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COORDINATING ACTIVITY OF THE PROSECUTOR'S OFFICE OF UKRAINE IN THE SPHERE OF COMBATING CRIMES AS A COMPONENT OF PROSECUTOR'S OFFICE CRIMINOLOGICAL FUNCTION

Key words: *prosecutor office, criminological function, crime, coordination activity, coordination meeting, law enforcement agencies.*

The implementation of public policies, which is aimed at ensuring an effective response to crime, protection of constitutional rights and freedoms, requires the state to create an appropriate system of agencies (entities) that are known in legal acts and scientific literature as law enforcement agencies. Such agencies include Ukrainian prosecution agencies, which have a specific feature of their legal status as the subjects involved in the fight against crime. Their task as law enforcement agencies is both the fight against crime and coordination of activities of other law enforcement agencies in this area of public policy.

The need for coordination activity is caused by the modern practice of law-enforcement activity, which, unfortunately, is characterized by duplication of powers of law enforcement agencies, lack of coordination of their actions, imbalance of forces and means used to achieve the objectives.

Besides, despite the significance and importance of the coordination activity of Ukrainian prosecution agencies in the fight against crime, this sphere has a range of problems, which require urgent solutions. They include insufficient legal support of the coordination activity of

prosecution agencies; inadequate level of methodological developments on these issues; implementation by prosecutors of only a few directions and forms of the coordination activity; inadequate organization of the coordination activity, and, sometimes, a formal attitude to it; absence of effective criteria to assess its effectiveness, etc.

The problem of the coordination activity of Ukrainian prosecution agencies was investigated by such scientists as A.M. Bandurka, V.V. Golin, Yu.M. Grosheva, L.M., Davydenko, V.V. Dolezhan, A.I. Ivanov, A.G. Kalman, P.M. Karkach, T.V. Kornyakova, S.S. Miroshnichenko, N.K. Yakymchuk and others, but many issues in this area remain unresolved. Implementation of the modern state policy and strategy in the sphere of fighting crime, which are focused, primarily, on the coordination of enforcement actions, eradication of duplication of powers of law enforcement agencies on the one side, and the lack of modern scientific research on the subject, on the other side, determine the relevance of this study.

The most important fact is that the coordination activity of prosecution agencies in the fight against crime relates to criminological function of prosecution agencies, which almost did not become the subject of a special study. According to S.S. Miroshnichenko, theoretically, the warning function (criminological function), with an important conceptual nature and multi-aspect practical aspect, belongs to the least explored issues in the organization and activities of prosecutorial system. In numerous publications, its functions are reduced to the prosecutor's supervision over compliance and correct application of laws, which is the main social and legal nature of its activity [1, p.14].

At the same time, the importance of criminological knowledge component and of prosecution activity is determined by the fact that despite the lack of a direct enshrinement of crime prevention function in the legislation with respect to prosecution agencies, it (the warning

function) is characteristic of all areas of their activity. These agencies belong to the state special subjects of criminological prevention with universal competency [2, pp.6–7].

In accordance with the Constitution of Ukraine and the Law of Ukraine «On Procuracy», the prosecution agencies support the state prosecution in court; represent the interests of a citizen or the State in court in cases determined by law; supervise the compliance with laws by authorities that conduct operative-search activity, inquiry and pre-trial investigation; supervise the compliance with laws in the execution of judicial decisions in criminal cases, as well as the apply other coercive measures which entail restrictions on personal freedom. In each direction of the prosecutors' work, there are criminological parties that are directed to the removal (neutralization) of causes and conditions of committing crimes, and joined together, form a single criminological function of prosecution. It is focused on the work of prosecution agencies on the prevention, mitigation or elimination of criminogenic phenomena and processes, which determine the crime, prevent potential crimes at different stages of the criminal formation and differ in specifics of prosecutorial discretion and methods of preventive purpose [3, p.253].

Many scientists agree that the key areas of criminological function of prosecution are criminological analysis of crime, participation in the development of measures for its prevention, supervision over compliance with the legislation on crime prevention, promotion of preventive public work, participation in legal education and coordination of law enforcement agencies [4, p.59].

Therefore, we will consider exactly the coordination activities of prosecution agencies as an integral part of their criminological function.

The history of Ukrainian legislation on procuracy indicates that the Ukrainian prosecution was created to supervise compliance with laws and in the interests of the fight against crime. This, in particular, was mentioned in the Regulation on the prosecution authority in the USSR,

approved by the All-Ukrainian Central Committee on June 28, 1922. At the same time, considerable attention was paid to the coordination. It, primarily, concerned the detection of violations of laws by joint efforts of prosecution and the Workers' and Peasants' Inspectorate [5, p.340]. According to T.V. Korniyakova, «there were even cases of direct subordination of individual control bodies to prosecution agencies» [6, p.128]. These findings were confirmed by A.L. Kononov who indicates that the Bureau for Supervision over Labor Affairs was established at the Commissariat of Labor. It was subordinated to specialized procuration on labor affairs [7, p.49]. The instructions of People's Commissariat of provincial prosecutors ordered to periodically hold a provincial conference on the fight against crime with a commission consisting of a public prosecutor (chairperson) and members of the meeting – the court chairperson, the chairperson of the Revolutionary Tribunal and the head of the provincial Unified State Political Department. The purpose of these meetings was to bring together all the authorities in the fight against crime, develop necessary measures in this area, discussions on proper operation of correctional labor institutions, criminal investigation department and the police [8, p.14–16].

The scientific literature of that time suggested that «the most important functions of the prosecutor's office include both the fight against violations of the law and the organization of this fight». It was noted that «meetings on the fight against crime represent one of the forms of organizational work... and their purpose consists in conducting joint measures that are coordinated by all agencies engaged in fighting crime» [9, p.113].

During mass repressions and the war years, the forms of joint activities became minimized and eventually disappeared altogether from the practice. The legacy of the Soviet totalitarian rule, among other things, maintained the role of the prosecutor's office as one of the most im-

portant pillars of the statehood [10].

It should be noted that although in the Regulations on the prosecutor's supervision dated 1955, there were no rules on the powers of the prosecutor's office for the coordination of activity of law enforcement agencies, in practice this function continued to be implemented by the prosecution agency. Thus, the order of the Prosecutor General of the USSR as of June 30, 1962 «On measures for further improvement of the activity of the prosecution agencies to combat crime and violations of the law» demanded «to eliminate inconsistencies in the work of the prosecution agencies, Court and the Ministry of Interior in the fight against crime, regularly discuss the criminal situation and to develop concrete measures to coordinate the investigative and search actions aimed at full disclosure of crimes and elimination of defects in the work of administrative authorities and strengthening the fight against crime» [11, p.49].

For the first time, the function of the coordination of activities of law enforcement agencies in the fight against crime was assigned to the prosecuting authorities by the Law «On the Procuracy of the USSR» (1979). In particular, Article 3 of this Act stated that the Prosecutor's Office coordinated the activity of law enforcement agencies in the fight against and other offenses. At the same time, coordination covered the activity of the prosecution agencies, the Interior, Justice and the courts, and the prosecutor's office itself acted as the main coordinating body. In connection with the legislative embodiment of this function in the 80s years, central and local prosecuting authorities actively used it in practice, which has led to the significant strengthening of cooperation between law enforcement agencies on combatting crime and its prevention.

At the same time, according M.K. Yakymchuk, in the early 90s, the cooperation between law enforcement agencies weakened. The coordination activities were not held regularly, which undoubtedly weakened the fight against

crime [12, p.277].

As for the first edition of the Law of Ukraine «On the Prosecutor's Office» (1991), in general, it did not mention the function of the coordination of the prosecution agencies on combatting crime. But in 1993, the Article 29 of the Law of Ukraine «On Prosecutor's Office» was supplemented by the third part, according to which «when supervising, the prosecutor shall take measures to harmonize actions of law enforcement agencies to combat crime». Later the concept of «the fight against crime» was changed to «fight against criminal offenses and the article remains unchanged until now.

The final consolidation of the coordination function of the prosecution agencies at the legislative level occurred in 2001 in connection with the adoption of the Law of Ukraine «On Amendments to the Law of Ukraine «On the Prosecutor's Office», where the Article 10, with subsequent amendments was called «Coordinating powers of public prosecution in the field of fight against crime and corruption» and established that the Prosecutor General of Ukraine and subordinate prosecutors coordinate the activity of law enforcement agencies on the fight against crime and corruption to improve the prevention of crime and corruption. This basic form of coordination of law enforcement agencies are coordination meetings of their heads chaired by the relevant prosecutor, and the decision of such meeting is mandatory for specified law enforcement agencies.

In addition to the legislative base, the legal framework for the prosecution agencies in this sphere are the Order of the Prosecutor General of Ukraine as of January 16, 2013 No.1/1gn «On the coordination activity of law enforcement agencies to combat crime and corruption», and the Regulations on the coordination of law enforcement agencies to combat crime and corruption, approved by the joint order of the Prosecutor General of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Tax Service of Ukraine, the Ministry of Defense of Ukraine,

the State Customs Service of Ukraine, Administration of the State Border Service of Ukraine, State Penitentiary Service of Ukraine as of April 26, 2012.

The importance of the coordination activity of the prosecution agencies in the fight against crime is evidenced by the fact that this activity is envisaged by the Article 25 of the Law of Ukraine «On Prosecutor's Office», in which, *inter alia*, states that the Prosecutor General, heads of regional and local prosecutors' offices, overseeing compliance with the laws of authorities engaged in operational- search activity, inquiry and pre-trial investigation, coordinate the activity of law enforcement agencies of the corresponding level in the sphere of the fight against crime [12].

It should be noted that the legislation of Ukraine in this direction of public policy was developed, taking into account the legal expertise of the CIS countries, primarily Russia. The coordination activity of the prosecution agencies of Kazakhstan is regulated by the Article 8-1 of the Law of the Republic of Kazakhstan «On the Prosecutor's Office», which indicates that coordination of law enforcement and other government agencies on the enforcement of law and order and the fight against crime is carried out by prosecution agencies [13]. The same rules are enshrined in the laws on the Prosecutor's Office in Georgia, Kyrgyzstan, Tajikistan, Uzbekistan, and the Republic of Belarus. The coordination activity of prosecution agencies in the majority of countries of Western Europe is not so pronounced. Thus, the activity of the European Public Prosecutor's Office implies the maintenance of the prosecution in court for crimes of varying severity, including those that are transnational in nature, protection of financial interests of the European Union, etc. [14].

However, analysis of the norms of the Criminal Procedure Code of the French Republic suggests that the main coordinator of law enforcement agencies in the fight against crime is the Public Prosecutor [15]. According to the Law of

the Federal Republic of Germany «On the Judicial System», prosecutors perform the coordination of law enforcement agencies [16]. In addition, differences in the consolidation of the legislative powers of the prosecutor in the various EU member states represent an issue for the European Union, because the same type of activity is allowed for the public prosecutor in one country and may be prohibited in another [17].

For proper understanding of the coordination activity, it is first necessary to define the concept of «coordination», its relation with the concepts of «harmonization» and «interaction». Legislative notion of the coordination activity of law enforcement agencies is not defined. In the academic explanatory dictionary of the Ukrainian language, this term refers to the coordination, estimating relationships, contacts in the activities of people between the actions, concepts, etc. In legal literature, the concept of «coordination» is used in the case when it comes to the agreed joint actions of various agencies that are involved in the fight against crime. The coordination of law enforcement agencies consists in the fact that it can be used to unite efforts in the fight against crime and to strengthen the rule of law [18, p.86]. At the same time, according to M.V. Kosyuta, the concept of «coordination» and «harmonization» are different. Coordination is primarily a purposeful activity, resulting in the harmonization. When we talk about the coordination of law enforcement agencies within the meaning inherent in the Law «On Prosecutor's Office», we understand it, in the first place, as the collaboration of participants and, secondly, as the activity of the prosecutor that is aimed at the establishment of such cooperation, when the prosecutor acts as «the leading subject of coordination» [19, p.100].

In our opinion, the concepts of «coordination» and «interaction» are also not identical. They differ because in case of coordination, one side organizes the relation, and the other only fulfills the conditions of this relation. Whereas, during the interaction, both sides are organize

relations. Another difference between coordination and interaction consists in the fact that the interaction is organized between two or more subjects of the joint activity, and the process of coordination requires the participation of at least three entities, one of which is the coordinator.

At the same time, in relation to the coordinating role of the prosecutor, it should be noted that it does not diminish the value of other law enforcement agencies, does not make them dependent and under the control of the prosecution agencies. These entities operate independently, equally to achieve a common goal together.

Thus, we propose to consider the coordination of the prosecution agencies on the fight against crime as the activity of prosecutors, who are endowed with the appropriate organizational powers, and their activity is aimed at harmonizing the functioning of independent entities in the presence of equal relations between them and a common goal.

The Law of Ukraine «On Prosecutor's Office» (1991) states that the coordination powers of the prosecution agencies are implemented through joint meetings, creation of interagency working groups of the agreed activities, analytical activities. It is clear that the above list is not exhaustive. We think that the forms of the coordination activity of law enforcement agencies should include: 1) coordination meetings of heads of law enforcement agencies; 2) exchange of information on the fight against crime; 3) publication of joint orders, instructions, preparation of newsletters, 4) joint visits to the regions for coordinated actions, audits, and to assist local law enforcement agencies in the fight against crime; 5) study and dissemination of good practice; 6) establishment of investigative teams to investigate specific crimes; 7) conducting targeted joint activities to identify crimes as well as the causes and conditions that contribute to them; 8) the mutual use of capabilities of law enforcement authorities to improve the skills of employees, conducting joint workshops, conferences; 9) development and adoption of coordi-

nated plans for the coordination activity and other elaborated forms.

At the same time, the basic form of coordination, as stated in the law, is a coordination meeting, which we propose to define as a collegial body, entrusted with the responsibility to develop the main directions of preventing and combating crime, which allows combining efforts in the fight against crime to achieve effective results in the shortest possible time at the lowest cost.

The coordination activity of the prosecution agencies is of great importance in the international law enforcement, for example, regarding crimes in the field of immigration. It is necessary to coordinate the activity both of the law enforcement agencies and of the migration services of several countries [20]. The fight against criminality, which bears interethnic nature, also requires coordination of the activities of law enforcement agencies and national government agencies of different countries [21].

Regarding the coordination of law enforcement agencies by the prosecutor's office, it should be noted that the Ukrainian legislation does not provide for a clear definition and a list of law-enforcement bodies. The issue of attribution of certain law enforcement agencies did not receive a single approach in the scientific literature, because scientists offer different definition of «law enforcement agencies», providing different lists regarding them; indicate various special features of the law enforcement agencies. These circumstances are a reason for many problems, including those associated with the coordination activity.

Concluding the consideration of the coordination activity of the prosecution agencies in the fight against crime, we think that these issues should be resolved at the legislative level by adopting a special Law of Ukraine «On the coordination activity of law enforcement agencies on the fight against crime», which, in our opinion, should: firstly, provide an exhaustive list of law enforcement agencies, on which the effect of the law will extend; secondly, to define the concept

of the coordination activity of law enforcement agencies, purpose, objectives, and principles of such coordination; thirdly, to define the legal status of the coordinating body (its objectives, functions, powers); fourth, to define areas and forms of coordination, fifth, to define the criteria of effectiveness of the coordination activity.

Moreover, we consider it necessary to support the proposals of the scientists who propose to determine the function of crime prevention as a separate direction in the work of prosecution agencies and enshrine it in the Law of Ukraine «On Prosecutor's Office».

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The article deals with the actual problems of the coordination activity of Ukrainian prosecution agencies in the fight against crime, which require urgent solution. They include insufficient legal support of the coordination activity of prosecution agencies; inadequate level of methodological developments regarding these issues; implementation by prosecutors of only a few directions and forms of the coordination activity; inadequate organization of the coordination activity; absence of effective criteria to assess its effectiveness. At the same time, the coordination activity of prosecution agencies is regarded as a component of criminological function of prosecution agencies.

Бурбіка М.М. Координаційна діяльність органів прокуратури України у сфері протидії злочинності як складова частина кримінологічної функції прокуратури

Стаття присвячена розгляду актуальних проблем координаційної діяльності органів прокуратури України у сфері протидії злочинності, які вимагають якнайшвидшого вирішення. Серед них: відсутність належного правового забезпечення координаційної діяльності прокуратури; неналежний рівень методичних розробок з цих питань; реалізація прокурорами лише кількох з можливих напрямків і форм координаційної діяльності; неналежна організація координаційної діяльності; відсутність дієвих критеріїв оцінки її ефективності. При цьому координаційна діяльність прокуратури розглядається як складова частина кримінологічної функції органів прокуратури.

Бурбыка М.М. Координационная деятельность органов прокуратуры Украины в сфере противодействия преступности как составная часть криминологической функции прокуратуры

Статья посвящена рассмотрению актуальных проблем координационной деятельности органов прокуратуры Украины в сфере противодействия преступности, которые требуют скорейшего разрешения. Среди них: отсутствие надлежащего правового обеспечения координационной деятельности прокуратуры; ненадлежащий уровень методических разработок по этим вопросам; реализация прокурорами лишь нескольких из возможных направлений и форм координационной деятельности; ненадлежащая организация координационной деятельности; отсутствие действенных критериев оценки ее эффективности. При этом координационная деятельность прокуратуры рассматривается как составляющая часть криминологической функции органов прокуратуры.