

HÜQUQ THE LAW

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THE MAIN ROLE OF PROSECUTOR OFFICE IN THE FIELD OF INVESTIGATION OF INTERNATIONAL CRIMES INCLUDING JURISDICTION OF INTERNATIONAL CRIMINAL COURT AND THE MAIN CHARACTER OF COOPERATION AGREEMENT BETWEEN THE INTERPOL AND PROSECUTOR OFFICE

Summary

The fight against international crime has been a serious problem for states, especially since the second half of the 20th century. One of the most effective organizations in the fight against this is the International Criminal Court. One of the main bodies of the International Criminal Court is the Prosecutor Office. The article describes the main tasks of Prosecutor Office, the main features of the candidates for this position, the grounds for appointment and dismissal, the main functions of collecting evidence used in the investigation of international crimes and the main features of the cooperation agreement between Interpol and the Prosecutor Office.

Key words: *fight against international crimes, prosecutor office, evidence, investigation of crimes, cooperation agreement*

Beynəlxalq Cinayət Məhkəməsinin yurisdiksiyasına daxil olan beynəlxalq cinayətlərin istintaqı sahəsində Prokurorluq ofisinin əsas rolu və İnterpol ilə Prokurorluq ofisi arasında əməkdaşlıq sazişinin əsas xarakteristikası

Xülasə

Beynəlxalq cinayətkarlıqla mübarizə xüsusilə 20-ci əsrin ikinci yarısından etibarən dövlətlərin ciddi problem hesab edilmişdir. Bu sahə ilə mübarizədə yaradılan ən effektiv təşkilatlardan biri Beynəlxalq cinayət məhkəməsi hesab olunur. Beynəlxalq cinayət məhkəməsinin əsas orqanlarından biri Prokurorluq Ofisidir. Məqalədə Prokurorluq Ofisinin əsas vəzifələri, funksiyaları bu vəzifəyə namizədlərin əsas xüsusiyyətləri, vəzifəyə təyin olunma və azad olunmanın əsasları, beynəlxalq cinayətlərin istintaqında istifadə olunan sübutların toplanmasında əsas funksiyaları və İnterpolla Prokurorluq Ofisi arasında imzalanan əməkdaşlıq sazişinin əsas xüsusiyyətləri əks olunmuşdur.

Açar sözlər: *beynəlxalq cinayətlərlə mübarizə, prokurorluq ofisi, sübutlar, cinayətlərin istintaqı, əməkdaşlıq sazişi*

Introduction

Since the second half of the 20th century, the fight against international crime has been one of the main unresolved problems of all countries. If there is a serious fight against international crimes within the framework of international criminal law also, the development of civilizations, interstate relations and, in parallel with the expansion of the exchange of information, the range of various types of international crimes has also expanded, to the detriment of the interests of states has become a real threat in the modern world. In character, according to the degree of danger and the negative consequences not the life of one or more states, but the life of all mankind to prevent acts affecting the interests of to ensure the effective fight against crimes against humanity in international law national legal systems are not enough. The constituent elements of such acts are determined by general international law and the criminal liability of those who committed those acts. Appropriate mechanisms are being established for its implementation. Significant progress has been made in this direction in modern times. Yugoslavia and Rwanda ad hoc international criminal tribunals, the International Criminal Court (ICC), as well as in some countries (Cambodia, Sierra Leone, Kosovo, Lebanon, etc.) "mixed" or "internationalized" tribunals, international judges and judicial bodies with prosecutors were established and started functioning.

In particular, it should be noted that the bodies of the International Criminal Court have taken effective steps in the fight against international crime. The organs of the court is reflected in the 34 article of Rome Statute. One of the organs of this court is Prosecutor Office. In accordance with 42 article of this statute, the

Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. A member of the Office shall not seek or act on instructions from any external source [1]

It is responsible for examining situations under the jurisdiction of the Court where genocide, crimes against humanity, war crimes and aggression appear to have been committed, and carrying out investigations and prosecutions against the individuals who are allegedly most responsible for those crimes. It is for the first time in history that an international Prosecutor has been given the mandate, by an ever-growing number of States, to independently and impartially select situations for investigation where atrocity crimes are or have been committed on their territories or by their national jurisdictions.

The office is headed by prosecutor elected by Assembly of state parties. The prosecutor operates in personal and substantive independence of both the court and state parties. It is well known that two tendencies clashed at the Rome Conference. Some states wanted to grant the power to set investigations and prosecutions in motion to states and Security Council and the group of the so called like-minded countries were advocating situation of and independent prosecutor capable of initiating proprio motu investigations and prosecutions. The final result was comprise. First of all, the right to carry out investigations and prosecutions was not left to authorities of the individual states or entrusted to a commission of inquiry or similar bodies. Instead, a prosecutor was investigated. States had only two options: Nuremberg model, whereby prosecutor is an official of the state that has initiated investigation and prosecutions and this therefore designated by that state and remains under its control. The second model is Yugoslavia and Rwanda model, whereby the prosecutor is totally independent body. As an independent and impartial body, The prosecutor was granted the power to investigate and prosecute ex officio. [2, p.5]

One of the main issues mentioned in the article is who can be a prosecutor and what are the characteristics of candidates to become a prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis. The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election. Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature. The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case. Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alia, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

The Prosecutor and shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators. In the employment of staff, the Prosecutor shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, mutatis mutandis, to the criteria set forth in article 36, paragraph 8. The Prosecutor, a Deputy Prosecutor, shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person: 1) Is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or; 2) Is unable to exercise the functions required by this Statute. A decision as to the removal from office of a the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot: 1) In the case of the Prosecutor, by an absolute majority of the States Parties; 2) In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor. [1]

The Rome Statute does not define what it considers and investigations and prosecutions. It indicates, however, that investigations involves an actions that maybe taken with respect to the situation or an individ-

ual while prosecution involves action taken with respect to a specific person, in other words a prosecution is an investigations at a more advanced stage. In accordance with 15 article of this statute, prosecutor may initiate investigations proprio motu that trigger the jurisdiction of court under article 13. The statute accords the prosecutor the power to initiate an investigation and to collect evidence upon his or her interpretation of both the law and the facts. Once commenced, the prosecutor must proceed with investigation and unless there is no reasonable basis to do so. The prosecutor may on behalf of the accused, appeal a decision or the sentence of Trial Chamber on any ground that affects the fairness or reliability of the proceedings or decision. At trial the prosecutor has to present all the facts and evidence relevant to whether there is criminal responsibility under this statute. This encompasses both incriminating and exonerating circumstances. The prosecutor also has extensive disclosure obligations.

In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry. Where information is submitted, or where oral or written testimony is received at the seat of the Court, the Prosecutor shall protect the confidentiality of such information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute. The provisions of rules 111 and 112 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defense. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed, and given such weight as determined by the relevant Chamber. Where a decision under article 15, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, or the integrity of investigations or proceedings. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence. When the Prosecutor intends to seek authorization from the Pre-Trial chamber to initiate an investigation, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate. A request for authorization by the Prosecutor shall be in writing. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation. [3, p. 4, 16-18]

The Prosecutor and the defense may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims., the Prosecutor shall, in evaluating the information made available to him or her, analyses the seriousness of the information received. For the purposes of this rule, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. The procedure set out in rule 47 shall apply to the receiving of such testimony. [3, p39]

Serious steps have been taken between Interpol and the prosecutor's office to combat international crime. The cooperation agreement was adopted between the Interpol and the prosecutor office of ICC. The purpose of the cooperation agreement is to establish a frame work for co operation between the parties in the field of crime prevention and criminal justice including exchange of police information and the conduct of criminal analysis, the search for fugitives and suspects the publication and circulation of Interpol notices, the transmission of diffusions and access to the Interpol telecommunications and data bases. The parties agree to exchange information, including police information as defined in the Interpol's applicable rules and regulations, in accordance with established Interpol procedures and The Rome Statute and The Rules of Procedure and Evidence. The parties shall designate a point of contact on a regular basis and exchange information on matters of mutual interests, [4, p 1]

Conclusion

We can conclude that the main purpose of The Prosecutor Office is to conduct a preliminary investigation of international crimes committed under the jurisdiction of the court and to provide procedural guidance to the preliminary investigation. At the same time, it should be noted that successful steps have been taken and effective results have been achieved in the fight against international crimes between the prosecutor's office and Interpol.

References

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