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The Role of the Environmental Prosecutor's Office In The Fight Against Environmental Violations

Yerbol ALIMKULOV*
Yermek NURMAGANBET**
Akynkozha ZHANIBEKOV***
Assel SHARIPOVA****
Akerke SABITOVA*****

Abstract

Law enforcement is a constituent part of government activities. The Constitution of the Republic of Kazakhstan defines the Republic of Kazakhstan as a State based on the rule of law. This means that the State acting through its bodies carries out its activities on the basis of the norms of law, ensures the supremacy of law, protects the legitimate interests of an individual, and the mutual responsibility of the State and citizens.

The Constitution of the Republic of Kazakhstan declares human rights and freedoms as the highest value, while the recognition, observance, and protection of rights and freedoms are declared a State duty. Thus, the State obliges all its bodies and institutions to respect and observe the legitimate rights and freedoms of citizens.

Keywords: environmental prosecutor's office, prosecutorial supervision, prosecutorial audits.

* Department of Criminal Law, Criminal Process and Criminalistics, Al-Farabi Kazakh National University, Kazakhstan, Almaty, 050040, 71 al-Farabi Ave. yerbolalimkulov@rambler.ru, +77017140181

** Yessenov University, Kazakhstan, Aktau

*** Department of Criminal Law, Criminal Process and Criminalistics, Al-Farabi Kazakh National University, Kazakhstan, Almaty

**** Department of Criminal Law, Criminal Process and Criminalistics, Al-Farabi Kazakh National University, Kazakhstan, Almaty

***** Department of Criminal Law, Criminal Process and Criminalistics, Al-Farabi Kazakh National University, Kazakhstan, Almaty

Introduction

State bodies indirectly participate in law enforcement activities, that is, they promote the protection of the law from violations by strictly observing the laws, ensuring the exercise of citizens' rights and by defending legitimate State interests.

The prosecutor's office occupies a special place among law enforcement agencies. It is an independent law enforcement agency, which ensures the observance of the rule of law in the State. The main goal of the activities of the prosecutor's office is to ensure the rule of law, the unity and strengthening of the rule of law, the protection of human and civil rights and freedoms, as well as the interests of society and of the State protected by law.

The importance of the activity of the prosecutor's office is evidenced by the fact that the constitutional norms assigned for the organization of the prosecutor's office come just behind the norms dedicated to the judiciary. Until now, the prosecutor's office continues to hold a special place among law enforcement agencies, since it is not a part of the legislative, executive or judicial authorities. It is an independent law enforcement agency, which ensures the observance of the rule of law in the State.

The importance of the activities of the prosecutor's office is again emphasized in the Prosecutor's Office Act no. 81-VI adopted on June 30, 2017. This Act enshrines the status, competence, organization, and procedure of the prosecutor's office of the republic[1].

The new Act, in addition to the areas of supervision assigned to the prosecutor, emphasizes the importance of the coordination function of the prosecutor's office aimed at ensuring law and order, rule of law and fight against crime. However, the main area of the prosecutorial activities is still related to ensuring the supremacy of law, the unity, and

[1] Kazakh Prosecutor's Office Act no. 81-VI (June 30, 2017). http:///online.zakon.kz. Accession Date: 2018.

strengthening of law, the protection of human and civil rights and freedoms, as well as the interests of society and of the State protected by law (Article 1 of the Act). The realization of the main tasks of the prosecutor's office are maintained by the main principles of organization and activities of the prosecutor's office enshrined in the Kazakh Prosecutor's Office Act (Article 3 of the Act).

The main content of the activities of the prosecutor's office is the prosecutorial supervision. In addition, the prosecutor's office carries out criminal prosecution of persons who have committed criminal acts, coordinates the activities of law enforcement agencies in the fight against crime, and participates in law-making activities.

The principles of organization and activities of the prosecutor's office are centralization, independence, legality and publicity.

The principle of centralization of the prosecution authorities means that they constitute a single centralized system, headed by the Prosecutor General of the Republic of Kazakhstan. The prosecution authorities have a strictthierarchy; the subordinate prosecution authorities report to the higher-ranking ones and to the Prosecutor General of the Republic of Kazakhstan. Higher-ranking prosecutors can give subordinate prosecutors mandatory instructions and assume the fulfillment of any of their duties. Prosecutors have tasks common to the entire prosecutorial system.

The principle of independence in the organization and activities of the prosecutor's office is that its units exercise their powers independently of public authorities, local administration, and public associations. To protect the independence of the functioning of the prosecution authorities, the law prohibits prosecutors and investigating prosecutors to be members of elective and other bodies formed by state authorities and local administration. Prosecutors cannot be members of public associations pursuing political goals and take part in their activities.

The principle of legality means that the prosecution authorities exercise their functions in strict accordance with the laws in force in the territory of the Republic of Kazakhstan.

The principle of publicity in the organization and activities of the prosecutor's office is expressed in the notification in the press about the appointment of prosecutors referred to in the Constitution of the Republic of Kazakhstan, in the obligation to inform the authorities, local administration and the public about the status of legality. The prosecution authorities are obliged to act openly to the extent that this does not contradict the requirements of the laws on the protection of citizens' rights and freedoms, as well as the legislation on the State secret and other secrets protected by law.

The Prosecutor's Office of the Republic of Kazakhstan is a centralized system of prosecution authorities and institutions. This system is headed by the Prosecutor General's Office of the Republic of Kazakhstan. Other prosecution authorities are divided into two parts. The first group consists of territorial prosecutor’s offices organized in accordance with the administrative territorial arrangement established by the Constitution of the Republic of Kazakhstan. The territorial prosecutor’s offices include the prosecutor’s offices of the regions, those of cities, towns and districts. Another part of the prosecution authorities, which are also subordinate to the Prosecutor General's Office of the Republic of Kazakhstan, is specialized. Specialized prosecutor’s offices include military, transport, environmental, penitentiary and other prosecutor’s offices. All of them proceed on the rights of the regional or district prosecutor's offices (Article 35 of the Act).

The Prosecutor General of the Republic of Kazakhstan carries out the formation, reorganization and abolition of prosecution authorities and institutions, the determination of their status and competence.

The Prosecutor General appoints and dismisses prosecutors from all levels of the prosecution system and is responsible for the tasks assigned to the prosecution authorities.

Prosecutorial supervision is the main activities of all prosecutors, which consists in monitoring the legality of decisions of state authorities, economic entities and associations affecting the rights and legitimate interests of citizens, society and the State. It is also aimed at eliminating violations of laws, circumstances favourable for such violations and bringing perpetrators to justice.

Prosecutorial supervision is carried out on behalf of the state, i.e. the Republic of Kazakhstan. This is its main difference from other types of supervision carried out by other government agencies. Prosecutorial supervision, in comparison with the supervision made by other supervisory government agencies, has the widest scope of implementation. It applies to all ministries, departments, representative and executive authorities, as well as to the activities of officials. Prosecutorial supervision does not include citizens as subjects of supervision. When a crime is detected in the actions of citizens, the prosecutor begins criminal prosecution. When exercising prosecutorial supervision, the prosecutor does not interfere in the economic, administrative and operational activities of enterprises, organizations and institutions. The prosecutor does not have administrative powers, does not manage supervised enterprises and organizations, has no right to impose administrative sanctions, and even more so of a criminal nature.

1. Materials And Methods

In accordance with the Kazakh Prosecutor's Office Act, four main areas of prosecutorial supervision over legality are distinguished:

1) supervision concerning the activities of State and local representative and executive bodies, local administration and their officials, other organizations regardless of the form of ownership, as well as the acts and decisions they adopt;

2) supervision concerning judicial acts, which took legal effect;
3) supervision concerning enforcement proceedings and proceedings for administrative offenses;
4) supervision concerning the activities of law enforcement and special State bodies in such areas as:

– pre-trial investigation, special investigative and counterintelligence activities;
– the enforcement of criminal penalties and the application of other measures of State coercion;
– the observance of the international treaties of the Republic of Kazakhstan.

Each area of prosecutorial supervision is characterized by its subject, the powers of a prosecutor and specific acts of response to violations of the law.

The subject of the first area of prosecutorial supervision, i.e. the so-called "general" supervision, is the implementation of laws by the ministries and departments, the representative and executive bodies of the Republic of Kazakhstan, local administration, military command authorities, supervisory authorities, and their officials, as well as the compliance of the legal acts issued by them with laws.

The prosecutor's office supervises the legality of the acts, activities (or inaction) of State and local representative and executive bodies, local administration and their officials. In exceptional cases, on the instructions of the President of the Republic of Kazakhstan or the Prosecutor General, it also supervises other organizations regardless of their form of ownership.

The supervision is carried out by conducting inspections and analysis of the legality, as well as by evaluating the acts that have entered into force.

The verification of compliance with the law is appointed and conducted by a prosecutor within his competence on the basis of the instructions of the:

1) President of the Republic of Kazakhstan;
2) Prosecutor General of the Republic of Kazakhstan.

The Deputy Prosecutor Generals, prosecutors of regions and those equal to them, prosecutors of districts and those equal to them take the decisions on the application and conduct of the audit of the activities of State and local representative and executive bodies, local administration and their officials to protect rights, freedoms and legitimate interests of:

1) the persons who, by virtue of their physical, mental and other circumstances, cannot exercise their protection independently;
2) the general public;
3) the persons, society and the State, if this is necessary to prevent irreversible consequences for someone's life, health or the security of the Republic of Kazakhstan.

The inspections, except for those conducted on the basis of or in the exercise of supervision over the observance of legality of the activities of law enforcement and special State bodies, may be appointed only in cases of establishing the fact of the failure or improper performance of their powers by other authorized State monitoring and supervisory authorities whose competence includes related issues.

The special emphasis in the new law on the procedure for conducting public prosecutor's audits is made on the fact that when exercising a supervision, the prosecutor's office should not substitute for the functions of other State bodies. The article 7 of the Prosecutor's Office Act of June 30, 2017 defines new procedures for conducting legality audits. A prosecutor entrusts an audit to an authorized State body, whose competence is to conduct it, except for the cases:

1) provided for by subparagraph 1) of paragraph 3 of article 6 of the Prosecutor's Office Act, as well as legality audits conducted when supervising the activities of law enforcement and special State bodies;

2) of a conflict of interests in the activities of an agency or of its officials;
3) when the reason for the application of an audit was a complaint about the decisions and actions (or inaction) of an agency or of its officials.

A competent authority is obliged to inform a prosecutor about the results of an audit within the period established by law.

In the cases provided for by subparagraphs 1), 2) and 3) of paragraph 1 of article 7 of the Prosecutor's Office Act, audits are conducted by a prosecutor.

An issued resolution on conducting an audit is registered by an authorized State body responsible for legal statistics and special accounts. A legality audit is conducted within no more than thirty calendar days.

If it is necessary to demand additional materials, as well as in connection with a significant amount of things to check, in exceptional cases, the time limit for conducting an audit can be extended by no more than thirty days and only in consultation with the Prosecutor General. An audit can be suspended in cases of the application of an examination, as well as to obtain information and documents from foreign countries until they are received, as well as in other cases that impede the conduct of an audit. The period for renewing a suspended audit is calculated from the day of its renewal.

Such a procedure for the registration of the resolutions on the application of audits and the timing of their conduct does not apply to audits conducted in the framework of criminal procedure and criminal enforcement legislation, as well as the legislation concerning enforcement proceedings, administrative offenses, special investigative and counterintelligence activities.

Only the persons specified in the resolution on the application of an audit can conduct that audit.

During an audit, a prosecutor is not entitled to:

1) require the provision of documents and information, if they are not the audit objects or are not relevant to the subject of the audit;
2) exceed the established time for conducting the audit;
3) prevent the normal functioning of the audited entity.

At the same time, a prosecutor retains their general powers when conducting a general supervision. These powers are as follows:
a prosecutor has the right to freely enter the territories and premises of the ministries, departments and other bodies that are subject to his (her) supervision area, and to have access to their documents and materials;
a prosecutor has the right to demand from the heads and other officials of the said bodies the provision of the necessary documents, materials, statistical and other information, the engagement of specialists for clarifying the issues that have arisen, the conducting of the inspections of materials and appeals submitted to the prosecutor's office, as well as the audits of the activities of subordinate enterprises;
if necessary, a prosecutor has the right to call officials and other citizens to obtain explanations for violations of the law.
Officials, on whom the fulfilment of the prosecutor's requirements depend, are obliged to fulfil them promptly, submit the necessary documents, engage specialists, organize inspections and conduct audits.

The acts of prosecutorial response to the violations of law revealed by a prosecutor can be:

- the lodging of a protest against a legal act, which contradicts the legislation;
- making recommendations on the elimination of violations;
- the recourse to a court with a demand to recognize a legal act as invalid;
- the issuance of a decision to initiate criminal proceedings or proceedings for an administrative offense in the case of the release of a person who was

unlawfully subjected to administrative detention on the basis of decisions of a non-judicial authority;

- a written request to change the liability of a guilty person in accordance with law.

A prosecutor or his (her) deputy makes recommendations on the elimination of law violations to a body or official who is authorized to eliminate the violations committed. Such recommendations are subject to an immediate consideration. Concrete measures should be taken to eliminate the violations of the law, their causes and conditions that contributed to them within a month from the date of making recommendations. The results of measures taken should be reported to the prosecutor in writing.

The decision on the commencement of proceedings in the case of an administrative offense shall be subject to a review by authorized bodies or officials in the period established by law. The results of the review are communicated to the public prosecutor in writing. The decision to initiate criminal proceedings, after its registration in the Unified Registry of Pre-trial Investigations, is sent for the investigation to an agency assigned to conduct preliminary investigations or inquiries. A prosecutor can also start to investigate criminal offenses.

1. Competence of the prosecutor's office and other law enforcement agencies for ensuring environmental safety

The environmental function of the prosecutor's office is understood as the activity to supervise the implementation of laws and by-laws in the field of environmental protection, nature management and environmental safety of society.

This definition, of course, does not fully reflect all the environmental activities of the prosecutor's office, which is not limited to supervision only and is carried out in various directions and with the use of a variety of methods in its activities.

In the opinion of P.R. Babatov, the environmental activity of the prosecutor's office should be understood as the activity of the prosecutor's office for the implementation of environmental supervision, the identification of the causes of environmental offenses, and the development of measures to prevent and eliminate them[2].

The competence of the prosecutor's office in the field of environmental protection is reflected in the Constitution of the Republic of Kazakhstan, which defines the fundamental principles of its organization and activities. It is also reflected in the Kazakh Prosecutor's Office Act of June 30, 2017, which regulates the activities of the prosecutor's office as a whole; as well as in the acts issued by the heads of the prosecutor's offices and in the by-laws on the protection of natural objects and the environment in general, which contain provisions on the nature protection activities of the prosecutor's office. The article 83 of the Constitution of the Republic of Kazakhstan defines the main task of the prosecution authorities as the supervision over the exact and uniform application of laws, presidential decrees and other normative legal acts on the territory of the Republic, over the legality of special investigative activities, inquiries and investigations, administrative and enforcement proceedings. In accordance with the Kazakh Prosecutor's Office Act of 30 June 2017, the prosecutor's office of the Republic of Kazakhstan is a State body, which reports to the President of the Republic of Kazakhstan[3].

The article 60 of the Environment Protection Act of the Kazakh SSR of June 18, 1991 enshrined the role of the prosecution authorities in the mechanism for the application of environmental legislation, which consisted in the highest supervision over the precise and uniform observance of the environmental legislation by all ministries, departments, enterprises, institutions and organizations, all supervisory

[2] PR Babatov; Environmental safety and competence of the prosecutor's office. Turabi. 5. 2003. PP. 41-42.

[3] Kazakh Prosecutor's Office Act no. 81-VI (June 30, 2017). http:///online.zakon.kz. Accession Date: 2018.

authority, local administration, non-governmental organizations, officials and other citizens. Nevertheless, later, in the Environment Protection Act of the Republic of Kazakhstan of July 15, 1997, this provision was not preserved. Only an expanded interpretation of the tasks assigned to the prosecutor's office made it possible to conclude that the function of the prosecutor's office includes the protection of the natural environment. Thus, in Order no. 16 of the Prosecutor General of the Republic of Kazakhstan entitled "On the organization of the prosecutor's supervision over the observance of human and civil rights and freedoms, the interests of juridical persons and the State" of July 9, 1997, it was noted that the main (priority) area of the prosecutor's supervision over the observance of human and civil rights, the interests of juridical persons and the State should be the supervision over the compliance with the legislation on nature protection and rational use of natural resources. In accordance with paragraph 3 of article 48 of the Kazakh Prosecutor's Office Act of 21 December 1995 no. 2702, specialized prosecutor's offices were provided for in the system of the prosecutor's[4].

This provision laid the foundation for the creation of environmental prosecutor's offices. Although the very possibility of the emergence of these prosecutor's offices was laid down in the Decree of the Presidium of the Supreme Council of the Kazakh SSR entitled "On the formation of a unified system of prosecution authorities of the Kazakh SSR, and on the ensuring of their independence" of December 6, 1991. It stated that the unified system of the prosecutor's offices of the Kazakh SSR consisted of the prosecutor's office of the republic, the prosecutor's offices of its regions and of Alma-Ata, the Alma-Ata, Tselina and West Kazakhstan transport prosecutor's offices (proceeding on the rights of the regional prosecutor's offices), the prosecutor's offices of the cities, towns and districts, as well as of transport, nature

[4] Kazakh Prosecutor's Office Act no. 2709 (December 21, 1995). http:www.egov.kz/wps/wcm/. Accession Date: 2018.

protection, water and other specialized prosecutor's offices (proceeding on the rights of the district prosecutor's offices). Article 11 of the Kazakh Prosecutor's Office Act of December 21, 1995, which had lost its force, stated that the unified system of the prosecutor's office consists of the General Prosecutor's Office, the regional prosecutor's offices, the Alma-Ata prosecutor's office, inter-district, district, urban and specialized prosecutor's offices. The East Kazakhstan, Zhambyl, Kzyl-Orda, Semipalatinsk and Shymkent environmental inter-district prosecutor's offices were among the first to be created.

14 environmental prosecutor's offices functioned in the Republic of Kazakhstan until recently. In addition to the above, the Karaganda, Akmola, and Almaty environmental inter-district prosecutor's offices also functioned. The activities of environmental prosecutor's offices were regulated by the provisions developed on the basis of the Model regulations on Environmental Inter-district Prosecutor's Offices.

In accordance with the Model Provisions, the supreme supervision over the exact and uniform implementation of laws regulating the protection of nature and rational use of natural resources in designated areas, as well as specific natural sites, certain sectors of the national economy, industrial and other economic zones was assigned to environmental inter-district prosecutor's offices. They also had to take measures within their powers to prevent, detect, suppress and timely eliminate violations of these laws, restore violated rights, recover damages and bring the perpetrators to justice[5].

In their work, environmental prosecutors were guided by the legislative acts of the Republic of Kazakhstan, orders and instructions of the Prosecutor General of the Republic of Kazakhstan, the Regulations on a specific environmental prosecutor's office and were independent of any local authority.

[5] PR Babatov; Environmental safety and competence of the prosecutor's office. Turabi. 5. 2003. PP. 41-42.

In accordance with the assigned tasks, the environmental inter-district prosecutor's offices acted in the following areas:

1) supervision over the observance of environmental legislation by juridical and natural persons;

2) supervision over the implementation of legislation in the process of conducting preliminary inquiries and investigations by internal affairs agencies in cases brought by the environmental prosecutor's office or based on materials submitted to the above agencies by environmental prosecutors for audits;

3) supervision of the legality and validity of sentences, rulings and decisions of courts on criminal, civil and economic cases brought by environmental prosecutors for consideration[6].

Environmental prosecutors coordinated their work with the territorial and transport prosecutors, other law enforcement agencies, local representative and executive bodies, environmental authorities and the public to supervise over the implementation of laws regulating the protection of nature.

Environmental inter-district prosecutor's offices were headed by prosecutors appointed by the Prosecutor General of the Republic of Kazakhstan for a period of 5 years. The above prosecutor directed the work of a team, distributed responsibilities, cases, and materials among employees, actively participated in the improvement of the style and methods of official activities, organized work to improve the skills of subordinates, promoted strict observance of, and bore personal responsibility for fulfilling the tasks assigned to the prosecutor's office.

A prosecutor could have deputies, senior assistants, and assistants. The Provisions stated that the staff of environmental prosecutor's offices included senior investigators and investigators but then such positions were liquidated because of the reorganization.

[6] Order no. 60 of the Prosecutor General of the Republic of Kazakhstan of October 10, 2010. Collection of normative legal acts. Almaty: Yurist. 2013.

In the above Provisions, the rights and duties of employees of environmental prosecutor's offices were not clearly defined, and therefore the Model Provisions required correction. It was also necessary to bring this normative act into line with the then Kazakh Prosecutor's Office Act of December 21, 1995[7].

Environmental protection prosecutors have made a certain contribution to the conservation of nature. Unfortunately, according to the Order of the Prosecutor General no. 51 of February 11, 1999, pursuant to the Kazakh President's Decree on Measures to Optimize the System of State Bodies of the Republic of Kazakhstan, environmental prosecutor's offices were abolished.

In the opinion of all authors dealing with environmental issues in the country, this fact aggravated the situation in the field of environmental protection, and therefore the process of creating environmental prosecutor's offices restarted afterwards[8]. Thus, the Order of the Prosecutor General of the Republic of Kazakhstan no. 150/6 of May 6, 1999, enabled the creation of the Caspian Ecological Prosecutor's Office, which oversees the territory of three regions, such as Atyrau, Mangistau, and West Kazakhstan ones. In accordance with the Provisional Regulations on the Caspian Ecological Prosecutor's Office approved by the Prosecutor General of the Republic of Kazakhstan on May 12, 1999, the activities of this prosecutor's office are aimed at:

– supervision of the exact and uniform implementation of laws on nature protection, observance of environmental human and civil rights, legally protected interests of society and the State in the field of environmental protection and rational use of natural resources;

[7] Kazakh Prosecutor's Office Act no. 2709 (December 21, 1995). http:www.egov.kz/wps/wcm/. Accession Date: 2018.

[8] DL Baydeldinov, Legal mechanism of public administration in the field of ecology. Almaty: Kazak Universiteti, 1998. P. 47.

– prevention, suppression and timely elimination of violations of environmental laws, the restoration of violated rights, compensation for damage and the bringing of perpetrators to justice;
– coordination of law enforcement and other agencies in combating violations of environmental legislation, close interaction with the local representative and executive authorities in order to better fulfil established environmental objectives.

The Caspian environmental prosecutor's office organized its activities in the following areas:

– supervision over the environmental legislation including the observance of environmental rights and interests of citizens by special
Stateandeconomicsupervisoryauthoritieswhosecompetenceisto protect environment and natural resources, as well as by juridical persons regardless of subordination, jurisdiction and ownership, and by local representative, executive authorities, officials, foreign juridical and natural persons;
– supervision over the legality of investigations and inquiries and special investigative activities in cases of environmental crimes including those brought by an environmental prosecutor's office;
– supervision of the acts and decisions of courts in criminal, civil and economic cases brought by environmental prosecutor's offices for consideration and the participation in court proceedings;
– challenging unjust sentences and decisions;
– submitting suits against defendants and the participation in relevant court proceedings.

In addition to the Caspian Environmental Prosecutor's Office, similar agencies were established in Almaty and East Kazakhstan regions[9].

Prosecutor's offices use, in their environmental activities, a range of legal means and measures of prosecutorial response. Such legal means include challenging sentences, rulings, prescriptive orders, complaints, sanctions, instructions, submissions of suits, and clarification of legal acts.

Decisions to prosecute are made following the results of audits. For example, for the 1st quarter of 2016, the Almaty specialized environmental prosecutor's office conducted 38 audits, which revealed 82 violations. As a result of the audits, in addition to prescriptive orders, submissions of suits and sentence challenging, 32 defendants were brought to justice[10].

A written prescriptive order to eliminate a violation of the law is brought by a prosecutor and submitted to an authority or an official who permitted the law to be violated or to an authority or an official authorized to eliminate the violation. A prescriptive order contains indications of the norms of the Constitution, laws, and acts of the President of the Republic of Kazakhstan, which are violated and concrete proposals on measures to eliminate the violation. For example, in 2015, the Atyrau specialized environmental prosecutor's office issued 102 prescriptive orders to eliminate violations of environmental legislation and in 2016, their number reached 118. In particular, on June 24, 2010, audits revealed gross violations, by economic entities, of the

[9] Decree of the President of the Republic of Kazakhstan of January 22, 1999 on Measures to Optimize the System of State Bodies of the Republic of Kazakhstan (with amendments and additions of April 21, 2005). http://online.zakon.kz/. Accession Date: 2018.

[10] Kozhakhmetov S. 2018. Questions and answers. In Specialized environmental prosecutor's office of the Almaty region. http://alm.prokuror.kz/rus/sub/spp/questions. Accession Date: 2018.

requirements of Articles 18, 25, 27, 76 of the Subterranean Depths and their Use Act[11].

In cases of rejection of prosecutorial supervision acts or failure to consider them within the established time period, a prosecutor has the right to apply to the court with a declaration for invalidating the actions and acts of authorities and officials, as well as for eliminating violations of laws. Another measure of prosecutorial response is a clarification of the law. It is used in those cases when there are sufficient grounds to believe that ignorance or misunderstanding of the law may entail its improper application by an authority, an official, or another citizen. Clarification of law is quite actively used in prosecutorial practice. For example, in 2016, the specialized environmental prosecutor's office of the Almaty region clarified the law to 122 officials[12].

2. Results And Discussion

Let us consider the basic directions of the nature protection activities of prosecutor's offices. The activities of prosecutor's offices in ensuring environmental safety are carried out in several directions:

1. Environmental supervision (here it is indicated not as an organizational and legal form but as a direction of activities).
2. Taking measures of prosecutorial response to prevent, suppress, and timely eliminate violations of laws on environmental protection and their causes; to restore the rights of juridical and natural persons infringed by violations of law, to compensate for damage; to bring perpetrators to justice. At the same time, prosecutors use the whole

[11] Malakhov V. 2017. Questions and answers. In Specialized environmental prosecutor's office of the Atyrau region. http://atr.prokuror.kz/rus/sub/spp/kontaktnaya-informaciya-4. Accession Date: 2018.
[12] Kozhakhmetov S. 2018. Questions and answers. In Specialized environmental prosecutor's office of the Almaty region. http://alm.prokuror.kz/rus/sub/spp/questions. Accession Date: 2018.

complex of measures of prosecutorial response provided for by the Kazakh Prosecutor's Office Act of June 30, 2017.

3. Participation in legal proceedings in cases of environmental offenses.

4. Development of measures to prevent violations of environmental legislation.

The prevention of violations in the field of nature protection should be understood as a set of measures aimed at identifying and preventing specific encroachments in this area and eliminating the causes and conditions that contribute to violations of environmental legislation. The prevention of offenses is divided into two types: anticipation and prevention proper. The anticipation of offenses is the anticipation of a possible transformation of some circumstances into the causal characteristics of possible offenses. Prevention proper is the impact made on a person during the formation and detection of his/her intentions to commit an offense, that is, before any action on his part begins. Suppression of offenses occurs when illegal activities have already begun. The prosecution authorities regularly analyze the state of the fight against environmental violations in each region and take appropriate measures to prevent such violations. The above measures are realized by making recommendations about eliminating the causes and conditions that contributed to the commission of offenses. They are also realized through speeches at sessions of maslikhats, at various interdepartmental meetings with reports for other State bodies, officials, and public associations. The above reports contain proposals by prosecutors to eliminate the causes and conditions of offenses. These measures also include the participation in the development and implementation of comprehensive plans and programs for crime prevention in the regions[13].

[13] AV Yeremenko; The Constitution is the supreme law that carries out the prevention of offenses. Zakonnost. 5. 2000. PP. 21-25.

5. Informing the public about their environmental activities, the state of application of environmental legislation, the fight against environmental violations, and the clarification of this legislation. It is carried out in various forms such as prosecutors' reports on the results of audits. These reports are discussed at meetings of work teams, sessions of maslikhats, and meetings of akimats. It is also carried out through appearances in the press, on television, on the radio, speeches explaining the environmental legislation to the public. Informing the public is very important, which is why every specialized environmental prosecutor's office reports annually to higher-level prosecutors.

According to the results of the reports of the specialized environmental prosecutor's offices, the Prosecutor General's Office of the Republic of Kazakhstan provided the following information to the media: in 2014, 1225 audits over the implementation of environmental protection legislation were conducted, according to which 12 966 violations of the law were identified, and10 427 of them were eliminated. With a view of the elimination of the revealed offenses, prosecutor's offices made 1 408 recommendations, cancelled and changed 157 illegal acts. 4 604 persons were brought to justice pursuant to the acts of prosecutorial response (1379 persons were subject to disciplinary action, 3205 persons were subject to administrative action and 20 persons were subject to financial sanctions), 46 criminal cases were instituted. Also, the courts of the country satisfied 84 lawsuits amounting to more than KZT 1.005 billion. The measures of prosecutorial response resulted in the fact that more than KZT 20.3 billion was paid in favor of the State[14].

It should also be noted that the environmental function of the national security agencies is gradually expanding. National security agencies, together with environmental authorities, participate in joint

[14] Prosecutor General's Office. (n.d.). https://kapital.kz/info/generalnaya-prokuratura-rk. Accession Date: 2018.

operations for wildlife conservation; investigate environmental crimes involving law enforcement officers and persons holding a responsible public office. However, in the Kazakh National Security Agencies Act of December 21, 1995, the environmental function of the National Security Committee of the Republic of Kazakhstan was not enshrined[15].

Compared with other law enforcement agencies, national security agencies rarely deal with environmental issues. They carry out their environmental functions in such organizational and legal forms as assistance to nature protection authorities and investigation of environmental crimes.

In the sphere of ensuring environmental safety, customs authorities are also involved. They carry out their activities in accordance with the Kazakh Customs Act of June 30, 2010. The following tasks set before these agencies are of environmental interest: the assistance in implementing measures to protect national security (including environmental security); the protection of human life and health; the protection of the environment, animals and plants; the suppression of illegal trade of threatened and endangered species of animals and plants, including their parts and derivatives, through the customs border of the Republic of Kazakhstan[16].

The main form of participation of customs authorities in the protection of the natural environment is assistance to nature protection agencies. For example, in May 1996, the Customs Committee of the Republic of Kazakhstan, the Ministry of Internal Affairs of the Republic of Kazakhstan, and the State Committee of the Republic of Kazakhstan for the Protection of the State border adopted a plan of joint measures for the protection of birds of prey and other animals listed in the Red Book of the Republic of Kazakhstan. This plan was made for the period

[15] Kazakh National Security Agencies Act of December 21, 1995 no. 2710 with amendments and additions as of January 15, 2013). 2013. https://online.zakon.kz/. Accession Date: 2018.

[16] Kazakh Customs Act of June 30, 2010 no. 296-IV. 2010. https://online.zakon.kz/Document/?doc_id=30776062. Accession Date: 2018.

between 1996 and 1998. According to this plan, the above-mentioned ministries and agencies have studied the practice of identifying and suppressing the facts of illegal catching of birds of prey in Almaty and Zhambyl regions in order to prevent attempts to smuggle out the most valuable species of birds of prey listed in the Red Book of the Republic of Kazakhstan; to intensify the inspection of air passengers, of aircrafts leaving the Republic of Kazakhstan; to intensify the work of customs posts on railways and highways for preventing smuggling of valuable hunting birds from the RK to neighbouring countries[17]. The assistance of customs authorities to nature protection agencies is not necessarily carried out within the framework of specially developed plans, it also occurs in the process of performing normal functional duties. When preventing environmental smuggling cases, customs authorities provide the environmental authorities with the necessary information and enable them to trace the path to the origins of an environmental offense.

Interesting developments on this issue are found in the works of Russian scientists. For example, V.V. Chernyshov analyzed the issues of environmental specialization in the law enforcement activities of prosecutor's offices. These issues are of significant importance for our legal system because in connection with the adoption of the new Kazakh Prosecutor's Office Act of June 30, 2017, the activities of the prosecutor's office are shifted towards supervisory functions and away from monitoring ones[18]. In his works, it is emphasized that in the field of environmental development of the country, solutions must be made to reduce the negative impact on the environment. The State has a large set of means for regulating relations in the sphere of nature management. Nevertheless, the problem of preserving nature as a

[17] The plan of joint measures for the protection of hunting birds and other animals listed in the Red Book of the RK for 1996-1998. n.d. https://studwood.ru/806672/pravo/kompetentsiya_prokuratury_inyh_pravoohranitelnyh_organov_obespechenie_ekologicheskoy_bezopasnosti. Accession Date: 2018.

[18] VV Chernyshov; Environmental specialization in law enforcement activities of the prosecutor's office. Vestnik RUDN. 1. 2014. PP. 30-35.

condition for human development remains important. According to the monitoring data, the ecological status of many regions remains unsuccessful. In this regard, the activities of prosecutor's offices in the environmental sphere remain relevant.

The threatening consequences of environmental violations lead to an increase in the work of the prosecutor's offices and an increase in the number of actions conducted by the prosecutor's office for law enforcement purposes. However, an increase in the number of actions conducted does not always lead to positive results. The statistical data about the growth of circumstances that have a negative impact on nature continues. Such data gives grounds to state that the number of recorded offenses in this sphere is increasing.

In order to counteract these offenses, the state uses: a) the legislation that normalizes the environmental management and protects natural objects; b) a system of departmental monitoring, consisting of various entities, both specialized and those, which have specialized units and personnel exercising monitoring over the implementation of legislation in the field of ecology; c) regional monitoring agencies of similar competence; d) the supra-departmental supervision over the implementation of legislation in the environmental sphere carried out by specialized prosecutors.

The mechanism of public administration is designed to work on protecting the environment in order to preserve and maintain the full life and health of citizens.

In this complex mechanism, the prosecutor's offices are the most important element in monitoring the state of the environmental protection system.

Lately, a lot of speculation has arisen about the general concepts of the functions of the prosecutor's office. A special problem of the issue was identified in connection with the adoption of new codified laws such as the new Criminal Code of the Republic of Kazakhstan and the new Criminal Procedure Code of the Republic of Kazakhstan, which contain a number of conceptual changes affecting the content of law

enforcement activities in the country as a whole. It is believed that, to no lesser extent, it caused the need to develop and to adopt a new Prosecutor's Office Act of June 30, 2017, the main provisions of which are stated at the beginning of the article[1920].

The place of prosecutor's offices in the system of supervisory government agencies is defined. All approaches to the formation of the concept of the functions of prosecutor's office recognize its activities aimed at ensuring legality. These functions include, first of all, supra-departmental supervision. However, it is customary to call it special and supreme supervision, as the Prosecutor's Office of the Republic of Kazakhstan to supervise juridical persons as well.

In the opinion of V.V. Chernyshov, the concept of prosecutorial supra-departmental supervision narrows the actual range of its areas under supervision. In fact, this is what happens. For example, when determining the competence of a prosecutor's office, the order of the Prosecutor General, as a rule, determines the scope of entities under supervision, which does not cover all possible actions of a prosecutor in the event of the discovery of signs of a punishable environmental offense.

A.Y. Vinokurov provides a comprehensive analysis of problems that reduce the effectiveness of environmental protection activities of prosecutor's office. Among them is the fuzzy formulation of tasks in the sphere in question by higher-ranking prosecutors, as well as the imperfection both of the environmental legislation, and general organizational problems of prosecutor's office. He also mentions other

[19] Criminal Code of the Republic of Kazakhstan of July 3, 2014 no. 226 (with amendments and additions of July 11, 2017). 2017. https://online.zakon.kz/m/Document/?doc_id=31575252. Accession Date: 2018.
[20] Criminal Procedure Code of the Republic of Kazakhstan of 4 July 2014 (with amendments and additions of July 11, 2017). 2017. https://online.zakon.kz/Document/?doc_id=1008442. Accession Date: 2018.

factors[21]. In his opinion, the main function of prosecutors, i.e. the supervisory one, is often supplemented by monitoring functions, and it does not contribute to concentrating efforts on the most effective measures of prosecutorial response. Speculating this way, A.Y. Vinokurov argues that "An important task of the nature protection activities of the Prosecutor's Office is also the supervision over the observance of legality in regulating the spending of funds allocated from the budgets of various levels for environmental purposes, as well as the funds of targeted budget environmental foundations." Among the priority tasks is also the strengthening of supervision over the implementation of national legislation and international legal acts aimed at prohibiting the import from abroad of hazardous wastes, radioactive, and toxic substances including chemical and biological ones[22]. In the citations quoted, there is a clear position of the author on the need to concentrate the supervisory functions of the prosecutor's office over the activities of government agencies.

The author points to objective conditions leading to such concentration: "since it is impossible to cover all objects with audits, it is recommended that they be conducted in the units of regional agencies authorized in the environmental sphere. To conduct inspections at enterprises, organizations, and institutions, the environmental authorities should be more widely involved[23]. It is difficult to disagree with the author's opinion.

However, under the mechanism of influence on an offender, A.Y. Vinokurov sometimes understands the direct means of prosecutorial response. He notes, "the very urgent task of prosecutors in the environmental field is to actively prevent the commissioning of

[21] AY Vinokurov. Problems of improvement of nature protection activities of the Prosecutor's Office of the Russian Federation. Moscow. 2006.
[22] AY Vinokurov. Problems of improvement of nature protection activities of the Prosecutor's Office of the Russian Federation. Moscow. 2006. P. 30.
[23] AY Vinokurov. Problems of improvement of nature protection activities of the Prosecutor's Office of the Russian Federation. Moscow. 2006. P. 32.

industrial, agricultural, defence and other facilities that may have a negative impact on the natural environment." A.Y. Vinokurov considers it necessary for prosecutor's offices to use their powers as measures to suppress offenses in the environmental sphere. At the same time, he believes that the current legislation regulating the organization and activities of the prosecutor's office creates certain obstacles for conducting prosecutorial audits including those over the implementation of environmental legislation at enterprises, institutions, and organizations. Following the logic used by the author, such measures for the observance of environmental legislation should be taken by environmental monitoring agencies, and the specialized environmental prosecutor's office should check the observance of the relevant legislation by these agencies[24]. Thus, the new legislation does not create an obstacle, as A.Y. Vinokurov interprets it, but is pursuing a policy of separation of monitoring and supervisory powers. In our opinion, this is the way to determine the goals of legislators implemented in the new Prosecutor's Office Act[25].

Following the logic used by Chernyshov, the delineation of powers is an adequate solution to the problem of the increasing role of the prosecutor's office and supra-departmental monitoring including in the environmental sphere.

It is quite rightly pointed out that this is not a matter of the number of actions conducted by the prosecutor's office but a matter of the level of their quality. A.Y. Vinokurov believes that a new quality of the prosecutor's office is required because of "... an increase in the lawlessness in the country including environmental violations, widespread corruption, weakening of State monitoring (supervision) on

[24] AY Vinokurov. Problems of improvement of nature protection activities of the Prosecutor's Office of the Russian Federation. Moscow. 2006. P. 33.
[25] Kazakh Prosecutor's Office Act no. 81-VI (June 30, 2017). http:///online.zakon.kz. Accession Date: 2018.

the part of specially authorized agencies, the inadequate efficiency of courts and a number of other factors[26].

It is absolutely necessary to troubleshoot the development of an unfavourable situation in the environmental sphere. It is absolutely clear that firstly, the troubleshooting refers to the transitional period of the development of environment protection in the country. Secondly, it is a key circumstance requiring a new quality of the prosecutor's office at the present stage of the formation of a public administration in the country. The indicated problems are consonant with the state of the matter in our country.

3. Conclusion

The structure of environmental monitoring agencies has grown and transformed for two decades, new forms of interaction between government agencies and local administration have been formed. During the active development of the local administration system, the prosecutor's office, in addition to its primary supra-departmental supervisory function, performed the statutory function of replacing absent or unsatisfactory State monitoring agencies.

However, when these agencies are generally formed, there is a need for constant monitoring of the environmental situation at the local level within their competence. In this situation, the replacement of malfunctioning executive government agencies by prosecutorial methods of monitoring and suppression of unlawful activities creates conditions for manipulation and evasion by supervisory authorities from the duties assigned by law. As a result, prosecutorial supervision overloaded with monitoring functions cannot fully enter a new level in the system of State environment protection to strengthen the supervision over the activities of the executive government agencies.

[26] AY Vinokurov. Problems of improvement of nature protection activities of the Prosecutor's Office of the Russian Federation. Moscow. 2006. P. 33.

The environmental prosecutor's office is working in this direction by forcing the government agencies (of local administration) and economic entities to solve the environmental problems, many of which were outside their field of vision for decades and have begun to be solved only as a result of measures taken by the prosecutor's office[27].

The basis for the activities of the specialized environmental prosecution authorities is as follows: creating the conditions under which the monitoring agencies and officials would not see any other way than to strictly implement the norms of the existing environmental legislation.

However, the issue of improving the effectiveness of the specialized environmental prosecutor's office is largely due to the lack of powers or interagency cooperation. This interaction is multifaceted and includes "... mutual exchange of information; coordination of planned activities; joint or simultaneous audits of implementation of law; joint participation in meetings of associations, other coordination and operational meetings; joint training sessions; joint preparation of educational literature; joint preparation of draft normative legal acts; involvement of specialists from environmental monitoring agencies and other agencies to participate in prosecutorial audits of the implementation of environmental legislation; joint coordination (conduct) of preventive work; coordination of response measures to eliminate identified violations of laws"[28].

Of particular importance is the coordination of operational work with the agencies of the Ministry of Internal Affairs to suppress environmental offenses. As for other issues of cooperation, in addition to specific expertise, the prosecutor's office is fully empowered to respond independently and effectively to the facts of violations within its competence. Even such a nominally preventive measure as a warning

[27] MB Yedrysheva; The Volga River flows (interview with V. A. Soldatova). Prokuror. 2. 2012. PP. 34-35.

[28] OA Pustovalova, Improvement of the prosecutor's supervision over the implementation of environmental legislation. Moscow. 2011.

message appears in the acts of the prosecutor's response. This is due to the fact that supra-departmental supervision should be provided with a full-fledged instrument and be independent of the entities under supervision to perform effectively its law enforcement function.

This proposal is based on the notion that an efficiently functioning mechanism of state environmental protection is a complex system, which includes the State, legislators, executive agencies, prosecutorial supervision, the court, and citizens. The activities of all these elements is a State environmental protection mechanism. All these elements are interrelated and ensure the activities of each other.

In view of the increasing complexity of prosecutorial supervision, the new Kazakh Prosecutor's Office Act of June 30, 2017, attempted to optimize the work of the environment protection mechanism by preventing the prosecutorial environmental supervision from a simultaneous monitoring by departmental units over the observance of the nature protection legislation by profit and non-profit organizations. Russian authors argued that if such a reform demonstrates its effectiveness on the basis of the example of environment protection, an empirical justification will be developed for the prosecutor's office as a whole. Our legislators went ahead: they established norms that change the system of relations between prosecutorial supervision and departmental monitoring in general in the direction of strengthening the responsibility of executive government agencies, and therefore the systems of mutual relations between them will have to be modified.

Thus, the prospects for increasing the efficiency of the work of specialized environmental prosecutors are related to the strengthening of the supervisory function and the imposition of monitoring functions over the observance of environmental legislation on relevant executive government agencies. The solution of the problem consists in equalizing the balance of functional duties in the state system of legality in accordance with the systemic distribution of the functions of government agencies. In environmental activities, as well as in the State as a whole, the legislative power has to issue laws, while the executive

power has to bring them into effect, and the prosecutor's office has to supervise the implementation of laws.

Let us once again dwell on the issues of distinguishing the concepts of supervision and monitoring in ensuring environmental safety. As a rule, "supervision is considered as activities aimed at auditing the compliance with the law in the field of environmental protection, at suppressing violations of environmental legislation and at taking special measures for offenders (the list of which is strictly limited by law) with the sole purpose of restoring the violated legality.

N.V. Rudenko notes the similarity of supervision and external monitoring. What is common to them is that they are not carried out for all aspects of the activities of entities under supervision and under monitoring but only for certain issues. In addition, their similarity is manifested in the fact that, when detecting violations, supervisory and external monitoring agencies take measures to eliminate them and bring perpetrators to justice[29].

If we make a correlation between monitoring and supervision as organizational and legal forms of environmental activities of law enforcement agencies, in our opinion, each of them is an independent form of activity and has a number of differences.

The difference between supervision and monitoring is that, firstly, supervision does not interfere with the operational and economic activities of the entities under supervision, and, secondly, its powers extend not only to enterprises, institutions, and organizations but also to individual citizens. Monitoring is characterized by the feature that it is not limited to a range of issues related to compliance with mandatory regulations such as laws and other normative acts. The monitoring agencies are interested not only in the fact whether an agent of management has violated the current legislation but also by how correctly, expediently and effectively it used all the powers given to

[29] NV Rudenko; The role and place of the Prosecutor's Office in the protection of the natural environment. Prokurorskaya i sledstvennaya praktika. 3. 1997. PP. 11-13.

him. The specificity of administrative supervision is manifested in limiting its competence by auditing only the legality of the actions of a particular entity. Supervision is a kind of narrower monitoring but narrowed only with respect to the scope of its application. Supervision is characterized by a somewhat limited penetration into the sphere of activities of entities in respect of which supervisory functions are implemented. Y.V. Moroz, share this point of view and adds one more difference such as organizational and legal means, "A prosecutor cannot personally oblige a government agency or an official to commit certain actions"[30]. When discovering a violation of the law … a prosecutor seeks to eliminate it, applies disciplinary, administrative or public measures to perpetrators of violations by submitting his/her proposals to an agency competent to resolve the relevant issues of bringing perpetrators to justice ... The agencies that exercise monitoring as a control function have certain administrative powers that enable them to take the necessary measures on the spot … Supervision is aimed, ultimately, to identify the facts of violations and to take measures to eliminate them without the right to directly interfere with the operational and official activities of the entities under monitoring ... The supervisory authorities are not bound by common departmental interests with entities under supervision, do not evaluate the activities of the latter from the point of view of expediency and cannot apply disciplinary and administrative sanctions to them. Monitoring is generally characterized by a connection with the day-to-day management of economic, cultural and other processes, the development of various recommendations and proposals, the provision of practical assistance in the organization and implementation of tasks to be solved. Supervision is indeed a form of social monitoring, but the term "supervision" itself has a narrower meaning. First, supervision means a certain detachment from activities under supervision and is

[30] YV Moroz. Legal protection of the environment of the cities of Kazakhstan.Almaty. 1999. PP. 4-5.

conducted "from the outside" (it is possible to exercise self-monitoring but you it is impossible to engage in "self-supervision"). Secondly, supervision presupposes the presence of pre-established parameters of activities under supervision. In this case, the subject of supervision may be the activities of monitoring agencies. Also from the point of view of A.P. Asylbekov, the difference between supervision and monitoring is that the supervisory authorities perform their functions in relation to government agencies that are not subordinate to them[31].

While for monitoring, as a rule, disciplinary or administrative measures are used, then in the implementation of supervision more stringent measures are applied, including criminal liability.

Thus, the prosecutorial supervision in the field of environmental protection is carried out in the following areas:

– supervision of the observance of the legislation in the field of environment protection and rational nature management by the government and monitoring agencies, juridical persons regardless of subordination, jurisdiction and form of ownership, local representative and executive authorities, officials and citizens within the boundaries of the activities of the environmental prosecutor's office;

– supervision over the observance of environmental legislation when conducting preliminary inquiries and investigations by internal affairs agencies in cases brought by the environmental prosecutor's office or based the materials sent to these agencies by environmental prosecutors for verification;

– supervision over the legality and validity of sentences, rulings and decisions of courts in criminal, civil and economic cases sent by environmental prosecutors for consideration.

The environmental supervision conducted by the prosecutor's office consists of two elements:

[31] AP Asylbekov, Problems of the legal regulation of environmental monitoring in the Republic of Kazakhstan. Almaty. 1998. P. 78.

– audit over the implementation of the environmental law and other legal regulations and the actions of an entity (an official) in terms of compliance with the law;
– adoption, in the process or as a result of a supervision, of special measures, the list of which is strictly limited by law.

An audit over the implementation of law is conducted on the basis of information about facts of environmental violations received by a prosecutor's office. Audits over the implementation of environmental legislation can be nominally divided into types. First, audits can be scheduled and unscheduled. Scheduled audits are conducted according to approved activity schedule of a prosecutor's office, and unscheduled ones are conducted due to unexpected facts of pollution of natural objects.

Secondly, the audits are classified as complex and specialized. Complex audits are conducted at an entity under supervision regarding the implementation of environmental legislation in general. Specialized audits are conducted regarding a particular issue such as the implementation of land or water legislation, etc.

When conducting audits, a prosecutor has the right:

– to involve specialists to participate in an audit and in making conclusions;
– to involve the employees of other law enforcement agencies to conduct audits on the basis of interaction;
– to carry out audit activities provided for by law.

The consideration of cases of environmental offenses is one of the activities of law enforcement agencies. The consideration of cases of environmental offenses includes:

1. the collection of facts relevant to a case of an offense, a thorough examination of the facts collected from the point of view of their involvement in a case under investigation and the establishment of a reliable truth;

2. the formulation of an appropriate legal assessment of a case;
3. the determination of specific legal consequences.

The consideration of cases of environmental offenses is divided into two types:

1) consideration of environmental misdemeanours;
2) consideration of cases of environmental offenses (crimes).

An environmental misdemeanour in the field of environmental protection is an unlawful, intentional or reckless act (action or inaction), which violates the norms of administrative, civil and other legislation and the environmental legal order established in the Republic of Kazakhstan.

The consideration of an environmental misdemeanour is preceded by the initiation of a case and its administrative investigation. The objectives of this stage of proceedings are the detection of an offense, its suppression, the initiation of a case, the discovery and consolidation of evidence, the adoption of measures to ensure the consideration of the case and the subsequent execution of the decision imposing an administrative penalty.

The sources of initial information about any offenses are:

1) applications from citizens;
2) reports from enterprises, institutions, organizations, and officials;
3) facts obtained by law enforcement agencies themselves;
4) information contained in mass media.

Unlike criminal procedural law, administrative law, as a rule, enshrines only a final document adopted at this stage of proceedings, i.e. a protocol for an administrative offense. The exception is a decree of a prosecutor on the initiation of administrative proceedings.

In cases of detection of signs of a criminally punishable offense, a prosecutor of a specialized environmental prosecutor's office not only has the right to initiate pre-trial proceedings in such a case but also takes a direct part in the pre-trial investigation, and participates in the proceedings as a procedural prosecutor.

On December 29, 2014, the order of the Prosecutor General of the Republic of Kazakhstan no. 163 approved the instruction for the organization of supervision by procedural prosecutors[32].

A procedural prosecutor exercises his/her powers within the limits of his/her competence in accordance with the Constitution of the Republic of Kazakhstan, the international treaties ratified by the Republic of Kazakhstan, the Criminal and Criminal Procedural Codes, the normative decrees of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan, other regulatory legal acts of the Republic of Kazakhstan, the orders and instructions of the Prosecutor General of the Republic of Kazakhstan.

In accordance with part 3 of Article 193 of the Criminal Procedure Code of the Republic of Kazakhstan, a procedural prosecutor participating in a case of an environmental offense is appointed by the Prosecutor General and his deputies, prosecutors of Astana, Almaty and other regions and their deputies from among the staff of specialized environmental prosecutor's offices.

In accordance with this instruction, a procedural prosecutor exercises supervision over a particular criminal case since the beginning of a pre-trial investigation. At the same time, the powers of a procedural prosecutor extend to all cases connected with the criminal case for which he/she was appointed as a procedural prosecutor. A procedural prosecutor supervises only the applications and communications registered in the Unified Registry of Pre-trial Investigations.

Within 24 hours from the time the notice of the beginning of the pre-trial investigation is received by a prosecutor's office, the head of the prosecutor's office determines a procedural prosecutor by a special resolution, a copy of which is immediately sent to a criminal investigation agency to be attached to a criminal case file. A head of a

[32] Order of the Prosecutor General's Office of the Republic of Kazakhstan no. 163 of December 29, 2014 on the approval of the Instruction for the organization of supervision by procedural prosecutors. 2014. http://base.spinform.ru/show_doc.fwx?rgn=72628. Accession Date: 2018.

prosecutor's office can appoint a procedural prosecutor at any stage of a criminal process, including re-qualification, and the transfer of a criminal case according to investigative jurisdiction.

While supervising the implementation of laws within a criminal case, procedural prosecutor performs the established procedural actions, i.e. he/she:

1) registers applications and communications about criminal offenses and transfers them to a criminal prosecution authority;
2) audits the observance of the law when accepting and registering applications and communications about criminal offenses;
3) transfers applications and available materials about a criminal offense received from a criminal prosecution authority to those concerned according to investigative jurisdiction and other jurisdiction;
4) approves the decisions of a person conducting a pre-trial investigation about the termination of the pre-trial investigation on the grounds envisaged by the Criminal Procedure Code of the Republic of Kazakhstan, or terminates the pre-trial investigation in full or against specific individuals;
5) authorizes and coordinates the actions and (or) decisions of a person conducting a pre-trial investigation, with the exception of cases attributed by the Criminal Procedure Code of the Republic of

Kazakhstan to the exclusive competence of a head of a prosecutor's office;

6) expresses consent for a temporary restraint on disposal of property and an interruption of the terms of a pre-trial investigation;

7) gives written instructions on the conduct of certain investigative actions, as well as on the inclusion of the results of unsolicited investigative actions in pre-trial investigation materials;

8) initiates and concludes a procedural agreement in the form of a plea bargain;

9) approves or draws up a new indictment, delivers an accused to the court and sends a criminal case to the court for examination on the merits;

10) participates in the inspection of incident scenes, as well as in other procedural and investigative actions;

11) receives, from criminal prosecution authorities, criminal cases, documents, and materials, including the results of investigative activities and unsolicited investigative actions for audits;

12) returns a criminal case for an additional investigation after the approval of such a decision by a head of a prosecutor's office;

13) participates in court hearings when considering issues classified by the Criminal Procedure Code to the competence of investigating judges;

14) audits the observance of the procedure and conditions of detention of accused persons according to the legislation of the Republic of Kazakhstan;
15) organizes, by order of the court, the conduct of investigative actions, the results of which are adjoined by the court to the case records at the request of a prosecutor;
16) has the powers of public prosecutor envisaged by the criminal procedural legislation;
17) signs records based on decisions related to a specific criminal case;
18) in cases provided for in the procedural legislation, he/she initiates the suspension of the activities of a person conducting a pre-trial investigation, as well as the submission of a prosecutorial supervision act to make perpetrators subject to disciplinary action for violations of the law.

A procedural prosecutor exercises his/her authority after appointment independently, without the obligatory consent of a head of a prosecutor's office, with the exception of cases provided for by law. At the same time, it is allowed to coordinate certain issues with a head of a prosecutor's office, in order to improve the quality of supervisory activities.

The procedural prosecutor's instructions for the organization of supervision also regulate the powers of a head of a prosecutor's office. They are applicable for the heads of departments of the Prosecutor General's Office, and of the prosecutor's offices of the regions when

they are appointed as procedural prosecutors and supervise over the legality of the pre-trial stage of a criminal process.

In criminal cases, supervisory proceedings are instituted, in which copies of procedural documents, including those about the appointment of procedural prosecutors, prosecutorial supervision acts, as well as the correspondence regarding the appeals related to a criminal case under investigation, are compulsorily kept.

A criminal case, together with criminal cases connected with it, is subject to a single supervisory procedure.

Also, procedural prosecutors institute electronic supervisory proceedings. In the event that a procedural prosecutor arrives at an incident scene, the employees of city and district prosecutor's offices, who arrived earlier, render him/her full assistance.

In the event that a suspect is released from custody during a pre-trial investigation in connection with the termination of a case due to innocence or lack of evidence, or if the court delivers an acquittal or an order to terminate cases on rehabilitative grounds, a procedural prosecutor immediately notifies a head of a prosecutor's office in writing. The fact of a person's release from criminal liability in view of his/her innocence is mandatory examined at an operational meeting with the head of the prosecutor's office, with the participation of the procedural prosecutor and a criminal investigative agency to decide what is the responsibility of perpetrators. The advisory opinion on the legality of a procedural decision with minutes of the meeting shall be submitted within three days (from the date of the meeting) to the Department, which verifies the legality and validity of the measures taken.