Features of prosecutorial supervision over the implementation of legislation on specially protected natural territories in modern Russia

Natalya Solovyeva 1, Vladimir Shinkaruk 1, Pavel Fantrov 1 and Davlatali Kakhkorov 1

1 Volgograd State University, 100, Prosp. Universitetsky, Volgograd, 400062, Russia

E-mail: solovieva_na@volsu.ru

Abstract. One of the ways to protect natural territories is the obligation authority to carry out prosecutorial supervision over the implementation of environmental legislation which directly establishes the obligation of individual entities to exercise this type of control. However, this obligation is not duly enforced. It creates a situation where on the one hand, there are positive goals of the state in the field of environmental protection, on the other hand, the positive desire of the nature user to comply with the law, and it leads to a negative result. The issue to enforce the law in the field of environmental control has remained relevant for a long time, and each stage of reforming environmental legislation increase its importance. The article describes the subject, object, tasks and purpose of prosecutorial supervision over the implementation of laws in the field of environmental safety and environmental management. So, the subject of prosecutorial supervision is the activity of prosecutors aimed at regulating public relations in implementing the law. The article classifies the subjects of prosecutorial supervision over the implementation of legislation on the specially protected natural territories as supervised and non-supervised. The purpose of prosecutorial supervision over the implementation of legislation on specially protected natural territories is to ensure the rule of law in the field of environmental safety and environmental management of specially protected natural territories. The authors divided the tasks of prosecutorial supervision in this area into general, special and private. The paper assesses the problems influencing the effectiveness of prosecutorial supervision over the implementation of legislative framework; inefficiency in management, control and cadastral registration of such territories; contradictions arising from the interaction and coordination of bodies that manage, protect and control specially protected natural territories with prosecution authorities. The authors offer recommendations aimed at improving the efficiency of prosecutorial supervision over the implementation of legislation on specially protected natural territories.

1. Introduction

The environmental prosecutor’s office of the Russian Federation has a major focus on supervisory activity overseeing the implementation of laws on environmental protection and nature management. In this supervision area, the environmental prosecutor’s offices in Russia are implementing the provisions enshrined in Article 42 of the Constitution of the Russian Federation on everyone’s right to
2. Materials and methods

The methodological basis of the study was a set of scientific methods used in the process of identifying features of prosecutorial supervision over the implementation of Russian legislation on specially protected natural territories. This article provided the following scientific methods:

- general scientific: from the abstract to the concrete, analysis, synthesis, induction, deduction, modelling;
- systematic method, in assessing prosecutorial supervision over the implementation of legislation on specially protected natural territories, which is an integrated system that includes a combination of the subject, object, tasks and goals of supervision over the implementation of laws related to environmental safety and environmental management;
- institutional, method focused on the study of institutions overseeing prosecutorial supervision over the implementation of legislation on specially protected natural territories;
- sociological, method assessing the effectiveness of prosecutorial oversight of implementing legislation on specially protected natural territories based on evidence.

3. Results and discussion

The centralized system of prosecution authorities of the Russian Federation performs prosecutorial supervision over the implementation of legislation as the main function. General provisions on prosecutorial supervision to enforce the law are enshrined in the third section of the Federal Law of the Russian Federation “On the Prosecutor's Office of the Russian Federation” and are the rule of law at the stage of criminal proceedings. The Order of the Prosecutor General of the Russian Federation “On the organization of prosecutorial supervision over the implementation of laws, the observance of human and citizen freedoms” provide the implementation of the environmental everybody's rights established by the second chapter of the Constitution of the Russian Federation. Following the invariable foundations of the constitutional system, human and civil rights are recognized as the highest value and are protected by the state.

According to A.A. Amirdzhanyan, prosecutor’s supervision is the Prosecutor’s General of the Russian Federation and its subordinate prosecutors’ activity on behalf of the state aimed at ensuring accurate and uniform implementation of all laws of the Russian Federation throughout the state” [1, pp. 139]. Environmental prosecutor's offices carry out prosecutorial supervision over the implementation of legislation on specially protected territories and ensure legality in the field of environmental safety and environmental management.
Article 21 of the Third chapter of the Federal Law of the Russian Federation “On the Prosecutor's Office of the Russian Federation” enshrines the general provisions on prosecutorial supervision over the execution of laws which include a ban on supervision by other state bodies, except for the prosecutor's office; conducting an audit in accordance with the information received on the legal violations. If this information cannot be confirmed or disproved, this provision is a distinguishing feature of prosecutorial supervision from the control and supervision carried out by other public authorities.

The totality of the subject, object, tasks and goals of supervision over the implementation of laws in the field of environmental safety and environmental management constitute the content of prosecutorial supervision.

An important component of prosecutorial oversight is the subject. The subject of activity always shows the direction of activity, that is, the direction of the prosecution authorities’ activity of the Russian Federation in prosecutorial supervision over the implementation of legislation on specially protected natural territories [2, pp. 48]. The subject of activity exists regardless of the will and consciousness of people. Consequently, the subject of prosecutorial supervision is the activity of prosecutors aimed at regulating public relations in implementing the law.

Implementation of legislation in the field of environmental safety of the Russian Federation is of two types:

- the application, it is the activity of mainly authorized officials in the publication of regulatory legal acts and the implementation of significant legal actions;
- compliance, it is the behaviour of officials, heads of commercial and non-profit organizations and citizens, which is lawful and does not contradict the legislation of the Russian Federation.

The subjects of prosecutorial supervision over the implementation of legislation on specially protected natural territories may include: The Ministry of Natural Resources and Ecology of the Russian Federation, the Federal Service for State Registration, Cadastre and Cartography, the authorities of the constituent entities of the Russian Federation and local authorities that manage, control, supervise and coordinate the activities of specially protected natural territories.

The Government of the Russian Federation is not supervised subject. Therefore, when adopting a normative legal act that contradicts the legislation of the Russian Federation, the prosecutor can only inform the President of the Russian Federation who is also not supervised.

The goal is always activities intended to achieve the result, in this case, it is the activities of the prosecutor's office in the implementation of prosecutorial supervision. We have identified the following goals of prosecutorial supervision over the implementation of legislation on specially protected natural territories:

- ensuring the rule of law in the field of environmental safety and environmental management of specially protected natural territories;
- ensuring the unity of legislation in the field of environmental safety, i.e. all subordinate regulatory legal acts must not contradict superior regulatory legal acts or be brought into conformity with higher ones;
- strengthening the rule of law in the field of environmental safety and protection of land with the special regime, which includes two elements: all subjects of prosecutorial supervision must act on current legislation and all newly created regulatory legal acts should not violate the unity of the legal system;
- protecting everybody's rights and freedoms as well as the legal interests of society and the state; regarding the rights of citizens, prosecutorial supervision is focused on implementing everybody's rights and freedoms established by article 42 of the Constitution of the Russian Federation.

The content of the prosecutor's supervision over the implementation of legislation on specially protected natural territories includes its tasks. The tasks of prosecutorial supervision in this area include general, special and particular tasks. The general tasks are applied to all types of prosecutorial supervision and are regulated by the Constitution of the Russian Federation and the Federal Law “On
the Prosecutor's Office of the Russian Federation” and other regulatory legal acts, and consist in the supervision of compliance with the Constitution of the Russian Federation and the implementation of laws in force throughout the Russian Federation by all entities without exception.

Particular tasks are tasks that the prosecutor solves during the implementation of specific activities in decision-making. They are numerous and diverse comparing with general and special tasks.

Special tasks are tasks solved in the implementation of certain types of prosecutorial supervision. In the field of environmental safety and environmental management, it set relevant tasks regarding specially protected natural territories. V.N. Shelestyukov and V.V. Erin distinguish the following tasks:

- identification of legal violations that regulates the organization, protection and use of specially protected natural territories;
- establishment of the causes and conditions conducive to these offences;
- elimination of violations and revealing the circumstances of offences in the field of environmental safety and environmental management;
- adaptation of measures by the prosecutor: measures to compensate for damage caused to health or property as a result of the legal violation governing specially protected natural territories; measures related to the accountability of persons committed violations;
- prevention of environmental offences [3, pp. 126].

In modern Russia, control bodies do not always take timely and adequate measures to eliminate violations and hold perpetrators accountable. Therefore, the task of the prosecution authorities is to increase the efficiency of the bodies exercising control over specially protected natural territories, as unacceptable reduced control, lack of proper assessment and response to non-compliance with the law [4, pp. 51]. This task is necessary to achieve the goal of promptly detecting violations of legislation on specially protected natural territories. One task of increasing the efficiency of prosecutorial supervision over the implementation of legislation on specially protected natural territories is the systematic coordination of law enforcement agencies in combating environmental crime for productive interaction not only with state authorities but also with non-profit associations engaged in environmental protection environment [5, pp. 128]. Correctly assigned tasks contribute to the actual elimination of identified legal violations on specially protected natural territories.

Prosecutorial supervision over the implementation of legislation on specially protected natural territories is subject to the information about the offence, and when data cannot be confirmed or refuted, the prosecutor or his deputy decides to conduct an audit and notifies the head or authorized representative of the organization or body that will be subjected to verification no later than the day it begins. It is possible to conduct prosecutorial inspections of compliance with the laws of specially protected natural territories by one’s initiative, the frequency established by the Prosecutor General’s Office for certain types of inspections and based on an interested party’s complaint. The prosecutor’s decision to conduct such an inspection must indicate the subject, purpose and grounds of the audit. If the prosecutor’s check found information that indicates other legal violations by the body or organization requiring for actions then the prosecutor or his deputy makes a motivated decision to conduct a prosecutor’s check with the extension of the check subject [6, pp. 116].

The prosecutor’s check lasts for thirty calendar days, this period can be extended by another thirty calendar days with a reasoned decision of the prosecutor or his deputy. The subsequent extension of the prosecutor’s inspection requires the decision of the Prosecutor General of the Russian Federation. If the check object is an organization or body with branches in different entities of the Russian Federation, then the term is established relative to such a branch. Also, the prosecutor or his deputy may repeatedly suspend this period following the implementation of actions established by law. The legislation does not limit the number of suspensions of prosecutorial checks but limits its duration. The total inspection period may not exceed 6 months, and this period may be extended by the Prosecutor General of the Russian Federation.

The powers of the prosecutor to supervise the implementation of legislation on specially protected natural territories should include the identification of violations contributing to circumstances and the
identification of perpetrators. When conducting a prosecutor’s check of a legal violation on specially protected natural territories, the prosecutor initially identifies responsible for this area. Specially protected natural territories can be under federal, regional and local jurisdiction. This classification facilitates the identification of the body to inspect. Upon receiving reports of the offence, the following bodies are subject to prosecutorial verification: relating to specially protected natural territories of federal significance, this is the Ministry of Natural Resources and Ecology of the Russian Federation managing in these territories, as well as the Federal Service for State Registration of Cadastre and Cartography monitoring and recording these territories; territories of regional significance - state authorities of the constituent entities of the Russian Federation and the territorial body of the Federal Service for State Registration of Cadastre and Cartography, territories of local importance - local authorities.

During a prosecutor’s audit of the activities of the Ministry of Natural Resources and Ecology, the Federal Service for State Registration of Cadastre and Cartography and its territorial departments, state authorities of the constituent entities of the Russian Federation, local authorities, authorities managing and monitoring specially protected natural territories, the prosecutor and his deputy need to check: compliance with the normative legal acts adopted by them, regulating relations in the sphere of organization and functioning of specially protected natural territories, with federal legislation; the procedure for conducting cadastral registration of such territories; provisions approved by these bodies on specially protected natural territories for their compliance with applicable law; creation of security zones; implementation of zoning these territories; land transfer procedure; definition of forest boundaries in these territories; authorization for the construction and reconstruction of capital objects, reconstruction and commissioning of objects located within the border of the indicated territories; accounting for the number of the animals and plants and methods for their protection [7, pp. 647].

Federal Service for Supervision of Natural Resources by the order of Ministry of Natural Resources and Ecology of Russian Federation No. 400 dated June 30, 2004, exercises control and supervision in the field of environmental management as well as within its competence in the field of environmental protection.

In the Federal Service for Supervision of Natural Resources, the prosecutor must establish and verify: identification of legal violations to specially protected natural territories by authorized bodies; the legality of the measures taken by authorized persons to prevent legal violations in this area; calculation of damage caused to specially protected natural territories owing to legal violation in this area; compliance with administrative law; transfer of materials to law enforcement authorities if there are grounds for violation, misconduct and acts; control over the issuance of orders for legal violation and the establishment of respective fines.

Prosecutorial supervision over the implementation of legislation on specially protected natural territories in modern Russia has the following acts of the prosecutor's response to identified violations: the prosecutor's protest; prosecutor's submission; prosecutor's resolution; warning for the inadmissibility of legal violation [8, pp. 38].

The prosecutor’s protest consists in the fact that the prosecutor or his deputy protest the body, organization or official issued the normative legal act contradicting the higher laws on specially protected natural territories. Also, the prosecutor may protest higher authority, organization or official. The protest must be considered no later than 10 days following the date of its admission to the organization or official. If the prosecutor protests the regulatory legal act of the legislative body of the constituent entity of the Russian Federation or local government, then it appears at the next scheduled meeting of this body, the results of this meeting or the results of the protest’s consideration are immediately reported to the prosecutor who brought the protest. Under Russian law, the prosecutor may set a shorter period for consideration of the protest and also withdraw the protest.

The submission of the prosecutor is an official document on elimination of a legal violation submitted by the prosecutor or his deputy to the body or official who is authorized to eliminate this violation in the field of specially protected natural territories or the non-compliance of regulatory acts with the higher law on these territories, and is subject to immediate consideration. The submission of
eliminating the legal violation of the special regime, the legal status of the land, natural resources and other real estate objects, protected zones of specially protected natural territories requires taking measures to eliminate the corresponding violations within one month. The results of the measures taken must be submitted in writing to the prosecutor who brought such a submission. A decision to take measures eliminating a violation or non-compliance with legislation by a collegian body requires the notification of prosecutor about the meeting day. If the decision of the Russian Government does not comply with the environmental human rights and other provisions of the rights established by the Constitution of the Russian Federation and other laws of the Russian Federation, the Prosecutor General shall inform the President about this.

High efficiency is essential in the implementation of prosecutorial supervision over the implementation of legislation on specially protected natural territories. So, the environmental prosecutor's offices annually identify more than three thousand legal violations in these territories by state authorities in the federal, regional and local governments, and administrations that manage, control, supervise and organize this area, as well as citizens and legal entities having land plots located within the boundaries of specially protected natural territories. In total, the prosecution authorities identify annually more than 280 thousand legal violations in the field of environmental protection and nature management. Prosecutors have a range of powers in supervising the implementation of legislation on specially protected natural territories and must ensure legality in this area. Nevertheless, in modern Russia, there are many problems in the field of prosecutorial supervision over the implementation of legislation on specially protected natural territories.

One main problem affecting the effectiveness of prosecutorial supervision is the contradiction of the Federal Law of the Russian Federation “On Specially Protected Natural Territories” to the provisions of other legislative acts regulating these relations in the sphere of organization, protection and use of such territories [9, pp. 236]. In practice, these contradictions or issues not fully resolved lead to inconsistency and arbitrary interpretation of certain provisions and cause difficulties for the prosecutor and his deputy to hold prosecution of persons violating the implementation of the legislation. So, due to the lack of normative consolidation of the issue related to the abolition of specially protected natural territories, the removal of the legal status of such land plots, prosecutors and their deputies in several constituent entities of the Russian Federation revealed the following violations: reduction and change of borders, reduction of the area or even the abolition of such territories in violation of the legal requirements.

Another problem is the inefficiency in the management, control and cadastral registration of such territories: violation of the cadastral record for such territories, lack of data on the quantity and their registration and borders. Ineffective legal regulation of these issues leads to unauthorized seizure of land, the construction of buildings and structures on them. A similar situation for the illegal use of reserved lands leads to the impossibility of collecting damages caused to natural objects and holding perpetrators accountable. In prosecutorial supervision, the prosecutor or his deputy must carefully check for the identification of the offences: cadastral registration and check their borders according to the data established by law, cadastral plans and regulations established by the passport of territories.

The existing problems in the field of prosecutorial supervision over the implementation of legislation on specially protected natural territories became the prerequisite for the creation of a department for the supervision of the implementation of laws on environmental protection and nature management in the structure of High Office for Oversight and Execution of Federal Law in 2019. The new Directorate of the Prosecutor General’s Office solves the tasks of strengthening prosecutorial oversight over the implementation of environmental laws and the observance of citizens' rights to a favourable environment. Besides, his tasks include the whole range of measures to combat illegal logging, water and air pollution, offences in the extraction and use of wildlife, aquatic biological resources and minerals. An equally important task of the new body is the organization of prosecutorial supervision in the field of preserving the unique natural complexes of the Russian Arctic, the Baikal natural territory, the Far East, and the Volga basin.
A feature of prosecutorial supervision over the implementation of legislation on specially protected natural territories is state oversight bodies' inspections in cooperation with prosecution authorities in this area [10, pp. 128]. The plans for such inspections require approval by the environmental prosecution authorities, and unscheduled inspections require agreement with the prosecution authorities at the location of the inspected object. The interaction and coordination of the bodies that manage, protect and control specially protected natural territories with the prosecution authorities are an effective means to ensure the legality of the adopted regulatory legal acts and to comply with the statutory regime of these territories.

One main feature of prosecutorial supervision over the implementation of legislation on specially protected natural territories in modern Russia is the presence of a wide range of legal acts regulating these relations. So, in the prosecutorial supervision over the implementation of legislation on specially protected natural territories, prosecutors need to check not only the compliance of regulatory legal acts with the Constitution of the Russian Federation and the main legal acts regulating relations in the field of such territories but also to identify the conformity of administrative regulations and the availability of documents certifying such a territory, i.e. passport, cadastral plan established the boundaries and regimes of a specific territory. This problem was also pointed out by the President of the Russian Federation V.V. Putin in a message to the Federal Assembly on February 2019, suggesting to terminate all outdated regulatory acts in the sphere of control and supervision on January 1, 2021, leaving only modern and updated documents. V.V. Putin also noted that in the field of prosecutorial supervision, it is necessary to restore order, adopt a new law on the prosecutor's office, and to review the duties of the prosecutor. In our opinion, the change in regulatory legal acts in the field of prosecutorial supervision over the implementation of legislation on specially protected natural territories requires a systematic approach.

A feature is also the analysis and improvement of the practice of prosecutorial supervision over the implementation of legislation on specially protected natural territories [11, pp. 5]. Such an analysis should consider current state tasks in the field of protection of specially protected natural territories, legislative changes and complex environmental regulations both in modern Russia and around the world. It is necessary to use the accumulated prosecutorial supervision and the totality of such potential.

To ensure the effectiveness of prosecutorial supervision over the implementation of legislation on specially protected natural territories, we offer some recommendations: to identify the illegality of normative legal acts regardless of information flow prosecutors should use the right to participate in meetings of legislative, executive bodies of state power and local authorities, for periodic inspections; systematically analyze prosecutorial and law enforcement practices in the field of environmental safety and environmental management; for each legal violation in specially protected natural territories to hold perpetrators accountable.

4. Conclusion
Prosecutorial supervision over the implementation of legislation on specially protected natural territories is one highest priority activity of prosecution authorities of the Russian Federation [12]. At the present stage of development, there is the most effective mechanism for prosecutorial supervision over the legal enforcement on the protection of nature and its resources, and the prosecution authorities play an important role in the field of environmental safety and environmental management. In modern Russia, there is a network of environmental prosecutor's offices that prevent and suppress offences in the field of environmental safety and environmental management. Given the Russian environmental situation for each violation in the field of environmental safety and environmental management, prosecutors and their deputies essentially raise the question of holding the perpetrators accountable and compensation for material damage caused by the environmental violation. Indeed, non-compliance with legislation on specially protected natural territories may entail the destruction of natural complexes and the loss of the unique habitat and recreational value of the territories. For each offence in specially protected natural territories, the prosecutors and their deputies issue many
response action reports and monitor its execution. Upon the prosecutor’s inspection, the case can be referred to the court, and the court must make a motivation decision. The prosecution authorities must monitor not only the received information received but the media because legal violations on specially protected territories attract public attention. Establishing the obligation of interaction between prosecution authorities and the media will be an appropriate source of information on legal violations. At present, prosecutorial supervision does not respond effectively to reports of legal violations on specially protected natural territories. Thus, it is necessary to create the possibility of the prosecutor and his deputy to respond to such offences independently without the received information.

In prosecutorial supervision over the implementation of legislation on specially protected natural territories, prosecutors and their assistants face problems that aggravate the effectiveness of this function. For example, issues related to the management, protection and use of natural resources in specially protected natural territories are regulated by many regulatory legal acts, many of which have unresolved issues or contradict other regulatory legal acts. The problem of prosecutorial supervision over the implementation of legislation on specially protected natural territories in modern Russia lies in the fact that the legislation is not fully implemented by state authorities, bodies of constituent entities of the Russian Federation and local governments that manage, control, supervise and coordinate activities in specially protected natural territories, as well as commercial and non-profit organizations, legal entities and individuals with land plots within the given territories, that is, in many supervised facilities.

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