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Increasing the effectiveness of international activities of the prosecutorial agencies of the Republic of Kazakhstan

The prosecutorial agencies of the Republic of Kazakhstan have multifaceted and multidimensional functions in the international arena and, therefore, their effective performance depend upon a range of various factors, such as the extent and comprehensiveness of the constitutional-legal regulation (normative framework), organizational framework, as well as academic research in this field. Moreover, at the present time, challenges and functions of the prosecutorial agencies in the international arena become more complicated and broader. In this regard, it should be noted that there is an insufficient normative framework and academic attention to the full range of existing multifaceted and multidimensional international activities of the prosecutorial agencies.

Key words: effective international legal cooperation; international activities of the prosecutorial agencies; implementing international matters in an effective manner; enhancing international performance of the prosecutorial agencies.

International legal cooperation implemented by the General Prosecutor's Office is considered as a strategic function in virtue of directly affecting international relations, security and foreign policy of the Republic of Kazakhstan with foreign states and international organizations. Specificity of organizational and functional capabilities (actions, powers, obligations) enable prosecutors to efficiently resolve a wide range of tasks that fall outside the competencies of other bodies of the Republic of Kazakhstan in international legal cooperation. International activities of the prosecutorial agencies can be acknowledged as an important tool for developing initiatives and ways of ensuring transnational security and strengthening of the rule of law in international relations and of integration into the global legal community. At the present stage, the importance of such activities of the prosecutorial agencies is greatly increased and recognized. Therefore, in a broader sense, cooperation, with so many players at the international level, makes it necessary to improve and enhance the effectiveness of international activities of the prosecutorial agencies.

Furthermore, at all the levels of power in the Republic of Kazakhstan, the prosecutorial agencies are working under the conditions that increase their accountability and require higher performance standards. For instance, according to the Presidential Decrees of the Republic of Kazakhstan dated August 17, 2010, No. 1039 «On Measures to Increase the Efficiency and Effectiveness of Law-Enforcement Activities and Judicial System in the Republic Of Kazakhstan» one of the critical requirements set out by the President is to increase the effective functioning of law enforcement agencies of the Republic Of Kazakhstan, including prosecutorial agencies [1]. In pursuance of this task assigned to them the State Program of Further Modernization of the Law Enforcement System of the Republic of Kazakhstan for 2014–2020 together with the Action Plan for Implementation of the State Program, approved by the Resolution of the Government of the Republic of Kazakhstan dated April 1, 2014, No 292, and the Concept of Personnel Policy of Law Enforcement Agencies of the Republic of Kazakhstan, was established by the Decree of the President of the Republic of Kazakhstan dated December 31, 2013, No 720 [2–4].

However, historically, international activities of the prosecutorial agencies have largely been ignored in the academic literature in general, not to mention their effectiveness. In this regard, this article is of particular relevance and also, it should be noted that this article is exploratory and does not attempt to microscopically and comprehensively cover all the possible aspects in this area. Instead, this article tried as a first step to articulate a number of thoughts on certain issues impeding the effective implementation of international activities by the prosecutorial agencies and recommendations aimed at addressing them.

In addition, this article make analysis from a legal standpoint, namely the prosecutorial service is regarded as part of the legal system in the Republic of Kazakhstan. Also this article encompasses organizational and sociological framework since the prosecutorial agencies make use of human resources management processes. Finally, from an economic point of view — the prosecutorial service regarded as an institution that tries to achieve maximum efficiency. Many of the issues in this article are analyzed from the macro (the prosecutorial agencies — centralised system of bodies) and micro perspectives (effective international activities that rest with prosecutors). When we associate all these concepts that represent different disciplines, it becomes clear that there is a need for an interdisciplinary approach. Indeed, nowadays, the General Prosecutor's Office of the Republic of Kazakhstan shifted its focus towards the ideology of managerialism, including towards such of its components like effectiveness and cost-effectiveness of personnel system, and strategic human resource management and has moved away from traditional bureaucratic approaches. Of course it is not possible to maintain all the recommendations of private corporations' regarding management policy which sometimes criticizes any hierarchy, since well-organized centralized management and coordination and monitoring for the prosecutorial agencies is very important and useful. Prosecutorial agencies will experience a drawback in case of insufficient control and coordination of their work [5; 997].

In a broader sense, international cooperation implies trust among the various entities in the international arena and these actors assess competence and professionalism of the prosecutorial bodies on the basis of their effectiveness. Therefore, one way of building trust is to demonstrate that competent authorities in international cooperation perform their functions effectively. For the purpose of this article, it is understood that effectiveness depends on many factors, particularly on the ability of the prosecutorial bodies to achieve its goals and objectives that society has set for them within some framework of costs, or other. In order to measure the prosecutorial bodies' success in meeting their goals and objectives and identify whether or not there had been any progress in achieving them, whether or not prosecutors are effective in international matters - creative and sophisticated performance indicators are necessary. Performance indicators are not only used in a corporate private world, but also utilized in a nonprofit public sectors to measure their progress in achieving their goals. Development and implementation of a variety of performance indicators provides a valuable tool for the prosecutorial agencies in dealing with their problems that they face every day [6; 2]. More importantly, linking performance indicators to certain objective that associated with certain goal can be useful in strategic planning and performance monitoring [7; 6]. Performance indicators can measure separate individual staff member's performance and any prosecutorial unit's performance in general and it can cover different dimensions of quantity, quality and timeliness, yet each of these dimensions is important and useful [8; 4].

The prosecutorial agencies of the Republic of Kazakhstan have multifaceted and multidimensional functions in the international arena and, therefore, their effective performance depend upon a range of various factors, such as the extent and comprehensiveness of the constitutional-legal regulation (normative framework), organizational framework, as well as academic research in this field. Moreover, at the present time, challenges and functions of the prosecutorial agencies in the international arena become more complicated and broader. In this regard, it should be noted that there is an insufficient normative framework and academic attention to the full range of existing multifaceted and multidimensional international activities of the prosecutorial agencies. It would be useful to adopt a separate act regarding international activities of the prosecutorial bodies, which could play its unifying role by covering all the aspects of international cooperation and of international activities in general.

Foreign countries, with which the Republic has no contractual relationship, in the case of referring to them for legal assistance, as a rule, refuse to satisfy such requests despite the existence of international legal principle of reciprocity. A number of international agreements very slowly reach the procedure of ratification, which affects the performance of the bodies conducting certain proceedings with the competent agencies of foreign states. Although the signature and ratification of a convention is easy to trace, the tracing of its implementation and enforcement in day-to-day basis is much more difficult. The absence of the internal procedures to implement and monitor international instruments has a significant hindering effect on their

impact, and has drawn a lot of criticism from international organizations [9; 55]. In this connection, the optimal solution to this problem in the long-term perspective can be achieved through dedicated consistent conclusion of bilateral interstate agreements, as well as by the accession of the Republic to international conventions [9; 62]. Therefore, it is necessary to accelerate the ratification and effective application of the relevant international legal instruments and try to simplify internal national procedures to implement them effectively.

At the same time, regardless of the level of how relevant international legal instruments and national normative framework are elaborated and developed, none of that is of much value, if it is not possible to implement them accurately and in an effective and timely fashion. Unfortunately, in a great number of cases, international assistance arrives in such a form that it is not useful to requesting authorities; or it is provided so late as to be of little practical value and harmful in strengthening the rule of law. Indeed, effective implementation is not limited to legislation and academic framework, it runs far deeper than that. A country may have an excellent legislative and treaty scheme for international legal matters and it still may be virtually impossible to provide effective interaction; because the operation of the best designed system depends only on people who implement them on a practical level. In many instances, success in international legal matters is dependent almost entirely on the knowledge and most critically flexibility of the competent authorities [10].

Admittedly, significant progress in the effective implementation of international obligations can be achieved through establishing some form of organizational framework. The critical problem is the lack of adequate programs and procedures for effective implementation of them on a practical, case by case level [10]. Because the General Prosecutor's Office of the Republic of Kazakhstan has an interest in ensuring that prosecutors exercise their functions effectively at the international level, the prosecutorial authorities need to have a specialized personnel, that carry out their duties in a timely and effective and competent manner and that adhere to an ethic of professionalism. National legislation do not expressly require or recommend and is mostly silent on providing professional specialized training for prosecutors to protect legal interests at the international level. In the present context, there is a need for robust, well-defined, and binding internal standards of training arrangements for personnel within the prosecutorial agencies of the Republic of Kazakhstan. It would enable them to enhance professional skills in interaction with various international organizations, courts and competent authorities of different legal systems in play (common law or civil law and any other legal systems). Initial and continuing training of prosecutors in the area of international law, foreign languages, analytical skills to navigate in a constantly dynamic international framework can make an important contribution to the prosecutorial agencies' effective capacity. Unquestionably, the challenge for the future is to develop an electronic system of cooperation amongst states which at a practical level will permit prosecutors to implement their international matters in a timely and effective manner.

International standards also recommend advancing specialization in international cooperation for prosecutorial agencies around the world. For instance, in order to further promote international cooperation Council of Europe Recommendation Rec(2000)19 and Recommendation CM/Rec (2012)11 provide list of measures for the member States that can be extended for non member states [11, 12]. And for the aim of implementing mentioned Recommendations the Committee of Ministers established the Consultative Council of European Prosecutors (CCPE) that in order to enhance the effectiveness of international cooperation of prosecutorial agencies suggests to the Committee of Ministers and the Council of Europe's member states to develop: «... appropriate training of prosecutors as well as other players in international judicial cooperation, ... setting up in each member state an appropriate structure to guarantee the specialisation of some prosecutors as regards international cooperation, ...multiplying the opportunities for practitioners from the various member states to meet and exchange, namely through specialised colloquies and seminars for prosecutors...» [13; 10].

In order to develop and maintain effective international cooperation, the prosecutorial offices of the Republic of Kazakhstan should be equipped properly, have sufficient technical — operational resources and proper organizational infrastructure [14; 7]. The General Prosecutor's Office of the Republic of Kazakhstan has the Department of International Cooperation that serves as the central unit concerning international matters. Effectiveness can be achieved also through institutional arrangements, therefore, the Department must be free from institutional rigidity and be flexible and open to many configurations and parameters in its internal — structural design in order to respond dynamic multifaceted and multidimensional international activities.

At the same time, the salary system of prosecutorial offices in the Republic of Kazakhstan is unitary and centrally strictly regulated and rarely depends on the quality and results of the work performed. Analysis

of the economic component of the personnel policy of law enforcement agencies in Europe (France, Germany, Sweden and the UK) show that their payment system has little flexibility too [15; 45]. In this regard, the problem of staff attrition appear, for example, the prosecutorial agencies in the United States usually hire newly appointed prosecutors that leave the prosecutorial offices after several years of work for other (often more lucrative) positions [16; 1590]. Empirical evidence shows that public prosecutors' salaries are not competitive with the private sector, as a result, the prosecutorial agencies seek personnel who want to gain necessary experience for the desired subsequent employment in the private sector [16]. In England, the payment is much higher for lawyers who work in the private sector, especially in the field of commercial law [17; 157].

It should be noted that the discussion of trends in the development of reward system in the prosecutorial agencies have largely been ignored in academia [18]. However, there are some personnel policy theories and approaches advancing the idea that financial incentives improve a prosecutorial performance. For example, Tracy Meares, suggests the use of financial rewards for promoting desired behaviors of prosecutors [19]. According to Stephanos Bibas, in order to compete for the best staff, the prosecutorial offices must be oriented to adjust market laws regarding personnel policies, because prosecutors are distinguished by their hard work, diligence, and certain results [5; 443]. Although, it is not the aim of this work to identify, cover and discuss issues that may arise during the implementation of performance management systems, this study provides a better understanding of what to consider when building an effective evaluation system along the development of reward system.

At the same time, despite the fact that international literature contains numerous studies that highlight the importance of the close relationship between performance measurement systems and personnel incentives (Eccles, 1991; Neely, Mills, Gregory, & Platts, 1995) — the real challenge lies in selecting appropriate methodology to assess the effectiveness of individual performance and link it with the reward system (Cutler & Waine, 2005; Tangen, 2004) [20; 103]. It is a matter of great concern to determine these indicators, methods for measuring these indicators, which creates an acute need for research and development of conceptual frameworks and boundaries to bring logic and rationality to this undiscovered space at the intersection of law and economics in terms of the prosecutorial bodies of the Republic of Kazakhstan. Therefore, the development and introduction of performance indicators, assessment criteria, methods, mechanisms and tools to assess effectiveness, monitoring technologies within certain prosecutorial activities is difficult, but necessary task. It requires carrying out research, which consists primarily in identifying approaches, theories, methods, tools and instruments and determining precisely those models that fit specific parameters (public sector and the prosecutorial agencies). The General Prosecutor's Office of the Republic of Kazakhstan needs to develop a balanced assessment system of individual prosecutors by ranking them and associating them with a balanced system of incentives.

Much work remains to be done by the General Prosecutor's Office of the Republic of Kazakhstan to enhance its effective functioning in the international arena where there are a lot of nuances and challenges. Consequently, the prosecutorial agencies of the Republic of Kazakhstan more than ever before need to develop a scientifically based plan (strategy) that takes into account progressive national and international experience, which would allow them normatively and institutionally enhance their international performance in a long-term perspective. Therefore, it is of particular importance to further pursue more in-depth conceptualizations, and comprehensive studies of the broadest range of aspects in this area of research. The challenge for the future lies in elaboration of a set of constitutional or organizational arrangements and prospects of development, summary and consolidation of theoretical and practical experience.

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Е.Қ.Көбеев, Г.Түсіпханова

Қазақстан Республикасы прокуратура органдарының халықаралық қызметінің тиімділігін арттыру

Қазақстан Республикасы прокуратура органдары халықаралық деңгейде көп қырлы және көп көлемді қызмет атқарады, сол себепті олардың қызметінің тиімділігі алуан түрлі факторларға тәуелді, атап айтқанда, конституциялық-құқықтық (нормативтік негіздер), ұйымдастырушылық негіздерді реттеудің деңгейі мен толықтығы, сондай-ақ осы саладағы ғылыми зерттеулер. Бұдан басқа, қазіргі уақытта прокуратура органдарының халықаралық деңгейдегі міндеттері мен қызметтері күрделеніп, кеңеюде. Осыған орай бүгінгі күні прокуратура органдарының халықаралық қызметінің көп қырлы және көп көлемді аумағын теориялық зерттеудің және қолданыстағы нормативтік базаның жетіспеушілігін атап өткен жөн.

Е.К.Кубеев, Г.Тусупханова

Повышение эффективности международной деятельности органов прокуратуры Республики Казахстан

В статье отмечено, что органы прокуратуры Республики Казахстан имеют многогранные и многомерные функции на международной арене. Следовательно, эффективность их деятельности, отмечают авторы, зависит от целого ряда различных факторов, таких как степень и полнота регулирования конституционно-правовой (нормативной), организационной основы, а также научные исследования в этой области. Кроме того, подчеркнуто, что в настоящее время задачи и функции органов прокуратуры на международной арене становятся сложнее и шире. В связи с этим показана недостаточность существующей нормативной базы и теоретического изучения всего спектра многогранной и многомерной международной деятельности органов прокуратуры.

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