

**Anna Vasilyevna Nikitina** – Candidate of Legal Sciences, docent of the chair of constitutional, administrative and financial law of the Khabarovsk State University of Economics and Law (Khabarovsk). *E-mail: A\_Nikitina@inbox.ru*

**Prosecutor as a party of constitutional dispute: offers for improvement  
of the current legislation**

*In the disputes resolved by the courts of law and the arbitration courts, the prosecutor over the general rule, speaks out in defense of public interests whereas in the constitutional and legal disputes resolved by the Constitutional Court of the Russian Federation, opposite works for the benefit of specific citizens and their associations, protecting their violated constitutional rights and freedoms that, according to the author of this article, not quite answers his mission and the purpose enshrined in the Federal law "About Prosecutor's Office of the Russian Federation". The European commission for democracy through law (Venice commission) doesn't support the legislation of those countries which grant to the prosecutor's office the right to protect someone's personal interests in the constitutional court, emphasizing that the Attorney-General can easily appear in a situation when personal and public interests are in a conflict. Proceeding from the international acts and foreign experience the suggestions for improvement of the Russian legislation regulating the status of the prosecutor as the parties of a constitutional and legal dispute are formulated in the article.*

**Прокурор как сторона конституционно-правового спора: предложения  
по совершенствованию действующего законодательства**

*В спорах, разрешаемых судами общей юрисдикции и арбитражными судами, прокурор, по общему правилу, выступает в защиту публичных интересов, тогда как в конституционно-правовых спорах, разрешаемых Конституционным судом РФ, напротив, действует в интересах конкретных граждан и их объединений, защищая их нарушенные конституционные права и свободы, что, по мнению автора статьи, не вполне соответствует его предназначению и целям, закрепленным в Федеральном законе «О Прокуратуре Российской Федерации». Европейская комиссия за демократию через право (Венецианская комиссия) не поддерживает законодательство тех стран, которые предоставляют прокуратуре право защищать в конституционном суде чьи-либо личные интересы, подчеркивая, что Генеральный прокурор может легко оказаться в ситуации, когда личные и публичные интересы входят в противоречие. Исходя из международных актов и зарубежного опыта в статье сформулированы предложения по совершенствованию российского*

законодательства, регулирующего статус прокурора как стороны конституционно-правового спора.

**Keywords:** *constitutional dispute, constitutional trial, Constitutional court of the Russian Federation, constitutional (authorized) courts of territorial subjects of the Russian Federation, Prosecutor General of the Russian Federation, public interests.*

**Ключевые слова:** *конституционно-правовой спор, конституционный судебный процесс, Конституционный суд РФ, конституционные (уставные) суды субъектов РФ, Генеральный прокурор РФ, публичные интересы.*

Participation of the prosecutor as a party of the dispute considered by the courts of law and the arbitration courts as civil and administrative legal proceedings is caused by the purposes of ensuring the rule of law, unity and strengthening of legality, protection of the rights and freedoms of the person and citizen, and also protected by the law of interests of the society and the state (item 2 of the art. 1 of the Federal law "About Prosecutor's Office of the Russian Federation"). By the general rule, the prosecutor has the right to appeal to the court in protection of the uncertain circle of people or interests of the Russian Federation, subjects of the Russian Federation, municipalities, that is in protection of public interests. The address to protection of the rights, freedoms and legitimate interests of specific citizens perhaps only in case if the citizen for health reasons, the age, incapacity and the other good reasons can't appeal to the court (the art. 39 of the Code of administrative legal proceedings of the Russian Federation, the art. 45 of the Code of civil procedure of the Russian Federation).

The role of prosecutor's office in the constitutional trial which main destination is the permission of constitutional disputes, is determined exactly the opposite. The main category of subjects of constitutional disputes are the bodies and the officials authorized the constitutional competence and the speakers in a dispute as the party protecting public interests, and also the citizens and their associations whose appeal to the court pursues the aim of protection of the own constitutional rights and freedoms. Unlike the constitutional bodies having the rights to get into a constitutional dispute with the purpose of protection of any constitutional principles and norms, working in protection of any public interests, the Prosecutor General of the Russian Federation according to the Federal constitutional law "About the Constitutional Court of the Russian Federation" is limited by the purpose of protection of constitutional rights and freedoms of the citizens and their associations, and has the right to do it as the concrete compliance assessment with observance of all conditions of admissibility of the complaint established to the articles 96, 97 of the law, acting, thus, not in protection of public interest, and in protection of the interests of specific citizen (association of the citizens).

In the scientific literature the position about need of investment of the Prosecutor General of the Russian Federation with the right to appeal to the

Constitutional court of the Russian Federation with requests for a check of constitutionality of regulations and contracts as the abstract compliance assessment [1, p. 89; 2, p. 581; 3, p. 237]. These ideas, certainly, demands support and the additional argument.

Proceeding from the status the Prosecutor's office of the Russian Federation headed by the Prosecutor General of the Russian Federation in constitutional disputes acts as the constitutional body as the basic elements of its constitutional status are determined by the Constitution of the Russian Federation. Characterizing the status of the Prosecutor General of the Russian Federation, B.S. Ebzeev writes: "he is a subject of material constitutional legal relationship, and his participation in the procedural constitutional legal relationship from the point of view of legal logic quite naturally" [4, p. 153]. According to the Federal law "About Prosecutor's Office of the Russian Federation" Prosecutor's Office of the Russian Federation has to exercise supervision of the observance of the Constitution of the Russian Federation (i. 1 of the art. 1 of the law), working not only for protection of the rights and freedoms of the person and the citizen, but also protected by the law of interests of the society and the state (i. 2 of Art. 1 of the law). The specified provisions of the Federal law have formed the basis for investment with the Constitutional court of the Russian Federation of the Prosecutor General of the Russian Federation in due time the right to appeal to the Constitutional court of the Russian Federation on compliance of the Constitution of the Russian Federation of constitutions and charters of the territorial subjects of the Russian Federation out of connection with their application in the concrete case [5].

It is necessary to add that carrying out different types of supervision, the Prosecutor's Office as any other public authority, has an opportunity to find the existing contradictions between the regulations and the Constitution of the Russian Federation. At the same time the European commission for democracy through the right (Venice commission) doesn't support the legislation of those countries which grant to the Prosecutor's Office the right to protect someone's personal interests as a protection of public interests acts as its main destination in the constitutional court, emphasizing that "The Attorney-General can easily appear in a situation when these interests are in a conflict, and it won't be able to protect them with such force what they deserve" [6, p. 33]. And the foreign legislation of a number of the countries in which the constitutional control is organized on the European model provides to the Prosecutor's Office (or to the Attorney-General) the right to get into the constitutional dispute in protection of public interests, challenging regulations as the abstract compliance assessment. Such countries treat: Republic of Bulgaria (p.1 of the art. 150 of the Constitution of the Republic of Bulgaria), Moldova (i. "f" p.1 of the art. 38 of the Code of the constitutional jurisdiction of the Republic of Moldova 1995), Poland (i. 1 p.1 of the art. 191 of the Constitution of the Republic of Poland), Azerbaijani (p. III of the art. 130 of the Constitution of the Azerbaijan Republic), Slovak (i. "e" p.1 of the art. 130 of the Constitution of the Slovak Republic), Portuguese republics (p. 2 of the art. 281 of the Constitution of the Portuguese Republic) and some other countries.

Presented arguments testify in favor of the need of modification of the art. 84 of the Federal constitutional law "About the Constitutional Court of the Russian Federation" establishing the list of constitutional bodies and officials having rights for the appeal to the Constitutional court of the Russian Federation with the request for a check of constitutionality of regulations of the public authorities and contracts between them as the abstract compliance assessment by the means of addition of this list with the Prosecutor General of the Russian Federation. Respectively, changes will be demanded also by the i. 6 of the art. 35 of the Federal law "About Prosecutor's Office of the Russian Federation" which new edition can look as follows: "The Prosecutor General of the Russian Federation has the right to appeal to the Constitutional court of the Russian Federation with request for a check of constitutionality of regulations of the public authorities and contracts between them".

Changes are demanded by the separate provisions of the Federal law "About Prosecutor's Office of the Russian Federation" and in connection with the participation of prosecutor's office in the constitutional disputes resolved by the constitutional (authorized) courts of the subjects of the Russian Federation. Practically all current laws of territorial subjects of the Russian Federation about the constitutional (authorized) courts of the territorial subjects of the Russian Federation, unlike the federal legislation, give to the prosecutor of the territorial subject of the Russian Federation the right for appeal to the constitutional (authorized) court of the territorial subject of the Russian Federation with inquiry as the abstract compliance assessment. At the same time according to i. 1 of the art. 35 of the Federal law "About Prosecutor's Office of the Russian Federation" the prosecutor is involved in the hearing of cases by the courts in the cases provided by the procedural legislation of the Russian Federation (which, by the way, is under exclusive authority of the Russian Federation) and the other federal laws, without mentioning the regional legislation as a legal ground of participation of the prosecutor in consideration of the case by the court. In this regard addition of the article 35 with the item 7 of the following contents is necessary: "The prosecutor of the subject of the Russian Federation has the right to appeal to the constitutional (authorized) court of the territorial subject of the Russian Federation with request for a check on compliance of the constitution (charter) of the subject of the Russian Federation of the regulations of public authorities of the territorial subject of the Russian Federation and the local governments".

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