

ECONOMICS OF EDUCATION: INTERACTION OF LOCAL SELF-GOVERNMENT BODIES AND PROSECUTOR'S OFFICE

ECONOMIA DA EDUCAÇÃO: INTERAÇÃO DAS AUTORIDADES LOCAIS E PROMOTORIA

ECONOMÍA DE LA EDUCACIÓN: INTERACCIÓN DE LOS ÓRGANOS DE AUTOGOBIERNO LOCAL Y LA FISCALÍA

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ABSTRACT: The economics of education is the investigation of economic matters connected to education, such as the requirement for education and the financing and provision of education. Hence, this work analyzes foreign experience in the constitutional regulation of the relations between local governments and the prosecutor's office on the example of the CIS countries regarding educational requirements. The author has isolated independent models and options regarding the constitutional provisions of interaction between local governments and the prosecutor's office. The conclusion is made about the impossibility of a positive or negative assessment of constitutional regulation degree in respect of the interaction between local self-government bodies and the prosecutor's office in the CIS member states for the reasons of a differentiated approach of states to the institution of local self-government.

KEYWORDS: Economics of education. Local self-government. Interaction. Independence. Management.

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RESUMO: *A economia da educação é a investigação de questões econômicas ligadas à educação, como a exigência de educação e o financiamento e oferta da educação. Assim, este trabalho analisa a experiência estrangeira na regulação constitucional das relações entre governos locais e Ministério Público a exemplo dos países da CEI em relação às exigências educacionais. O autor isolou modelos e opções independentes quanto aos dispositivos constitucionais de interação entre governos locais e Ministério Público. A conclusão é feita sobre a impossibilidade de uma avaliação positiva ou negativa do grau de regulação constitucional no que diz respeito à interação entre os órgãos de governo local e o Ministério Público nos estados membros da CEI por razões de uma abordagem diferenciada dos estados à instituição de autogoverno local.*

PALAVRAS-CHAVE: *Economia da educação. Autogoverno local. Interação. Independência. Gestão.*

RESUMEN: *La economía de la educación es la investigación de cuestiones económicas relacionadas con la educación, como la necesidad de educación y el financiamiento y la provisión de educación. De ahí que este trabajo analice la experiencia extranjera en la regulación constitucional de las relaciones entre los gobiernos locales y la fiscalía a partir del ejemplo de los países de la CEI en cuanto a los requisitos educativos. El autor ha aislado modelos y opciones independientes respecto de las disposiciones constitucionales de interacción entre los gobiernos locales y el Ministerio Público. Se concluye sobre la imposibilidad de una evaluación positiva o negativa del grado de regulación constitucional con respecto a la interacción entre los órganos de autogobierno local y la fiscalía en los estados miembros de la CEI por razones de un enfoque diferenciado de los estados a la institución de autogobierno local.*

PALABRAS CLAVE: *Economía de la educación. Autogobierno local. Interacción. Independencia. Gestión.*

Introduction

The relevance of the study is conditioned by the trend of modern state building, which is characterized not by the functional isolation of public bodies, but by the search for new trends and areas of interaction (LUDMILA *et al.*, 2017; SAIDA *et al.*, 2018; ANNA MINASYAN *et al.*, 2019) in order to implement constitutional partnership (MARINA *et al.*, 2018; BURTSEV *et al.*, 2018). It naturally manifests itself in relation to local government bodies and the prosecutor's office. At the same time, proactive forms of interaction prevail in the potential of the former, and imperative forms prevail in the potential of the latter.

Being involved in the implementation of the state significant functions, local authorities and prosecutors are interested in finding the most optimal combination of these forms of interaction (ALLA *et al.*, 2017; MIKHAIL *et al.*, 2019; BELYAEVA *et al.*, 2019).

Within the framework of the presented work, research attention is devoted to the constitutional regulation of interaction between local government bodies and the prosecutor's office in the countries of the Commonwealth of Independent States (hereinafter - the CIS).

Centrifugal processes, the state-legal structure, together with the desire of countries to protect themselves from everything that brings back memories of the former Soviet system, play a significant role in the development of the legal systems of the CIS member states. At the same time, all independent states try to create their own system of public structures, including the prosecutor's office and municipal authorities; form their own concept of structure and activities. To a certain extent, the choice of the concept was influenced by the previous Soviet model, the concept of other states, and by the historical pre-revolutionary foundations to the least extent (SAPARGALIEV, 2005).

Methodology

The study was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods.

The objectives of the study led to the use of special legal methods. Thus, the comparative legal method contributed to the identification of interaction parameters between the prosecutor's office and local authorities.

The work used the texts of constitutions presented on the Internet resources "Constitutions of the states (countries) of the world"⁶.

Discussion and results

A unified local management system was inherent in all states of the Soviet Union before their secession. The principle of its unity was laid in the foundation of the system of Soviets as the bodies of state power. The activities of the lower-level councils were directed by the higher-level councils. Local councils were heavily dependent on party bodies.

The basic laws of all states of the considered integration include separate chapters or special rules that are devoted to local self-government. Constitutions do not recognize the possibility of citizens' right restriction to local self-government. The interaction of central and local authorities is enshrined constitutionally and it is based on the principles of economic and

⁶ Available at: <https://worldconstitutions.ru>

organizational independence of local self-government in the areas of their jurisdiction, delineation of local self-government and state power powers, responsibility of local governments and their officials to the state, integrity and unity of the state territory, the balance of social-economic development of territories, and a combination of centralization and decentralization during the exercise of state power. The basic laws of some states establish subordination and mutual cooperation as the principles of interaction between central and local bodies (the Constitution of Uzbekistan).

In addition to Kazakhstan, specific most important powers of local self-government bodies are defined at the level of constitutions in a significant part of states. These powers cannot be transferred to other bodies or officials.

We summarize that almost all constitutions of the CIS countries contain the norms on local self-government. However, their implementation is not the same.

Such states as Russia, Armenia and Azerbaijan belong to the first group, because their municipal bodies are not included in the vertical of state power, and the population makes decisions on the issues of local importance independently, i.e., local government is independent in this group of countries.

Moldova can be conditionally attributed to the second group, where the process of local self-government development has not been completed yet.

The third group of states includes Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, located in Central Asia. The functioning of local self-government is carried out only in such small settlements as Ayl Okmaty in Kyrgyzstan, Mahallya in Uzbekistan, Jamoaty Shahrak and Dekhot in Tajikistan, i.e., at the lowest level. The issues of local importance are not dealt by the municipal authorities in these countries, but by the “local state administration” (Kyrgyzstan); “Local government” (Kazakhstan); “Local government bodies” (Tajikistan and Uzbekistan).

A specific system of local self-government is being formed in Belarus. It consists of a combination of three forms: centralized government, local government and self-government.

The focus of further attention is the norms of foreign constitutions concerning cooperation between municipal bodies and the prosecutor's office (note that there are no such norms in the Russian Constitution).

After the analysis, it is possible to come to the conclusion that the basic laws of the CIS countries contain the norms reflecting the following options, which can be called promising for interaction between municipal bodies and the prosecutor's office.

Let us make a remark that none of the considered constitutions speaks directly about the interaction of the declared subjects. We can judge about the existing interaction by the wording

of the constituent acts in connection with the relations between state authorities and municipal authorities.

First, let us note a group of constitutions that contain the norms on cooperation through the interaction of municipal bodies and state authorities.

The Constitution of the Republic of Kyrgyzstan contains the following provision in Chapter 7 “Local Self-Government”: the legislation of the Republic of Kyrgyzstan determines the principles of municipal body organization and functioning, and also regulates their relationship with state bodies (Article 93). It seems that this rule gives us the opportunity to talk about the existence and prospects of cooperation between different levels of government, although it is of a reference nature.

The original wording regarding local self-government bodies in this vein is contained in the constituent act of Uzbekistan.

So, the Chapter XXI "Foundations of state power at the local level" states that local government bodies take part in the consideration of local and state issues (Article 101). As you can see, the Uzbek Constitution contains an indication of a specific form of interaction between municipal bodies and state bodies. It should be especially noted that the declared relationship between local and republican bodies in the Constitution of Uzbekistan is characterized by mutual cooperation and subordination.

The norms of part 1 and 2, the article 182 "Tasks of the community and powers of local self-government bodies" of the Constitution of Armenia are presented in a similar meaningful way. In accordance with it, the powers of local self-government bodies can be their own in order to solve the obligatory and voluntary tasks of the community, as well as delegated by the state.

In order to exercise the powers of state bodies most effectively, these powers may be delegated to local self-government bodies by law. Thus, the established form of interaction is delegation.

Another option includes the basic laws that do not contain the norms that directly or indirectly make it possible to speak about the existence of grounds for the interaction of the subjects under study.

The Constitution of the Republic of Kazakhstan (Section VIII "Local State Self-Government and Management") does not contain any proposals that contribute to the creation of cooperation between municipal bodies and public authorities in the future.

Section V “Local self-government” of the Constitution of Belarus (Article 121), despite the name, contains only the norms on the exclusive competence of local Councils of Deputies.

Let's turn to the Art. 118, the wording of which stipulates the following: administrative and executive bodies, local Councils of Deputies, within the framework of their competence, implement the tasks set by the higher bodies of state power. Let us summarize that state administration is carried out locally in Belarus.

Note that similar positions are included in the Constitution of Tajikistan via Chapter 6 “Local government”: the executive and representative bodies acting within their competence constitute the local government. They guarantee the observance of the Constitution, laws, joint resolutions of the Majlisi Namoyandagon and Majlisi Milli, the resolutions of the Majlisi Namoyandagon, the acts of the President and the Government of the Republic of Tajikistan. This legal structure speaks of the lack of interaction and cooperation of various levels of government, and only about the implementation of local government.

The basic law of Azerbaijan, in separate sections on local self-government, describes the powers of municipalities in sufficient detail, as well as the possibility of vesting certain state powers with municipal bodies briefly.

The norms of the Constitution of the Republic of Moldova should be especially noted, since they contain only an indication that when you resolve general issues between local public authorities, relations are based on the principles of legality, cooperation and autonomy (part 3, article 113). It follows that the Basic Law directly indicates the interaction of municipal bodies with each other.

As for the prosecution authorities, one can trace the predominant focus on the legal structures and theories of Western European countries during the search for an individual model for the creation, organization and functioning of the prosecution authorities in the CIS countries.

At the same time, the basic condition for creating their own model of the prosecutor's office in the CIS countries is that a special place is assigned to this institution in the basic laws.

Taking this condition into account, it seems possible to single out several models that reflect the legal position of the prosecutor's office in the CIS member states, depending on the position it occupies in the main law (SAFONOVA, 2011).

The first model includes the following states: Azerbaijan, Kazakhstan, Moldova and the Russian Federation. The constituent documents of the listed countries contain the provisions on the prosecutor's office in the chapters on the judiciary. Let us make a remark that the title of the chapter on the judiciary in Russia has been corrected in terms of additions by the prosecutor's office.

The second model is represented by such countries as Armenia, Belarus, Tajikistan and Uzbekistan. The legal status of the prosecutor's office in these states is enshrined in separate chapters of the Constitutions ("Prosecutor's Office").

The third model includes only the Kyrgyz Republic, in the main law of which the prosecutor's office is described in the chapter "Other state bodies".

Absolutely all the studied countries, defining the position and purpose of the prosecutor's office in the state legal mechanism, focused on its independence, but soon problems appeared in the application of the principle of independence of the prosecutor's office, which were primarily related to the fact that, according to the Constitution, this institution is the part of the executive power or the judicial system.

In order to understand the constitutional and legal position of the prosecution bodies of the CIS countries in detail, let us turn to the organization and functioning of this body in a number of the above-named states.

So, let's note the positiveness of the wording of the clause IV, Art. 125, the Constitution of Azerbaijan, which "justifies" in some way the placement of the Art. 133 "Prosecutor's Office of the Azerbaijan Republic" in Chapter VII "Judicial Power". This clause states: "The Prosecutor's Office of the Republic of Azerbaijan and the defense are involved in the administration of justice, with the exception of constitutional proceedings". Thus, it is clear that the prosecutor's office is the participant in the process of administering justice, but not its direct subject.

From the meaning of the Constitution of the Republic of Kazakhstan, the prosecutor's office, as a state body, is not a part of the judicial branch today by its status. Its inclusion in the chapter "Courts and Justice" of the Constitution is conditioned by the fact that the administration of justice is carried out by a court with the participation of a prosecutor, and they complement each other during the implementation of human rights activities and ensuring the rule of law (ZHURSIMBAEV, 2003).

We state that the prosecutor's office of Kazakhstan cannot be included in the framework of the principle of separation of powers in its classic traditional form. The Republic of Kazakhstan has chosen its own path of a new type of prosecutor's office legal creation (BAHTYBAEV, 2005). The prosecutor's office, acting as a mechanism for monitoring the exercise of powers by the legislative, executive and judicial authorities and interacting with them, exercises supervision over the correct application of legislation and acts in the interests of all branches of government. The main task of the prosecutor is to detect violations of the law,

achieve their elimination, protect the innocent and, at the same time, raise the question of the violator responsibility (ZHURSIMBAEV, 2003).

In the Constitution of the Republic of Moldova, despite the fact that an independent Part 3, which includes two articles (Art. 124 "Powers and structure", Art. 125 "Term of office of prosecutors"), is separated, it is placed in the Chapter IX "Judicial power".

As for the second model of the organization and functioning of the prosecutor's office in the CIS countries, the following should be noted.

In chapter 6 "Prosecutor's Office" of the constituent document of Belarus, the constitutional and legal status of the prosecutor's office is established in such a way that the oversight activity is carried out by the Prosecutor General of Belarus and the subordinate prosecutors for the clear and uniform observance of decrees, and other normative legal acts by state authorities and other bodies subordinated to the Council of Ministers, local executive and representative bodies, institutions and enterprises, associations of the public, citizens and officials.

The prosecutor's office exercises supervision over the implementation of legislation in criminal prosecution, compliance of decisions made by the court in civil, administrative and criminal cases with the law. In some cases, stipulated by law, the prosecutor's office conducts a preliminary investigation, and also supports the state prosecution in court.

The Prosecutor's Office of the Republic of Belarus is a single centralized system. The main purpose of the prosecutor's office of Belarus is determined, its main functions as a body of state power are indicated in the Basic Law of the Republic of Belarus, in a separate, special chapter.

The third model of the prosecutor's office position in the system of government and its functioning can be traced in the Kyrgyz Republic.

The previously valid Basic Law of Kyrgyzstan (Ch. 5), devoted to executive power, had three sections: "Government", "Local state administration" and "Prosecutor's office". Based on these provisions, it could be assumed that the Republic of Kyrgyzstan is the only one in the CIS, where the prosecutor's office was attributed to the executive branch (SHCHERBA *et al.*, 2007).

But at the same time, the provision was enshrined in the previously valid Basic Law of the Kyrgyz Republic (Art. 77), that the supervision of the accurate and uniform implementation of laws is the responsibility of the prosecutor's office. It turned out that all the functions of government bodies for the implementation of legislative acts are fully supervised by the prosecutor's office.

Previously, the Constitution of the Republic established that the Attorney General is appointed by the President with the consent of Parliament. The Law "On the Prosecutor's Office of

the Kyrgyz Republic" (paragraph 5, part 2, Art. 8) stated that the Prosecutor General is obliged to submit a report to the President of the Kyrgyz Republic and to inform the Government of Kyrgyzstan about the observance of legislative acts by the executive authorities, about the protection of public order and national security, and the rights and freedoms of citizens⁷.

Thus, taking into account the normative provisions indicated by us, the constitutional and legal status of the prosecution bodies of the Republic of Kyrgyzstan did not allow them to be attributed to the executive authorities (SHCHERBA *et al.*, 2007).

In this regard, the leading legal scholars of Kyrgyzstan have initiated quite reasonable proposals to include the provision on the prosecutor's office into a separate chapter of the Basic Law of the Republic, while securing the legal status of the prosecutor's office in it as independent from other branches of government, representing a single centralized system of bodies with the subordination of subordinate prosecutors to the superior and the General Prosecutor of the Republic of Kyrgyzstan, as well as the principle of independence of the prosecution bodies and their subordination only to the Basic Law and other laws of the Kyrgyz Republic.

It should be noted that the current Constitution of Kyrgyzstan 2010 (Section 7 "Other state bodies") has the Art. 104 on the prosecutor's office, which states that the prosecutor's office constitutes a single system, which is entrusted with supervision over the exact and uniform execution of legislative acts by executive bodies, local self-government bodies and their officials.

In almost all CIS member states, the prosecutor's office is a single, centralized and independent system that carries out its tasks and functions established by law.

Conclusions

Based on the results of the analysis, it should also be noted that only the constitutions of Kyrgyzstan (Article 104) and Belarus (Article 125) mention the imperative form of interaction between local self-government bodies and the prosecutor's office - supervision.

On the whole, it has been established that none of them (as well as in Russia) has a direct mention of the interaction of local self-government bodies and the prosecutor's office. At the same time, this can be judged in the context of the constitutional provisions on public administration at the local level (Belarus and Tajikistan), on the powers of municipal bodies and vesting them with certain state powers (Azerbaijan). The constitutional wording on

⁷ More information at: www.law.vl.ru

cooperation between the municipal and state levels of public authority (Kyrgyzstan) is productive for the development of interaction between local self-government bodies and the prosecutor's office.

It is impossible to give a positive or negative assessment of constitutional regulation degree concerning interaction between local self-government bodies and the prosecutor's office in the CIS member states for the reasons of a differentiated approach of states to the institution of local self-government, its historical traditions in the state; ongoing internal political, economic, social processes; and the different mission of the municipal government in each specific state.

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