуальные вопросы совершенствования форм предварительного расследования. Дисс....канд. юрид. наук. Южно-Уральский Гос. Университет. – Хабаровск, 2010.
2. Бурнос Е.Н. Теоретические и правоприменительные вопросы совершенствования предварительного расследования. Дисс....канд. юрид. наук. Кубанский государственный аграрный университет. –Краснодар, 2008.
3. Воронин О.В. К вопросу о содержании современного прокурорского надзора // Вестник Томского государственного университета. – 2011. – № 346.
4. Мельников Н.В. Прокурорская власть и личность: Правовые средства обеспечения конституционных прав и свобод граждан России. – М. : Изд-во «Юрист», 2003.
5. Прокурорский надзор: Учебник / Винокуров Ю.Е. [и др.] ; под общ. ред. Ю.Е. Винокурова. – 6-е изд., перераб. И доп. – М. : Высшее образование, 2005.
6. Муравьев Н.В. Указ. соч. С. 501; Савицкий В.М. Очерк теории прокурорского надзора в уголовном судопроизводстве. М. : Издательство «Наука», 1975.
7. Тадевосян В.С. Прокурорский надзор в СССР: учебное пособие / В.С. Тадевосян. – М. : Издательство «Знание», 1968.
8. Чеканов В.Я. Прокурорский надзор в уголовном судопроизводстве. М. : Издательство Саратовского университета, 1972.
9. Прокурорский надзор в Российской Федерации : учебник для бакалавров / Е.Р. Ергашев [и др.] ; под науч. ред. Е.Р. Ергашева. – М. : Издательство Попов А.А. Организация прокурорского надзора за исполнением законов при производстве предварительного следствия. Специальность 12.00.11 – Судебная деятельность, прокурорская деятельность, правозащитная и правоохранительная деятельность. Дисс. ... канд. юр. наук. – М. 2020.Юрайт, 2011.
10. Жубрин Р.В. Проблемы теории и практики прокурорского надзора за исполнением законов при расследовании незаконного предпринимательства. Дисс. ... канд. юр. наук. – М. 2005
11. Кожевников О.А. О направлениях деятельности прокуратуры // Российский юридический журнал. – 2016. –№ 1; Дытченко Г., Никитин Е. Проблемы организации надзора за законностью оперативно-розыскной деятельности // Законность. – 2008. – № 10.
12. Литвинова, И.В. Прокурорский надзор за соблюдением прав и свобод человека и гражданина при осуществлении оперативно-розыскной деятельности: дис ... канд. юрид. наук / И.В. Литвинова. - СПб, 2001.
13. Бессарабов, В.Г. Прокурорский надзор: учеб. / В.Г. Бессарабов. - М.: ТК Велби, Изд-во Проспект, 2007.
14. Халиулин А.Г. Прокурорский надзор за исполнениями законов органами дознания и предварительного следствия. Российский прокурорский надзор. – М. 2002.
15. Курбанов Р.Д. Автореф. дисс. ... канд. юрид. наук. Прокурорский надзор за исполнением законов досудебном производстве по уголовным делам о незаконной добыче водных животных и растений. – М. 2002.
16. Михайленко А.Р. К вопросу о сущности предмета и объекта прокурорского надзора. В кн. Актуальные проблемы теории, практики и преподавания прокурорского надзора в свете основных положений СССР и Закона о прокуратуре СССР. М. 1981.