

PROSECUTOR'S COMPETENCE AT THE STAGE OF CRIMINAL PROSECUTION IN GERMANY AND RUSSIA

Irina Belozero^{1*}, Roman Rastopshin²

¹Assoc. Prof., PhD, RUDN University, RUSSIA, belozeroⁱⁱ@rudn.ru

²Mr, PhD candidate, Ministry of Internal Affairs for Saint Petersburg and the Leningrad Region, RUSSIA, rebrading@gmail.com

*Corresponding Author

Abstract

This article is devoted to one of the important institutions of criminal justice, the role of the prosecutor in criminal prosecution. It is important to conduct a comparative legal analysis of the prosecutor's functions in criminal proceedings of Germany and Russia. Both criminal proceedings in Germany and Russia, and the emerging ideas about the European model of criminal investigation should be examined. The authors systematically consider the main areas of the prosecutor's functions in pre-trial proceedings, highlighting the beginning of the criminal prosecution, the principles governing the functions of the prosecutor and the powers of the prosecutor. The paper examines the discrepancies in the prosecutor's powers in Russia and Germany. Besides, the authors conclude that the variety of forms of criminal prosecution in these countries has a positive effect on the development of domestic legal proceedings. It should be noted that in Germany, the prosecutor investigates crimes reported to the prosecution authorities by victims or on the basis of information from the police. In the Russian Federation, when information about an offence is received by the procurator's office, the procurator verifies this information and, depending on the significance of the offence in question, transmits the relevant materials to inquiry or investigative bodies. The prosecutorial authorities do not investigate crimes, but only exercise control. At the same time, as part of this control, the procurator is notified of the detention of a person suspected of having committed a crime, verifies the criminal case file upon termination of the investigation and signs an indictment. According to the Russian Code of Criminal Procedure, in Russia an investigator or a person conducting an inquiry shall bring charges against the offender, while in Germany the prosecutor has a "state monopoly" on bringing a charge.

Keywords: Criminal proceedings, competence, Germany, prosecutor, Russia.

1 INTRODUCCION

The competence of the prosecutor in the criminal process of Germany and Russia in the framework of criminal prosecution has a number of differences. In the criminal proceedings of the Russian Federation, the initiation of a criminal case is an independent stage of the criminal proceedings, in the criminal proceedings of Germany there is no such stage. In the Russian criminal proceedings, there is a time period at this stage during which the inquiry officer or investigator is required to initiate or refuse to initiate criminal proceedings. There are no such time limits in the German criminal proceedings. Not limited by the time in Germany is the investigation process itself.

In this article the authors undertake a comparative study of the prosecutor's competence in Russia and Germany.

2 COMPARATIVE STUDY OF THE PROSECUTOR'S COMPETENCE IN RUSSIA AND GERMANY

The competence of the prosecutor in the criminal process of Germany and Russia in the framework of criminal prosecution has a number of differences. In the criminal process of the Russian Federation, the initiation of a criminal case is an independent stage of the criminal process, in the criminal process of Germany there is no such stage. In the Russian criminal process, this stage has a time period during which the inquiry officer or investigator is required to initiate or refuse to institute criminal proceedings. There are no such terms in the German criminal process. Not limited by the time in Germany is the investigation process itself.

When deciding on a criminal prosecution in Germany, the prosecutor examines the factual circumstances of the case and decides to start an investigation in the case. The assessment given by the prosecutor to the relevant offense has certain significance, since he gives the authorization to conduct prosecution.

It should be noted that the preliminary investigation is carried out in Germany not only by the prosecutor, but also by the police, the investigating judge. However, the prosecutor directs the investigation and can conduct it on his own. The prosecutor has a special role in the investigation of serious crimes.

In accordance with the Code of Criminal Procedure of the Russian Federation, the prosecutor is an official authorized, within the limits of his competence, to carry out criminal prosecution in the course of criminal proceedings on behalf of the state, as well as to supervise the procedural activities of the inquiry bodies and preliminary investigation bodies.

It should be noted that the prosecutor plays an important role in criminal proceedings in Germany when the fundamental rights of citizens are touched upon during criminal prosecution. Despite the fact that restrictions on the rights and legitimate interests of citizens in the German criminal proceedings belong to the competence of the court, in cases urgent, the prosecutor can fulfill these functions.

During the criminal prosecution, the prosecutor issues orders authorizing the conduct of investigative actions or certain procedural measures. For example, the prosecutor's office has the right to issue orders in relation to:

- Preliminary detention,
- Physical examination and personal search,
- Search of things and premises,
- Seizure and other procedural actions.

The individual powers of the prosecutor in pre-trial proceedings for such procedural measures as: procedural detention, personal search, seizure, should be considered.

As far as the procedural detention is concerned, it should be pointed out that the prosecutor assumes responsibility for the legality of the event only if it is urgent.

At the same time, the prosecutor decides to detain a person if the latter is caught at the scene of the crime. Such right to detention is at the same time the duty of the prosecutor.

When conducting a personal search of a person, the competence of the prosecutor is limited by a court decision. The exception is an obvious urgency of the case. The powers of the prosecutor related to the physical examination of a person are not restricted. In this respect the prosecutor has the same powers as the court.

The seizure order is issued by the court, however, if this is an urgent investigative action, the prosecutor may exercise this right. Based on the decision of the prosecutor, it is possible to forcibly seize a thing, take it for administrative custody, impose a ban on alteration of or disposal with such thing. During this event, the prosecutor has the right to examine the thing or document, as well as to analyze them as evidence.

Unlike in the German criminal proceedings, the prosecutor in the Russian criminal proceedings does not independently investigate the crime, however, he has a sufficiently large competence and, in accordance with Article 37 of the Code of Criminal Procedure of the Russian Federation, has the right to verify compliance with the Federal Law requirements during receipt, registration and resolution of initial communications about a crime, has the right to make a reasoned decision to send the relevant materials to the investigating authority or the inquiry body to resolve the issue of criminal prosecution on the facts of

violations of the criminal law revealed by the prosecutor, consider the application for concluding a pre-trial agreement on cooperation, approve the indictment, the indictment act or the indictment resolution in a criminal case, exercise other powers granted to the prosecutor by the Code of Criminal Procedure of the Russian Federation.

In light of the rule of conduct of the procedure within the reasonable time limits, as supported by the European Convention for Human Rights, the accused has the right to be ensured that the criminal prosecution is completed within a reasonable time. This right is due to the fact that participating in the criminal process of an accused has a tremendous psychological burden on a person.

This rule directly influences the duties of the prosecutor. The prosecutor must end the prosecution as soon as possible if the following reasons exist:

- Initial suspicion has not been confirmed,
- Continuation of the investigation may create a risk of substantial damage to the accused.

As it was noted earlier, the criminal process of the Russian Federation sets clear terms (time limits) of the preliminary investigation, so it is very difficult to “delay” the time of the preliminary investigation. If the terms of the preliminary investigation are artificially delayed by the investigator or the inquiry officer, the person concerned may file a complaint with the prosecutor's office and for the prosecutor, in turn, it is necessary to immediately respond to these violations. With regard to the bodies of inquiry, the prosecutor's instructions will have a more substantial character, and with regard to the investigator, certain aspects will have to be decided with the head of the investigative body.

When considering the conduct of individual investigative actions in the criminal proceedings of Russia, such as: detention, personal search, seizure, it should be noted that are conducted in a different way, as compared with the investigative actions in the German criminal proceedings.

In accordance with the Code of Criminal Procedure of the Russian Federation, procedural detention is possible only in the following cases:

- When a person is caught at the scene of the crime or immediately after its commission,
- When obvious signs of crime are found on the body, clothing or in the house,
- When victims or eyewitnesses point out to this person as having committed a crime.

The prosecutor shall be notified about such detention always within 12 hours, and the court shall be notified within 24 hours. It is the court, and no other body, that makes the further decision: to arrest the detained person or to release him.

A personal search of the detained person, in accordance with the Code of Criminal Procedure of the Russian Federation, is carried out by both the inquiry officer and the investigator. The conduct of a personal search is not within the competence of the prosecutor. A personal search is carried out without an appropriate resolution when a person is detained or arrested, and if there are sufficient grounds to believe that a person who is in the room or in another place in which the search is being conducted conceals objects or documents that may be relevant to the criminal case.

The seizure is the responsibility of the investigating authorities, in some cases of the bodies of inquiry. The seizure of objects and documents containing state or other secrets protected by the law of the Russian Federation, objects and documents containing information on deposits and accounts of citizens with banks and other credit organizations, as well as things pledged or deposited in a pawnshop, should be based on a court decision. In carrying out this investigative action, the prosecutor in the criminal process of Russia is not an active subject.

3 CONCLUSION

To summarize, there are differences in the role of the prosecutor as a participant in the criminal proceedings in Germany and Russia.

First, criminal investigation in Germany is carried out by a prosecutor. In Russia, in pre-trial proceedings, the prosecutor also carries out criminal investigation, however, his powers are not as broad as the powers of the prosecutor in the German criminal proceedings.

Second, in carrying out certain investigative actions, the prosecutor in Germany has the right to conduct them independently.

Third, the prosecutor in Russia can only control the timing of the investigation.

REFERENCE LIST

Boyne, S. M. (2014) The German Prosecution Service: Guardians of the Law? DOI: 10.1007/978-3-642-40928-8

Criminal Procedure Code of the Federative Republic of Germany.
<https://www.legislationline.org/documents/section/criminal-codes/country/28/Germany/show>

Jasch, M. (2018) Prosecution and Politics in Germany: The Struggle for Independence. *The Evolving Role of the Public Prosecutor: Challenges and Innovations*.

Hellmann, U. (2005). Strafprozessrecht. Springer-Verlag.

Maklakov, V. (2012). Constitutions of Foreign States: UK, France, Germany, Italy, European Union, USA, Japan: Coursebook. Infotropik Media.