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Information and Analytical Activities of the Prosecutor's Office: On the Issue of Functional Status

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ABSTRACT: This article analyzes the information and analytical activities of the Russian Prosecutor's Office, and in doing so highlights a number of its characteristic features. The author, relying on doctrinal and historical research relating to the information function of the state, analyzes various aspects of the Prosecutor's Office. The areas reviewed include: the Constitution of the Russian Federation and foreign and domestic legislation concerning the prosecutor's office. Taking into account the progressive informatization of various spheres of public relations, analyzing the practice of work, and comparing debatable objective positions regarding the allocation of its other functions, the author concludes that there is a possibility of giving the studied type of prosecutor's activity a functional status and the need for appropriate adjustments to the law.

Keywords: state; prosecutor's office; informational; analytical; activity; function; informing; legality; law and order; population.

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Информационно-аналитическая деятельность прокуратуры: к вопросу о функциональном статусе

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Аннотация. В публикации анализируется информационно-аналитическая деятельность российской прокуратуры, выделяется ряд ее характерных признаков. На основе проведенного обобщения, опираясь на доктринальные научные исследования, посвященные информационной функции государства, на Конституцию Российской Федерации, зарубежное и отечественное законодательство о прокуратуре, с учетом прогрессирующей информатизации самых разных сфер общественных отношений, анализируя практику работы и сравнивая дискуссионные научные позиции относительно выделения иных ее функций, автор приходит к выводу о возможности придания исследуемому виду прокурорской деятельности функционального статуса и необходимости соответствующей корректировки закона.

Ключевые слова: государство; прокуратура; информационная; аналитическая; деятельность; функция; информирование; законность; правопорядок; население.

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The accelerating development of scientific and technological progress (based primarily on the use of increasingly sophisticated information technologies) and the resulting changes in socioeconomic conditions have created a natural need for individuals and society as a whole to adapt to them, as well as its state superstructure, as represented by the various state bodies. These changes cannot but affect the content of their activities, resulting in the transformation, emergence, or allocation of new functions and the abolition of those that have lost their relevance. In other words, "with social and scientific and technological progress, the state apparatus acquires more and more new, previously absent functions, while at the same time deepening many of the former ones" [1, p. 189].

Thus, due to global processes of informatization in the society and owing to the works by Vengerov, Nikodimov, Prosvirnin, and others, the concept of new information function — considered one of the most important among all state activities — is reflected in the categorical apparatus of the state and law theory at the doctrinal level [2, pp. 152–153; 3; 4, pp. 29–35].

Applying the universal methodological technique of complementing the knowledge of scientific disciplines, and relying on the opinion of Gulyagin about their organic interconnections with the state functions of the most important state body, the Prosecutor's Office of the Russian Federation, which is associated with the rule of law [5, pp. 50–54], stated that it is logical to assume that the latter are also subject to appropriate changes and delimitation.

Consequently, with the emergence of the state's new information functions, those of the Prosecutor's Office can hardly be preserved in a static state, especially because their concise listing in the text of article 1 of the Federal Law from 17.01.1992 № 2202-1 "On the Prosecutor's Office of the Russian Federation" (hereinafter referred to as the "Prosecutor's Office Law") gives us every reason to imply that this list is not closed. This is also confirmed by regular scientific discussions regarding the place in the system of functions of the Prosecutor's Office of a particular prosecutorial activity type [6, pp. 24–29]. The special importance of the correct definition of the state bodies' functions was indicated by the authoritative Russian legal scholar, Bachilo. Considering the functions of the state, she concluded that each state structural system carries out all or several state functions on the basis of methods specific to the activities of the state, but by means and in the forms peculiar only to a specific type of bodies [7, pp. 4, 34].

The ambiguous nature of the process of defining new prosecution functions is also confirmed by the following example. In his dissertation study, Shalumov highlights such a function as the "participation of prosecutors in the prevention of the laws' violations", considering it to be in the form of "systematic informing by all prosecutors of public authorities and local self-government bodies, as well as the population about the legality state" [8, pp. 11–12]. Professor A.Yu. Vinokurov quite reasonably held a different opinion, stating that the presence in the system of extra-functional activity of the Russian prosecutor's office is only an independent section in the form of "the prosecutor's work to prevent offenses" [9, pp. 52–56]. This does not have a "functional" status and has a protective nature in relation to the recognized functions.

The Order of the Prosecutor-General of the Russian Federation from 07.12.2007 № 195 ("On the organization of prosecutorial supervision over the implementation of laws, respect for the citizens' rights and freedoms") defines the narrower scope of the prosecutors' activities, stating that they only prevent criminal manifestations as the main direction of the "general supervision" activities of the Prosecutor's Office. Thus, according to different researchers, and as indicated in the organizational and administrative document, prosecutors' activities to prevent violations of the law (offenses) can be divided into three: as a function, as a section of non-functional activities, and as the main direction of "general oversight" work.

Regarding the above coincidence of some forms of information implementation and analytical activities of prosecutors, as well as their participation in the prevention of law violations in terms of informing the authorities and the public, we believe that similar examples are inherent in other areas of the prosecutors' functional activities. Thus, the implementation of the function of prosecutorial supervision by making a submission to eliminate law violations, as well as their causes and conditions contributing to them, is also aimed at their prevention.

Indeed, "when allocating <...> the functions of the Prosecutor's Office, an objective assessment of the living conditions and development of society is necessary. Without [it], the prosecution functions may be unreasonably expanded or narrowed, which will be to the detriment of social development and, undoubtedly, to the detriment of the prosecution" [10, p. 16]. Therefore, some experts expressed the view that there is a new function of prosecutor's office after the assignment to the General Prosecutor's Office of the Russian Federation by the Federal Law No. 4-FZ from 07.02.2011 ("On Amendments to Certain Legislative Acts of the Russian Federation in connection with the adoption of the Federal Law 'On Police'") the responsibility of maintaining the state unified statistical records of applications and reports of crimes, the state of crime, and the crime detection, status, and results of investigative work and prosecutorial oversight. For example, Insarov noted that "in order to implement the function of conducting a single statistical record," the Prosecutor-General's Office of the Russian

Federation is taking measures to develop the functionality and prepare for the commissioning of the State automated system of legal statistics (GAS PS) [12, p. 20].

Indicative in this regard is the position of Professor Karpov regarding the issue of amendments to the Law on Prosecutor's Office, introduced by federal laws from 17.07.2009 No 171-FZ, from 07.02.2011 No 4-FZ and from 21.11.2011 No 329-FZ. According to Professor Karpov, the text of section 1 and article 51 of the Law on Prosecutor's Office indicates that the activities of the prosecution should be recognized as its functions, as they define additional prosecution activity types [13, p. 8]. Thus, the functions of the prosecutor's office are considered as both basic and other activities of prosecution bodies, thereby emphasizing the degree of controversy surrounding the issue. Considering the above positions, as well as the recent (2020) changes in the Constitution of the Russian Federation, it seems appropriate to study the information-analytical activity of the Prosecutor's Office in terms of its functional status and the development of relevant theoretical recommendations.

In philosophy, the notion of function is traditionally considered as a way of behavior that is inherent in any object and contributes to the preservation of the existence of either that object or the system in which it is a part of. Thus, it should be noted that the information-analytical activity, usually considered as an important element of the prosecution organization, ensures its full functioning in the system of public authorities, along with its improvement and development, which fully corresponds to the above-mentioned attribute. In support of this conclusion, we quote the Regulations of the Prosecutor-General's Office of the Russian Federation, according to which information and analytical work is carried out in the bodies of the Prosecutor's Office "in order to improve the organization and management in the prosecution system of the Russian Federation, determine the priorities of activity, form plans, [and] prepare the organizational, administrative, information, and reference documents of the Prosecutor General's Office"[1]. Thus, information and analytical work is part of the mandatory organizational conditions that ensure the prosecution system unity [14, p. 45]. Therefore, this work should "permeate" the whole system, be subject to unified rules, and comply with the unified requirements [15, p. 104].

It has been pointed out earlier that the implementation of the function of analysis of detected offenses is a necessary prerequisite for increasing the effectiveness of complex work to strengthen the rule of law [16, pp. 17–23]. Clarifying the concept of this activity, it should be noted that in organizational, administrative, information, and reference documents of the Prosecutor-General's Office of Russia, as well as in lower prosecution offices, the term "information and analytical activity" is used in scientific and methodological literature as "information and analytical or simply analytical work" [14, p. 10]. Almost every profile order of the Prosecutor-General of the Russian Federation on this or that direction of activity — including functional ones — requires regular sending of report notes. That this is considered as the main form of information and analytical activity implies a thorough analysis of relevant information [17, pp. 14–19].

Regarding the implementation of information-analytical activity in the form of preparation and sending on-site information letters, reviews, and other information-analytical documents, we note that first of all, there is a correction (i.e., change) in the work of a prosecutor in a particular area. We consider this impact to be a facilitating one. Thus, it would be scientifically incorrect not to mention the existing opinion about information-analytical work only as the work that ensures the performance of tasks and functions entrusted to the prosecution service by law [18, pp. 13–19]. In addition, Professor V.K. Zvirbul noted that in the management system, the prosecutor's office performs a feedback function of detecting all shortcomings in combating crime, further emphasizing that the prosecutors' task of studying crimes is not an additional work that goes beyond the prosecutorial supervision but is rather part of the activity to detect violations of legality and their causes [19, pp. 382–384].

The above position certainly does not exclude the emergence of other doctrinal views on the positioning of information-analytical activity in the system of functions of prosecution service. The key features that form the concept of function are the goals that determine its content. In our opinion, the place of informational and analytical work, which permeates all areas of prosecutorial activity, is not limited to the role of an auxiliary, organizational element. Instead, it also has a pronounced nonfunctional nature, which is conditioned by a legally defined purpose of informing the country leadership, as well as regional and local public authorities, about the state of law and order and the tasks set by the Prosecutor-General of the Russian Federation.

The difference in approaches in terms of determining the place of information and analytical activities is clearly demonstrated by the published Order of the Prosecutor-General of the Kazakhstan Republic dated 12.07.2021 No. 102 ("On Amendments to the Order of the Prosecutor-General of the Kazakhstan Republic) dated May 2, 2018 No. 60 ("On Some Issues of Organization of Prosecutorial Supervision"), which contains the rules for analyzing the legality and evaluation of acts and decisions taken by the Government, other states, local representatives, and executive bodies, which is performed by prosecution bodies. According to these rules, the analysis of the legality

[1] Regulations of the Prosecutor General's Office of the Russian Federation, approved by Order of the Prosecutor General of the Russian Federation of 11.05.2016 No. 276.

state and the evaluation of acts and decisions are forms of higher supervision carried out by prosecution authorities. In addition, the analysis of the legality state is defined as an administrative procedure that requires the initiation of administrative proceedings and considers the provisions stipulated in the Administrative Procedure Code of the Kazakhstan Republic[2].

Particular attention is paid to information and analytical work in the Procurator-General's Office, where, pursuant to Presidential Decision No. UP-5019 of 18 April 2017 (i.e., on strengthening the role of the procuratorial authorities in the implementation of social and economic reforms and modernization of the country and ensuring reliable protection of human rights and freedoms), the post of the Deputy Prosecutor-General, who shall be responsible for the organization and coordination of activities in the analysis of the law and order problems, has been established.[3]

At the same time, Melkumov has already expressed the issue of the existence of a similar analytical function at the prosecutor's office, along with the administrative function (in relation to bodies of enquiry and investigation and the administrations of correctional institutions) and the preventive–educational, managerial, and other traditional functions. Under these functions, Melkumov justified the appropriateness of singling out this kind of analytical activity as an independent function based on the paramount importance of prosecutors' awareness of everything that characterizes the unlawful behavior of officials and citizens [20, p. 113].

This activity is not only organizationally supported by the creation of relevant structural and other units; instead, its very name implies "close contacts of prosecutors in the external information environment" [21, p. 8]. For example, a more capacious information function of the state is also expressed in the form of information support to the activities of state bodies and other entities external to state bodies, including individuals [4, p. 8].

Meanwhile, Afanasiev interpreted the definition of state functions as the main areas of activity determined by the needs, goals, and objectives of the state, noting that with the intensification of information processes, the traditional division of such functions into external and internal ones has largely lost its relevance, especially in the information and public spheres [22, pp. 54–58]. Thus, as the subject and result of information-analytical activity, the resulting information that is obtained and interpreted performs not only a supporting role but also serves an external influencing function.

If prosecutors correctly identify and explain the causes and conditions that give rise to relevant manifestations of social pathology, and if they develop the right solutions to eliminate them, changes will not only occur in the organization of the agency work, but also in the external environment through the reduction of the delinquency level. However, this result is not always achieved solely via the supervisory function of the Prosecutor's Office, i.e., only via the adoption of prosecutorial response acts (prepared based on the analysis of the information received about the violations). Given that the goal of strengthening the rule of law provided for by the Law on Prosecutor's Office cannot always be achieved by the resources and powers of prosecutors alone, the integration of efforts by the prosecution and public authorities is in particular demand. Such an integration aims to provide a joint solution for the current and future tasks in the field of law enforcement and send the verified results of information and analytical activities to the competent officials, thus reflecting the revealed problems in an aggregate way.

The positive effect of the quality information and analytical work conducted by prosecutors has been observed since the prosecution system establishment. The public authorities have permanently used in their activities the information received from the prosecution authorities about the state of lawfulness (report notes and other information materials). According to the decree of Peter the Great "On the position of prosecutor general" from 27.04.1722, the latter was obliged to "report" to the head of state about the revealed violations "on a monthly or weekly basis, as the decree will have"[4]. This was also evidenced by the practice of sending to the field for action material from Soviet prosecution services [23, 27].

Modern prosecutors, also possessing extensive and diverse information, are ex officio well aware of the state of the rule of law in the territory under their jurisdiction. As a rule, this information is also reflected in the work of legislative (representative) and executive bodies of public authorities, not only to eliminate already existing offenses, but also to prevent them in the future.

In development of this position, the opinion of Professors Ergashev and Gabysheva can be cited. In their discussion of the activities of the Russian Prosecutor's Office, they referred to informational letters, information, reports, and other sources that indicate prosecutorial response, which contain information about the state of legality without requiring the elimination of law violations [24, pp. 38–44]. Koreshnikova believes that the legal means of a prosecutor (which can also include reports on the state of law and order, informational letters, information, etc., considered

[2] Order of the Prosecutor General of the Kazakhstan Republic dated 12.07.2021 No. 102 ("On amendments to Order of the Prosecutor General of the Kazakhstan Republic dated 2 May 2018 No. 60 "On certain issues of organization of prosecutorial supervision"). https://www.gov.kz/memleket/entities/prokuror/documents/details/143074?lang=ru (accessed on: 29.09.2021).

[3] See: National Legislation Database of the Uzbekistan Republic. https://www.lex.uz/docs/3177798 (accessed on: 27.05.2021).

[4] Electronic Library of the Faculty of History, Lomonosov Moscow State University. http://www.hist.msu.ru/ER/Etext/genprok.htm (accessed on: 29.08.2021).

as specific, signaling means of response) cover the legally regulated actions of a prosecutor, as mediated by his legislated powers, with the aim of effectively performing his assigned functions [25].

Other scholars have also given their respective arguments on the existence of the signal-informational impact of interpreted (i.e., analytical) information. For example, Professor Ovchinsky argued that a precondition for the possibility of information-signaling influence on a system is the ability of this system to reach a certain critical state, as characterized by energy disequilibrium. In this case, the insignificant impact from the outside is enough for the system or its elements to discharge (or release) a large amount of energy and move to a new state [26, p. 18].

In accordance with the above position in relation to the information-analytical activity of a prosecutor, we consider the situation with a low level of law and order as a critical, unbalanced state, in accordance with the prosecutor information with specific proposals to the heads of federal, regional, or municipal authorities as a certain impact from the outside. Such a noncoercive, informational influence provides the necessary impetus for the addressees to take the necessary managerial and organizational measures, thus making it possible to fundamentally change the complex crime-prone situation. In other words, the results of the prosecutor's information-analytical activity not only allows a more precise definition of the objective but can also act as a trigger for taking appropriate measures and subsequent changes in the state of law and order. In other words, the information-signal effect of the qualitatively prepared and implemented results of a prosecutor's information-analytical activity has a cumulative positive impact on the state of law and order.

Thus, regarding the existence of inherent to information-analytical activity, we can conclude that both the specified forms of implementation (legal means and means of prosecutorial response) and the corresponding mechanism of impact on supervised entities aim not only to prevent offenses by eliminating the causes and conditions of their commission, but also to inform relevant public authorities and their officials about the state of law and order, which plays a more independent role.

The informational and analytical activity of the prosecutor's office is also characterized by another feature, which has been reasonably highlighted by Vinokurov: the pronounced uniqueness of its implementation by prosecution bodies [9, p. 52]. This is manifested in the exclusively complex and voluminous nature of preparation and implementation of the most capacious and complete report on the state of law and order and in the work done by prosecutors to strengthen them, thus indicating the leadership of regional public authorities, local self-government, and population.

Considering that the function of the Prosecutor's Office is also understood as a type of its activity, which also requires the use of inherent powers and legal means and procedures [27, p. 59], we note that the information and analytical activity primarily corresponds to the right to request the information of the prosecutor's interest, as enshrined in Articles 9.1, 22, 27, 30, 33 of the Law on Prosecutor's Office, the mechanism of implementation of which is specified in Article 6 [17, pp. 14–19; pp. 28, 54–61][5].

In discussing the functions of the prosecution service, the list and hierarchy of which are the subject of constant debate, one cannot but agree with the indication that they must be defined by Federal Law[6]. However, at first glance, information and analytical activities are not explicitly mentioned among the functions of the Prosecutor's Office outlined in the Law on the Prosecutor's Office. Nevertheless, this legislative act explicitly stipulates that the Prosecutor's Office also carries out other functions provided for by Federal Law. Thus, the Law provides that the Prosecutor's Office shall inform the federal public authorities, the public authorities of the subjects of the Russian Federation, the local authorities, as well as the population about the state of lawfulness. The Act also stipulates that the Procurator-General is required to submit to the chambers of the Federal Assembly and to the President of Russia an annual report on the state of law and order in the country and indicate the works that have been undertaken to strengthen it. The legislative assignment of such information to prosecutors, including the preparation of this most important final information and analytical document is a significant confirmation of the importance of information and analytical activities. This is because it serves as the basis for the adoption of relevant laws, regulations, and management decisions by the country's leadership and other authorities in all areas, including social, economic, law enforcement, and international, both at the federal and regional/municipal levels.

Moreover, unlike the Russian one, the Law of the Republic of Belarus of 08.05.2007 No. 220-3 "On Prosecutor's Office of the Republic of Belarus")[7], which we have mentioned as an example of a legal norm from

[5] As for the definition and specification of the tasks and subject matter of information-analytical activity, we should note that these issues have been covered in other publications of the author, the duplication of whose content does not seem expedient due to the limited format of the scientific article.

[6] Problems regarding the development of the functions of the Prosecutor's Office, as well as its place and role in the modern state, were discussed in the works of Amirbekov, Alekseev, Boytsova, Vinokurov, Gerasimov, Gulagin, Kobzarev, Kozhevnikov, Karpov, Korshunova, Martynenko, M.S. Shalumov, etc.

[7] National Legal Internet Portal of the Belarus Republic. https://pravo.by/document/?guid= 3871&p0=H10700220 (accessed on: 21.09.2021).

the closest union state, does not avoid a direct definition of the activity in question. According to paragraph 2 of Article 17, the Prosecutor-General's Office "shall analyze the practice of prosecutorial supervision and the state of law in the Republic of Belarus", as well as "perform other functions as provided by this Law and other legislative acts." It seems advisable to similarly enshrine the informational and analytical function in the domestic Law on the Prosecutor's Office, while considering the implementation of this function at all levels of the Russian prosecution system.

The participation of prosecution bodies in the implementation of the Presidential Decree No. 657 of 20.05.2012 ("On monitoring law enforcement in the Russian Federation") also involves serious information and analytical work. Some authors consider even one such monitoring as an independent function of prosecutor's office, justifying their conclusion by the fact that, within the legal department of the General Prosecutor's Office of the Russian Federation, two departments of the same name have been created respectively: law monitoring and law enforcement practice [29, pp. 47–50]. In this regard, we note that, in the General Prosecutor's Office within the Main Organizational and Analytical Department, an even larger and more separate division has been created, namely, the Information and Analytical Department, which consists of three subdepartments: Department of Analytical Support, Department of Departmental Statistics, and Department of Information Support.[8] The establishment of an appropriate organizational structure within the Prosecutor's Office can also be considered as confirmation of the validity of our proposal on the functional status of information and analytical activities.

The publication of the relevant departmental order No. 380 dated 16.07.2020 ("On Improving Information and Analytical Activities of the Prosecutor's Office of the Russian Federation") establishes for the first time the specific requirements for identifying prosecutors responsible for its implementation at all levels of the prosecution system, thus organizing their systematic professional development and focusing its goals beyond purely organizational limits (to ensure the use of the results of information and analytical activities for the preparation of pre-sentence and post-sentence reports).

It seems that the strongest argument in favor of our position is the adoption of the Law of the Russian Federation on amendment of the Constitution of the Russian Federation from 14.03.2020 No. 1-FKZ ("On the improvement of the regulation of some issues of organization and functioning of public authorities"), which added the text of Article 102 of the Constitution of Russia with the point "m" that the annual reports of the Attorney General of the Russian Federation on the condition of law and order in Russian Federation are under the authority of the Federation Council. Thus, we are talking about the constitutional obligation to annually submit to the Federation Council the most important information and analytical report. This reflects not only the state of law and order in the country but also the work done by prosecutors to strengthen them, thus clearly showing the role and importance of prosecutorial information and analytical activities.

In view of the above, one can draw the conclusion about the universal nature of information and analytical work. On the one hand, this is an obligatory, albeit auxiliary, element that traditionally provides the daily external activities of prosecutors; on the other hand, it is also an essentially independent function that characterizes the special field of external information interaction between prosecutors and other authorities. This is also implemented in the forms defined by the legislation on the prosecution, which usually requires a separate organizational structure. In other words, informational and analytical work has a complex character: it is the initial stage in all directions of prosecutorial activity (collecting, processing, summarizing, and analyzing the information) and a means of organizationally ensuring the unity of the prosecutorial system. This is achieved by informing the leadership of the prosecutorial system about the situation on the ground and the problems that require appropriate managerial decisions, as well as another expression of the external activity of the Prosecutorial Office (informing the leadership of the country, region, and state).

Thus, information and analytical activities cover and permeate all areas of prosecutorial competence. They are implemented as an element of implementation and organization of supervisory and other work to improve the effectiveness of prosecutorial checks, as information and analytical support of all functions of the Prosecutor's Office, and as a means to improve the organization and management in the Prosecutor's Office. Furthermore, this activity takes on an extra-functional nature by informing the public authorities and the population about the state of law and order and the work done to strengthen them (the quintessence of which we consider the corresponding report of the Prosecutor-General to the President, the Federation Council, and the State Duma of the Russian Federation).

In this regard, it seems that the information-analytical activities have a certain set of features that allow us to consider the possibility of highlighting it as another function of the dynamically developing system of modern Russian prosecution, including its appropriate enshrinement in the Law on Prosecutor's Office.

[8] Clause 2.5 of the Regulation on the Main Organisational and Analytical Department of the Prosecutor General's Office of the Russian Federation, approved by Order of the Prosecutor General of the Russian Federation of 25.10.2017.

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