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## Theoretical questions about the concept of the object of prosecutor's supervision

Based on the analysis of modern educational literature on prosecutors' supervision, the authors come to the conclusion that there is no unequivocal opinion on the question of some of the fundamental categories of the science of prosecutorial supervision. Among such categories it is possible to name concepts of object and a subject of public prosecutor's supervision. Some authors (O.S. Akhetova, M.H. Geldibaev, B.V. Korobeinikov, A.A. Ogorodnikov, M.P. Polyakov, A.V. Fedulov, V.B. Yastrebov) under the object of public prosecutor's supervision understand federal ministries, state committees, services and other federal executive bodies; representative (legislative) and executive bodies of the subjects of the Russian Federation; bodies of local self-government; military administration bodies; control bodies; officials of the above ministries, state committees, services and other bodies; government bodies and heads of commercial and non-commercial organizations. Others (A.P. Stukanov) argue that the subject of prosecutor's supervision is not the totality of these bodies and organizations, but the legality of their activities. Such disunity in the understanding of these important categories of the theory of prosecutorial oversight necessitated the presented research, which highlights different views on the disputed issues under consideration. The approaches to minimizing the contradictions on this problem have been determined.

*Keywords:* state activity, prosecutor's supervision, object of prosecutor's supervision, subject of prosecutor's supervision, subject of legal relations, supervisory bodies, subject of public prosecutor's supervision.

The highest supervision of prosecutor's office over exact and uniform application of law has a universal character in comparison with other state control bodies and civil society institutions. To improve prosecutorial supervision and increase its effectiveness it is necessary to develop its scientific basics in details. The fundamental problems of the theory of prosecutorial supervision were paid close attention by scholars of the Soviet period and by many authors in the post-Soviet period. However, authors have not come to a unanimous or consensus view regarding the most important categories of science of prosecutorial supervision. These «white» spots include the concept of the object and the scope of prosecutorial supervision.

One of the most notable monographs, in which a thorough analysis of various points of view on the scope and object of prosecutorial supervision was carried out for the first time, it is necessary to mention the work of V.V. Gavrilov, in the foreword to which the author states that «not all of the most important theoretical problems of this discipline are developed by science ... Among these gaps, it is possible to include to this day with full justification, the questions about the scope, object, function and the limits of the competence of prosecutor's supervision» [1; 4]. After publication of this work, quite a long time passed, during which one could hope for a solution to this problem. But many years later we again have to deal with different approaches in covering these concepts, which served as the basis for A.P. Stukanov for reiterating that «the different meaning put by researchers in such fundamental concepts of prosecutor's supervision as an object and scope often leads to contradictory and sometimes opposite conclusions, which is clearly not good not only for science but for practice» [2; 44].

Analysis of modern educational literature on prosecutor's supervision allows us to conclude that so far the approach of different authors to questions about the object and scope of prosecutor's supervision is ambiguous. To confirm this conclusion, for purposes of illustration, it is necessary to provide sufficiently voluminous extracts from educational and monographic sources containing various opinions about the objects of prosecutor's supervision.

In the opinion of B.V. Korobeinikov «the object of prosecutor's supervision should be understood as enterprises, institutions, organizations and other bodies, which are the subject to prosecutorial inspections on the implementation of laws ... Participants of prosecutorial-supervisory relations should be considered as the subject of prosecutors' supervision... One object of prosecutor's supervision may contain several objects and subjects of supervision. Thus, in ... the federal ministry can be the subject to the inspection on the implementation of laws in the accounting service, in control and other units (objects of supervision) and the legality of acts adopted by officials (subjects of supervision)» [3; 15].

Other authors, sharing this position, state: «Prosecutor's supervision branches are certain areas of prosecutor's supervision that have their scope of supervision, established supervisory objects, specific powers of the prosecutor in supervising» [4; 53, 54]. The above definition also allows to assume the presence of a multiplicity of objects of supervision within the framework of one branch, but that these authors understand under the object of supervision - we can learn from the following narrative of M.Kh. Geldibayev and A.A. Ogorodnikov: «The law imposes on the prosecutor's office supervision over the implementation of laws by a strictly defined circle of bodies and officials.

In accordance with the law, this circle includes federal ministries, state committees, services and other federal bodies of executive power; representative (legislative) and executive bodies of the subjects of the Russian Federation; bodies of local self-government; military administration bodies; bodies of control; officials of the above-mentioned ministries, state committees, services and other bodies; government bodies and heads of commercial and non-commercial organizations.

This list is exhaustive and not expandable.

Public and political organizations and movements are excluded from the system of **objects** (highlighted by us - S.V.) of public prosecutor's supervision, because in the conditions of society democratization, strengthening and development of relations, the other means of control must be applied to above mentioned public and political structures» [4; 64].

Similarly, the scope of public prosecutor's supervision is defined by I.V. Kushnir, according to which «the objects of prosecutor's supervision over the observance of human and citizen's rights and freedoms are defined in the Law on the Prosecutor's Office: federal ministries, state committees, services and other federal bodies of executive power; representative (legislative) and executive bodies of the subjects of the Russian Federation; bodies of local self-government; military administration bodies; bodies of control; officials of the above-mentioned ministries, state committees, services and other bodies; government bodies and heads of commercial and non-commercial organizations» [5].

It is not difficult to see that here the object of public prosecutor's supervision is also understood as government bodies and heads of commercial and non-commercial organizations. However, the exclusion of public and political organizations from the circle of «objects» of prosecutor's supervision causes suspicion, since in their statements and actions they can be in conflict with the current legislation (holding unauthorized meetings, processions, calls for committing offenses etc.).

Within the framework of this idea, M.P. Polyakov and A.V. Fedulov discuss: «The law on the prosecutor's office defines its objects, scope and powers of the prosecutor in relation to each of the prosecutor's supervision branches» [6; 17]. And further: «In accordance with the Law on the Prosecutor's Office, the objects of prosecutor's supervision for the observance and enforcement of laws include: 1) federal ministries, state committees, services and other federal executive bodies; 2) military authorities, their officials; 3) control bodies, their officials; 4) representative (legislative) and executive bodies of state power of the subjects of the Russian Federation; 5) local government bodies; 6) government bodies and heads of commercial and non-commercial organizations» [6; 81, 82].

The statement of the aforementioned authors that «among the **objects** (highlighted by us - S.V.) of prosecutor's supervision there are no citizens of the Russian Federation» [6; 83] causes concern. In contrast to this opinion, other authors, on the contrary, note: «From the content of Article 26 of the Law on the Prosecutor's Office, it follows that citizens are not included in the number of **subjects** (highlighted by us - S.V.)» [7; 172]. The question arises: if citizens, as bearers of duties fixed by law, grossly and clearly violated the requirements of the law in the form of a crime, do they fall into the sphere of prosecutor's supervision? The answer is obvious and it is certainly positive, because having established the fact of committing a crime by a citizen, the prosecutor's office has the right to investigate this crime in full. However, not including citizens in the number of objects (or subjects?) of the prosecutor's supervision, we are unable to logically substantiate the legality of investigating crimes by the prosecutor's office.

It should not be forgotten that the implementation of the norms of law can be carried out in various forms: permission, use, execution, application. Citizens by themselves can not and are not objects of prosecutor's supervision, because law-abiding citizens do not represent any interest for the prosecutor, except cases of infringement of their rights and legitimate interests on the part of officials of state bodies or other citizens (for example, instituting criminal proceedings for a crime against the rights and freedoms of man and citizen). Secondly, citizens do not carry out law enforcement activities, because it is entrusted to state bodies, their officials and persons exercising governing functions in commercial and non-commercial organizations. Thirdly, citizens who have crossed the line of prohibiting or prescribing norms of the law are also not subject

to prosecutor's supervision, since the prosecutor assesses only the legality of the citizen's actions in this particular case, and not all factors that together determine the legal status of the citizen as such. Fourthly, even if we agree with this opinion, with such an interpretation of the object, foreigners and stateless persons fall out of the field of prosecutor's supervision, who also must comply with the laws of the host state. Finally, if a citizen is viewed as an object of prosecutor's supervision, then inevitably the question arises: if a citizen as a bearer of duties established by law has grossly and clearly violated the requirements of the law in the form of a crime, do they fall into the sphere of prosecutor's supervision? The answer is obvious and it is certainly positive, because having established the fact of committing a crime by a citizen, the prosecutor's office has the right to investigate this crime in full. However, not including citizens in the number of objects (or subjects?) of the prosecutor's supervision, we are unable to logically prove the legality of investigating crimes by the prosecutor's office. Consequently, the subject of the offense, and the subject of prosecutor's supervision is the citizen himself, without becoming an object of supervision.

Among the statements that equated institutions and organizations, as well as citizens, to the objects of prosecutor's supervision, is the opinion of D.I. Aminov: «The limits of prosecutor's supervision over the execution of laws are determined by the competence of the prosecutor's office, **objects** (highlighted by us – S.V.) of prosecutor's supervision, the presence or lack of information about violations of the law.

The prosecutor's office does not supervise over the execution of laws by both chambers of the Federal Assembly of the Russian Federation, the judiciary, the Government of the Russian Federation and the President of the Russian Federation, this is not their competence ... The number of **objects** (highlighted by us – S.V.) of prosecutor's supervision over the execution of laws includes citizens of the Russian Federation and other individuals» [8; 102].

Disclosing the priorities for the implementation of the prosecutor's supervision over the observance of human and citizen's rights and freedoms, some authors note that «as the situation changes, priorities may change», ... but in any case there should be «the supervision over the observance of human and civil rights and freedoms at supervised facilities, including commercial and non-commercial organizations...» [7; 174]. In other words, in this case, the objects of prosecutorial supervision are the bodies and organizations enshrined in Article 21 and 26 of the Federal Law «On the Prosecutor's Office of the Russian Federation».

The above mentioned statements on the object of prosecutor's supervision are shared by V.B. Yastrebov, which on the pages of the textbook repeatedly, directly or indirectly, includes institutions and organizations and their officials to the objects of prosecutor's supervision. He notes that the Federal Law of February 10, 1999 «introduced an absolutely necessary, eliminating a serious obstacle in the work of prosecutors that had previously occurred in the article determining the scope of supervision over the execution of laws, according to which the number of **objects** (highlighted by us - S.V.) of prosecutor's supervision included governing bodies and management of commercial and non-commercial organizations» [9; 63].

Analyzing the peculiarities of the place and activity of the military prosecutor's office, the author further emphasizes: «The military prosecutor's offices are an integral part of the single prosecutorial system of the Russian Federation. They supervise over the legality in the Armed Forces of the Russian Federation, other troops and military formations created in accordance with federal laws. The military formations that arise on a different basis are known to be illegal and, naturally, they can not be the **object** of supervision (highlighted by us - S.V.) to the military prosecutor's office» [10; 130]. There is a doubtful conclusion: if the prosecutor himself discovers or prosecutor receives information about the organization and activities of illegal armed groups, prosecutor should not react in any way to such a violation of the law, because such formations are not object of supervision.

Commenting Article 21 of the Federal Law «On the Prosecutor's Office of the Russian Federation», which fixes the scope of supervision over the implementation of laws, V.B. Yastrebov points out that the prosecutor's office supervises over the execution of laws by a set of bodies, organizations and officials strictly defined by law. «As can be seen from the list presented in Article 21 of the Law, it includes federal branches of executive bodies (ministries, services, agencies, other federal executive bodies), legislative and executive bodies of state power of the subjects of the Russian Federation, local government bodies, military governing bodies, control bodies, their officials, government bodies and heads of commercial and non-commercial organizations that carry out activities in various spheres of society. It can be changed or supplemented only by the adoption of relevant laws. A substantiated and extremely necessary change in the list of **objects** (highlighted by us – S.V.) of prosecutor's supervision was provided by the Federal Law of February 10, 1999, which eliminated the mistake made in the edition of the Law «On the Prosecutor's Office of the Russian Federation» of 1995, which was expressed in non-inclusion of government bodies and heads of

commercial and non-commercial organizations in Article 21» [9; 142]. In another place, returning to the same issue, the author again emphasizes: «The circle of objects supervised by the prosecutor with full completeness is established by the law» On the Prosecutor's Office of the Russian Federation «and prosecutors do not have the right to go beyond this circle» [9; 148].

The author's idea that «the main criterion for assessing the activity of supervised objects by the prosecutor's office is the legitimacy of their actions and acts is very noteworthy... The prosecutor's field of view is only that part of the activity of the objects of supervision that is regulated by law is connected with the execution of laws» [9; 148].

Such a point of view, although with some interpretation, is expressed by Ahetova O.S., in the opinion of which «the object of prosecutor's supervision - enterprises, institutions, organizations and other legal entities in which prosecutor's inspection of the execution of laws are conducted» [10]. At the same time, it can be seen from the above provision that the author does not include individuals either on the list of objects of the prosecutor's supervision or among the subjects of supervision.

The authors of all the given points of view avoid a very important point: if enterprises, institutions, organizations and citizens are objects of prosecutor's supervision, then who will be the subject in this case?

Another position on the issue of the object of prosecutorial supervision is represented by A.P. Stukanov in the study of the relationship between the concepts of the object and the scope of prosecutor's supervision. His position, in our opinion, is more successful in comparison with the above statements, although it is quite controversial. He writes: «In our opinion, the object of prosecutor's supervision over the execution of laws by the administrative jurisdictions bodies is the legality in the activities of these bodies. The concept of the scope of supervision is close in its meaning to the concept of the object. It is advisable to use it to specify the object of prosecutor's supervision when it is necessary to concentrate the attention of the prosecutor on the actions and acts of the supervised bodies, the legality of which should be inspected. Thus, the scope of prosecutor's supervision over the execution of laws by the administrative jurisdiction bodies is observance of human and citizen rights and freedoms, the procedure for initiating proceedings on administrative violation established by law, administrative investigation and consideration of cases of this category, as well as the legality and validity of the resolutions» [2; 45].

It is not difficult to see that the approach of A.P. Stukanov radically differs from the others, if only because there is no attempt to list enterprises, institutions, organizations and their officials. But here, too, the author's position, in our opinion, needs to be clarified, since in determining the object of prosecutor's supervision it is necessary to proceed from the concept of an object universally accepted in philosophy. «An object is something that exists in reality (that is, independently of consciousness): a scope, phenomenon or process, to which the subject-practical and cognitive activity of the subject (observer) is directed ... The object puts certain boundaries and limits to the subject's activity» [11]. From the point of view of the modern Russian language, according to the dictionary of the Russian language of S.I. Ozhegov, the word «object» is used in the following meanings: 1) the phenomenon, the scope to which any activity is directed and 2) the enterprise, the institution, and also all that is the place of some activity [12; 377]. Probably, the authors, implying enterprises, institutions and organizations under the object of prosecutor's supervision, are based on the concept of the object in its second meaning.

Returning to the question about the object of prosecutorial supervision, it is necessary to remember that the prosecutorial supervision is a kind of cognitive activity, which consists of different levels of cognition. The first level of cognition is the contemplation, observation and it does not entail a detailed study and transformation, determination of the form, structure, content, relationships, etc. In this regard, there is unified object of prosecutor's supervision. This is a consequence from the formulation, which is enshrined in Art. 83 of the Constitution of the Republic of Kazakhstan, which establishes that the prosecutor's office shall exercise the highest supervision over exact and uniform application of law, the decrees of the President of the Republic of Kazakhstan and other regulatory legal acts on the territory of the republic. Summing up what has been said, the object of prosecutorial supervision is an exact and uniform application of law, the decrees of the President of the Republic of Kazakhstan and other regulatory legal acts.

The object of prosecutorial supervision is concretized in various branches of supervision, depending on the content of legal relations, it forms a generic object of the branch of prosecutorial supervision. Generic object of supervision answers two questions: first, the prosecutor's office oversees the exact and uniform application of *which* law, and, secondly, the prosecutor's office oversees the exact and uniform application of law by *which* subjects of the legal relationship. For example, in the branch of prosecutorial supervision over

the legality of investigation and inquiry, the unified object of the supervision does not change – it is the exact and uniform application of law, but a generic object allows to answer these questions.

Thus, in order to decrease the contradictions on the object of the prosecutor's supervision and to find an acceptable definition, we suggest that we understand under the object of public prosecutor's supervision the exact and uniform execution (by the Constitution of the Republic of Kazakhstan - application) of laws by state and non-state bodies and organizations, officials and citizens as subjects of legal relations and the bearers of rights and obligations. The scope of prosecutor's supervision is the legality of actions and acts of subjects of legal relations.

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## Прокурорлық қадағалаудың нысанының ұғымы жайлы теориялық сұрақтар

Прокурорлық қадағалау туралы заманауи оқу әдебиеттерін талдау негізінде авторлар прокурорлық қадағалау ғылымының кейбір іргелі ұғымдарына қатысты мәселелері бойынша біржақты пікір жоқ екендігі жайлы қорытынды жасады. Осындай ұғымдардың арасында прокурорлық қадағалаудың нысаны мен пәні жайлы ұғымдарды айтуға болады. Бірқатар авторлар (О.С. Ахетова, М.Х. Гельдибаев, Б.В. Коробейников, А.А. Огородников, М.П. Поляков, А.В. Федулов, В.Б. Ястребов) прокурорлық қадағалау нысаны ретінде федералды министрліктерді, мемлекеттік комитеттерді және атқарушы биліктің өзге де қызметтері мен органдарын түсінеді; Ресей Федерациясы субъектілерінің өкілді (заңшығарушылық) және атқарушы органдарын; жергілікті өзін-өзі басқару органдарын; әскери-басқару органдарын; бақылау органдарын; жоғарыда аталған министрліктердің, мемлекеттік комитеттердің, қызметтердің және басқа да органдардың лауазымды тұлғаларын; мемлекеттік органдар мен коммерциялық және коммерциялық емес ұйымдардың басшыларын түсінеді. Басқа авторлар (А.П. Стуканов және тағы басқалар) прокурорлық қадағалау пәні деп бұл органдардың және ұйымдардың жиынтығы емес, олардың қызметінің заңдылығы деп түсінуді ұсынады. Прокурорлық қадағалау теориясының осы маңызды ұғымдарын түсінудегі мұндай келіспеушілік, қарастырылып отырған даулы мәселелер бойынша әртүрлі көзқарастарды көрсететін зерттеулерді қажет етеді. Осы мәселеге қатысты қайшылықтарды барынша азайтудың көзқарастары анықталды.

*Кілт сөздер:* мемлекеттік қызмет, прокурорлық қадағалау, прокурорлық қадағалау нысаны, прокурорлық қадағалау пәні, құқықтық қатынастардың субъектісі, қадағалау органдары, прокурорлық қадағалау субъектісі.

## Теоретические вопросы о понятии объекта прокурорского надзора

На основе анализа современной учебной литературы по прокурорскому надзору авторы приходят к выводу о том, что по вопросу о некоторых фундаментальных категориях науки прокурорского надзора нет однозначного мнения. Среди таких категорий можно назвать понятия объекта и предмета прокурорского надзора. Одни авторы (О.С. Ахетова, М.Х. Гельдибаев, Б.В. Коробейников, А.А. Огородников, М.П. Поляков, А.В. Федулов, В.Б. Ястребов) под объектом прокурорского надзора понимают федеральные министерства, государственные комитеты, службы и иные федеральные органы исполнительной власти; представительные (законодательные) и исполнительные органы субъектов Российской Федерации; органы местного самоуправления; органы военного управления; органы контроля; должностные лица перечисленных выше министерств, государственных комитетов, служб и иных органов; органы управления и руководители коммерческих и некоммерческих организаций. Другие (А.П. Стуканов) утверждают, что предметом прокурорского надзора является не совокупность указанных органов и организаций, а законность их деятельности. Такая разобщенность в понимании данных важнейших категорий теории прокурорского надзора обусловила необходимость представленного исследования, в котором освещаются различные взгляды на рассматриваемые спорные вопросы. Определены подходы к минимизации противоречий по данной проблеме.

*Ключевые слова:* государственная деятельность, прокурорский надзор, объект прокурорского надзора, предмет прокурорского надзора, субъект правоотношений, надзорные органы, субъект прокурорского надзора.

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