

Analysis of the Implementation of International Legal Standards of the Prosecutor's Office and the Status of Prosecutors in Ukraine

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Abstract

The relevance of the research in the field of activities of the prosecutor's office is due to the active reformation of this institution in Ukraine with the aim of bringing it to the best international legal standards. The purpose is a detailed study of the theoretical and practical segment of the prosecutor's activity through the prism of international legal standards. As a result, the legal norms of legislative acts of the world doctrine, the main approaches responsible for the implementation of prosecutorial activity, and the main problems that hinder the proper functioning of this system were identified. The theoretical and practical aspects of the application of international legal standards of the prosecutor's office revealed during the work will help to propose recommendations for eliminating conflicts of legislation in the sphere of prosecutors' exercise of their powers to improve the functioning of the current system of implementation of prosecutorial activities.

Keywords: Reformation, Normative Legal Acts, European Union, Prosecutorial Activity, Human Rights.

Introduction

The current situation that has developed in Ukraine regarding the emergence of problems in many spheres of social life requires the implementation of reformation processes. Most of the reforms have been taking place for several years, but the desired substantive results have not yet been obtained. One of the main issues remains the approval and implementation of the principles of the rule of law, as well as compliance with the legal order at the appropriate level. In order to solve the above problems, the institute of law enforcement needs urgent improvement.

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Currently, the public life of Ukraine is in a rather tense state, which is directly related to the country's entry into a new level of European integration and the establishment of relations with the countries of the European Union, which forces the authorities to actively carry out reforms in many areas and state institutions. In particular, an important element in the implementation of this state policy is the reform of the prosecutor's office, namely (Bibikova, 2022; Tatsiy & Serohina, 2018):

- increasing the level of public trust in its activities;
- restoration of the image of the prosecutor's office and its employees, as well as the implementation of international aspects and standards in the activities of this structure, which will be characterized by defining the main goals and tasks, highlighting the principles on which the activity will be based;
- increasing the efficiency of performance of the functions assigned to the prosecutor's office;
- reforming the forms of activity of the prosecutor's office, staffing of these bodies, structural organization of prosecutorial bodies of Ukraine;
- determination of the legal status of prosecutors, as well as other actions related to the reform of the prosecutor's office of Ukraine.

The Institute of Prosecutorial Activities and the Prosecutor's Office do not belong to any of the branches of government existing in Ukraine. Prosecutor's offices are assigned certain duties related to the implementation of the function of ensuring public prosecution in court, representing the interests of the state or individuals in cases provided for by the current legislation of Ukraine (Sukhonos & Bilokin, 2018; Voitenko, 2023). The bodies of the prosecutor's office are defined precisely as law enforcement bodies that can participate both in pre-trial actions and in the execution of court decisions in criminal proceedings.

Scientists believe that prosecutor's offices cannot be attributed to any of the existing branches of government in Ukraine, so they single out prosecutorial institutions as an independent branch of state power (Kulish & Mykolenko, 2018; Oliinyk et al., 2022). If considering the issue of the independence of the prosecutor's office among other branches of state power, it can be noted that this is influenced by such a factor, which is determined depending on which functions in the rule of law the prosecutor's office is able to implement. In general, the functions that are implemented thanks to the activities of the prosecutor's office should be defined by society as a factor that protects the fundamental values of the public, which may be

harmful, as well as the rights and freedoms of citizens, which may also be violated (Kotsur, 2022; Tacij et al., 2014).

Materials and Methods

A number of different methodological approaches were used in the writing of a research on the application of international legal standards in the activities of the prosecutor's office on the territory of Ukraine. In order for all theoretical aspects of this work to be revealed qualitatively and consistently, for this, such a methodological approach as a method of scientific literature analysis is used, which, based on the study of the works of scientists, as well as scientific comments on legal acts, will help to reveal, in turn, not only the theoretical, but also the practical component. After studying the theoretical aspects of the scientific research, the method of comparative analysis was used, which helped to find out how and how effectively the mechanism of the introduction of international legal norms into prosecutorial activity works, as well as to identify and propose various recommendations in order to eliminate conflicts of legislation in the field of prosecutorial activity.

In turn, guided by the above, it is possible to formulate tasks and goals in research:

- to determine the theoretical aspect of the activity of the prosecutor's office, to reveal its essence, and to identify ways of implementing this activity in a theoretical sense through the prism of international legal standards;
- conduct a study of the legislation of the world doctrine, in which there is an opportunity to see what methods of implementation of the activities of the prosecutor's office are established in their normative legal acts, and its effectiveness;
- on the basis of the study of theoretical and practical components of the work, to identify, firstly, what problems exist in the field of implementing the mechanism of prosecutorial activity, and, as a result, to determine the methods of solving them and provide recommendations (improvement of legislation in the field of prosecutorial activity, raising the professional level) based on international legal aspects.

Thus, the research was carried out in the following successive stages:

- 1) The first stage of the research demonstrates its theoretical component, which is based on the study of certain aspects of the activities of the prosecutor's office of Ukraine, the analysis of the current mechanism of the prosecutor's activity and the methods of its implementation.

2) The second stage provides an opportunity to start revealing the practical component of the work, which is based on the study of Ukrainian and foreign experience in the implementation of prosecutorial activity through the prism of international legal standards, which was investigated thanks to the study of the legislation of the European Union and Ukraine.

3) The third stage, which is the final part of the research, is a study of the problems of implementation of the activities of the prosecutor's office in Ukraine in the spectrum of international standards.

Having studied all the practical and theoretical components, it is possible to provide certain recommendations on the elimination of conflicts of legislation in the field of prosecutorial activity and the improvement of the efficiency of the work of the prosecutor's office of Ukraine thanks to the introduction of international legal standards into their activities.

Results and Discussion

Firstly, it is worth emphasizing the importance of conducting research on the implementation of international legal standards of prosecutorial activity in Ukraine, which is due to a number of factors. Among such factors, several can be distinguished: firstly, it is due to the increase in the level of crime throughout the world, which is emphasized by numerous international legal acts; secondly, the development of organized crime at the international and transnational levels is of particular importance, which currently constitutes one of the main problems of modern times, causes great damage and affects all spheres of social and political life in a negative context; thirdly, an important role is played by the international community's awareness of the high level of danger of such illegal acts as terrorist attacks, genocide, war crimes, other criminal offences against peace, security, and international legal order, and the need to prosecute those who committed them. The above factors played an important role in the implementation of new trends in the formation of the model of law enforcement agencies in modern conditions and the relationship of these bodies with criminal justice bodies, paying special attention to international legal standards on which this activity should be based during the performance of the powers entrusted to them (Chaplinska, 2018; Grega & Nečas, 2022).

It is necessary to focus on the existing conflict of legislation in the field of prosecutorial activity, which is expressed primarily in discrepancies between the norms of various legal acts that regulate the powers and activities of prosecutorial

bodies. So, for example, in the Constitution of Ukraine (1996) established that the prosecutor's office in Ukraine is authorized to represent the interests of the state in the cases and in the manner prescribed by law, and in Law of Ukraine No. 1697-VII "On the Prosecutor's Office" (2015) at the same time notes the possibility for the prosecutor to also represent the interests of the citizen in court. Such a situation creates a conflict in legislation, which in turn must be resolved in favour of the Constitution of Ukraine. In order to resolve and prevent conflicts in the legislation, it is necessary to improve it, as well as research and adopt international standards in the field of professional activities of prosecutors.

Investigating the topic of this work, it is necessary to define the concept of "international legal standards of prosecutorial activity". Thus, under international legal standards of prosecutorial activity, it is necessary to understand international rules and requirements for the behaviour of prosecutors during the exercise of their powers, which are aimed at observing the principles of the rule of law and legality, protecting human rights, and building trust and respect for the prosecutor's office. Various international organizations pay considerable attention to the formation of standards of prosecutorial activity. Thus, the United Nations (UN) was the first organization that began legal regulation of the standards of prosecutorial activity. In 1995, the International Association of Prosecutors was created, the main task of which was to ensure cooperation between the prosecutor's offices of different countries in order to achieve efficiency in the field of mutual assistance in the investigation of crimes and the performance of other tasks (Mazurik, 2021; Uliutina, 2021; Cherniei et al., 2022).

Legal acts that regulate the standards of activity of prosecutors are divided into two types: acts of a general and special nature (Yarosh, 2021). Acts of a general nature include: The Universal Declaration of Human Rights (1948), the Convention on the Protection of Human Rights and Fundamental Freedoms (1950), International Covenant on Civil and Political Rights, (1966). Acts of a special nature should include acts of the UN and its subordinate structures, documents of the Council of Europe and its structures, and documents of corporate structures of prosecutor's offices. The process of reforming the prosecutor's office institutes is of a permanent nature, and continues on the territory of Ukraine even now, but I would like to single out a number of stages that have already been completed. Thus, the first stage in Ukraine began in 1996 after the adoption of the Constitution of Ukraine. The purpose of this process of improving the activities of the prosecutor's office was to transform the

activities carried out in a democratic manner. However, analysing from a practical aspect, the implementation of these changes did not leave behind any results that would reform the prosecutor's office in accordance with international legal standards (Ionushas, 2020a; 2020b). Second stage of reform, which took place in 2004, is directly connected with the appearance of numerous new normative legal acts, and the stated provisions became important factors in improving the system of the investigated bodies. Also, this stage of reform should be described as the one that determined the key directions of changes in the entire legal sphere, and, in particular, the reform of the prosecutor's office (Gnatyuk, 2018).

Third stage of reform, which took place in 2012, is connected precisely with the adoption of the new Criminal Procedural Code of Ukraine, which provided for the implementation of significant changes in the powers of the prosecutor's office. The most significant event was the adoption of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" (2015). The key aspect of this law was the exclusion of the general supervisory function from the activities of the prosecutor's office, as well as some new functions that were assigned to the prosecutor's office. If considering the reformation process in which the prosecutor's office is now, it should be noted that the main goal is to improve the legal status of this institution, change the direction of functional activity, implement European standards into Ukrainian specialized legislation, which as a result enables the formation of a democratic and effective system of prosecutor's offices and ensure legality within the framework of criminal proceedings. If singling out the main tasks that the process of reforming today's prosecutor's offices sets before itself, they include optimizing the processes of the prosecutor's office in accordance with the principles, recommendations, and standards of the European direction, strengthening the importance of the prosecutor's role as an accuser in court, ensuring his independence from both external and internal influences, which can be achieved through the creation of a system for ensuring effective internal security, directly in the institutions of the prosecutor's office (Koshlyak, 2020; Besenyő & Málnássy, 2022).

It is also worth noting the place of the prosecutor's office in the system of public power, the problem of which is not theoretical, but more in the legal and practical content, because society should consider everything related to the activities of the prosecutor's office through the prism of providing a guarantee against lawlessness and protecting one's own rights and interests. Currently, one of the main tasks of the prosecutor's is to restore public trust on the basis of transparency, the

application of legal norms enshrined in legislation regarding the equality of all subjects and protection against discrimination regardless of their gender, age, financial situation, political status (Pilgun & Kuzmuk, 2021; Yaroshenko et al., 2018).

In today's legal doctrine, several models of functioning of prosecutor's offices are distinguished. Firstly, it should be noted that they belong to the judicial system or use a certain independence in the judicial system, which is found in the practice of Spain, Bulgaria, Lithuania, and Colombia. Next, it is possible to cite a model in which the prosecutor's office belongs to the structure of the Ministry of Justice and at the same time belongs to the judicial bodies and the judicial body, which is gaining importance in the politics of the United States of America, France, Denmark, Belgium, Romania, Israel, Japan, Syria, Estonia and other countries. The model of the prosecutor's office belonging to an independent system, which is at the same time accountable to the parliament or the head of state, which finds its place precisely in countries that are post-socialist or socialist in form of government, that is, for which a characteristic general function in the activities of the prosecutor's office as supervision of compliance with the law. The last model determines the practice of countries in which there are no prosecutor's offices or similar authorities. As an example, such countries include Great Britain, whose practice involves acting as a prosecuting attorney, and the Attorney General heads the legal profession (Amelin, 2021a; 2021b).

If considering the question of the place of the prosecutor's office in Ukraine, it should be noted that in accordance with the evolution of the relevant legislation and the changes made to the Constitution of Ukraine in 2016, it is possible to follow the gradual convergence of the model of the prosecutor's office with the judiciary with the provision of a certain autonomy. Amendments to the Constitution of Ukraine excluded its Chapter VII "Prosecutor's Office" and currently determine the place of the prosecutor's office in Chapter VIII "Justice", which to some extent on a formal level can refer the prosecutor's office to such a branch of power as the judicial branch (Lutsenko, 2017).

However, if considering the new stage of reform, at which the prosecutor's office system is currently, it should be noted that it begins precisely with the adoption of Law of Ukraine No. 113-IX "On Amendments that Certain Legislative Acts of Ukraine Concerning Priority Measures that Reform the Prosecutor's Office" (2019), which was supported by 259 people's deputies. Based on the adopted legal act, the legislator sets the goal of a significant reform of prosecutorial bodies, which will

allow to sufficiently increase the level of efficiency of prosecutors' activities. However, the mentioned Law of Ukraine caused ambiguous comments from law enforcement officers and scientists. Therefore, in order to carry out a full-fledged analysis of the implementation of international legal standards of prosecutorial activity in Ukraine, firstly, it is necessary to carry out an analysis of this normative legal act in order to present a full picture of the current situation in the country with the reformation of the legal structure under study (Voitenko, 2022).

Firstly, it is necessary to note one of the main provisions of the above-mentioned Law of Ukraine, which concerns changes in the structure of prosecutor's offices. Thus, the General Prosecutor's Office, district and regional prosecutor's offices were formed. The reform of the prosecutor's office takes place thanks to the attestation of law enforcement personnel; the attestation process is not extended only to the Prosecutor General and prosecutors appointed to administrative positions, as well as to the head, his deputies, and prosecutors of the Specialized Anti-Corruption Prosecutor's Office (Law of Ukraine No. 113-IX..., 2019). An important change was the process of liquidation of the military prosecutor's office sector (Drach, 2020) and the suspension of the work of the Qualification and Disciplinary Commission of Prosecutors until September 1, 2021. If considering the issue of certification of prosecutor's office employees, it should be emphasized that it takes place in three stages. According to the Order No. 221. General Prosecutor of Ukraine "On the approval of the procedure for passing the attestation by prosecutors" (2019), the following stages of attestation by employees of the prosecutor's office are fixed, namely:

- taking an exam using computer technology, which must show the ability and knowledge of the application of the law by prosecutors;
- passing an exam, which is carried out in a form to identify general abilities;
- conducting an interview to identify general competence, professional qualities and compliance with the rules of prosecutorial ethics.

If the prosecutor does not pass any of the certification stages, in this case, he will be dismissed from his position. However, persons who did not previously hold the position of the prosecutor at the time of entry into force of the normative legal act have the opportunity to participate in the open selection for the vacant position of the prosecutor. The most violent reaction to the adopted Law of Ukraine No. 113-IX "On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures to

Reform the Prosecutor's Office" (2019) called for the provision of certification by prosecutors and investigators of the prosecutor's office. Such a reaction was caused by the haste of adopting the law, which indicates that all aspects of the legal direction were not taken into account and that they were not prescribed. So far, this has resulted in judicial authorities issuing decisions on the reinstatement of prosecutors who have not passed the attestation process. In the first phase of the certification process, out of 1083 prosecutors of the General Prosecutor's Office of Ukraine, only 610 successfully passed the last one, which is 56% of the total number of prosecutors of the General Prosecutor's Office of Ukraine (Bordun-Komar, 2020). In this regard, a certain trend has arisen, which concerns the formation of a risk factor among candidates for the positions of prosecutors. The presence of these candidates in a large amount of movable and immovable property or their participation in certain scandals, in particular, corruption direction, which indicates the non-participation of candidates in the process certification

The most important principle on which the activity of the prosecutor's office is based is stated in the provision of Article 3 of the Constitution of Ukraine (1996), which states that the highest value is a person, his life, health. It should also be mentioned that there are no generally defined rules concerning the organization of the work of the of prosecutor's offices and the status of prosecutors. However, highlighting the organization of the prosecutor's office, it should be noted that it should be endowed with sufficient independence in the direction of protecting its employees from certain political influence. According to one of the fundamental principles, namely the principle of legality, it is worth noting the fact that the prosecutor's office must function in accordance with the requirements of the law. International legal standards governing the organization and activities of the prosecutor's office, as well as the status of prosecutors, are enshrined in many legal provisions. Recommendation Rec 19 of the Committee of Ministers of the Council of Europe to member states on the role of the prosecutor's office in the criminal justice system (2000) should be noted. In accordance with this Recommendation, it was determined that prosecutors are representatives of the state authority, who on its behalf guarantee society compliance with the law and the application of this law, in particular, in cases where a violation of the current legislation leads to the initiation of criminal proceedings, taking into account such factors as rights of the subject and the level of effectiveness of the criminal proceedings.

The next regulatory act to be considered is Recommendation CM/Rec(2012)11 on the role of public prosecutors outside the criminal justice system, adopted by the Committee of Ministers of the Council of Europe (2012), which determined the role of the prosecutor's office in society. International legal standards, which are fixed in the above Recommendation CM/Rec(2012)11 on the role of public prosecutors outside the criminal justice system, adopted by the Committee of Ministers of the Council of Europe (2012) also reveal the close international cooperation of prosecutor's offices in order to ensure the provision of mutual assistance; the activities of the prosecutor must fully comply with the principle of the rule of law and legality; the activity must preserve the principle of confidentiality, that is, any information that became known to the prosecutor during the performance of his powers cannot be disclosed. Thus, violations of the above-mentioned standards have often been the subject of disputes in the European Court of Human Rights.

In *Case of Brumgrescu vs. Romania* (1999), which concerned property rights and violations of Article 6 of the Convention. In 1993, a trial was held on the illegal nationalization of the house of the applicant's parents. However, the Prosecutor General of Romania filed a motion to annul the decision of December 9, 1993. And based on this petition, the court made a decision to cancel the 1993 court decision. Among the arguments for annulment of the court decision was that the house became the property of the state in accordance with the norms of a legal act and such an act was not subject to judicial review (*Case of Brumgrescu vs. Romania*, 1999). As for the activities of the prosecutor, the decision of the European Court of Human Rights on this case states that by allowing the submission of the petition by the Prosecutor General on such conditions, the Supreme Court of Justice nullified the entire judicial process, which ended with the adoption of a court decision that could not be annulled and thereby a violation of the principle of the rule of law and the right to access to justice (*Case of Brumgrescu vs. Romania*, 1999). The prosecutor violated the principles of the rule of law and the protection of human rights and interests. To ensure that these violations do not occur in the future, it is necessary to improve the legislation on prosecutorial activity and raise the professional level of prosecutors.

One of the main international legal standards of the activities of prosecutors is the observance of national and international legal acts in their activities; performing their duties professionally and honestly; adhering to the principle of the rule of law; priority should be given to the protection of human rights; take into account, during the performance of their powers, that prosecutors act on behalf of society and in the

public interest; make efforts to maintain a clear balance between the general interests of society and human rights; to carry out cooperation between the prosecutor's offices of different countries; improvement of qualification and professional level; be politically neutral, i.e. not be members of any political party and not publicly support political parties or participate in campaigning to vote for any political party; improvement of the candidate selection process (Mykolenko, 2017).

Within the scope of this research, it is worth noting an important international legal standard of prosecutorial activity as compliance with the principle of a fair trial, which is enshrined in the European Convention on Human Rights (1950). Thus, during the pre-trial investigation or direct trial of the case, prosecutors are obliged to observe and guarantee every person's right to access to court and a fair trial, to impartially, fairly and independently exercise their powers during the trial. The standards of prosecutorial activity are contained in the Guidelines relating to the role of prosecutors (1990), including selection for the position of the prosecutor. This legal document provides for professional selection for the position of a prosecutor from among persons who have expressed a desire to work for the relevant position. Thus, persons who have expressed a desire to take up the position of the prosecutor must possess a sufficient professional level, high moral qualities, appropriate education, and qualifications and comply with the requirements of professional ethics (Borysova et al., 2019).

It is also advisable to mention another international legal standard for the activities of the prosecutor's office, namely, independence and impartiality when prosecutors exercise their powers. Firstly, this refers to the prevention of any dependence of prosecutors on judicial authorities. Each country must develop such rules that one and the same person cannot hold the position of both prosecutor and judge at the same time. Prosecutors, while exercising their powers, should not question the authority of the court, prevent the execution of court decisions or access of a person to the court for the protection of their violated rights (Mazurik, 2021). Among the international legal standards of prosecutorial activity, it is necessary to single out the state's provision of guarantees for prosecutors to fulfil their professional duties in the presence of appropriate legal and organizational conditions. Appropriate provision of guarantees should be carried out in close cooperation with the prosecutor's office. The state must ensure (Mykolenko, 2017; Shapoval et al., 2018):

- promotion and promotion of prosecutors;
- guaranteeing decent wages, social benefits and pensions;

- protection of prosecutors and their family members;
- impartial and equal treatment of every employee of the prosecutor's office;
- the right to prosecutorial self-government.

The Council of Europe focuses on assisting in reforming the prosecutor's office in Ukraine in accordance with European legal standards. It should be noted that not only the above-mentioned normative legal acts provide grounds for determining standards in prosecutorial activity. Great importance should also be attached to the issue of the professional ethics of prosecutors, which consists in determining their moral relations during the performance of their powers. This creates conditions for the favourable formation of collective relations, and increases the level of integrity and efficiency among the employees of the law enforcement structure to increase the level of public trust and the authority of the prosecutor's office. Firstly, the issue of professional ethics was revealed quite specifically and extensively in the Guidelines for the role of prosecutors (1990) regarding the role of prosecutors. It is pointed out the need for prosecutors to encourage the application and observance of the basic principles defined in the main human rights documents, while guaranteeing the protection of citizens from crime and maintaining the effectiveness of the criminal justice system.

Thus, having singled out the main international legal standards of the prosecutor's activity, the author indicated recommendations for their adoption into the legislation of Ukraine. Thus, the following recommendations for the introduction of international legal standards have been developed activities of the prosecutor's office and the status of prosecutors in the legislation of Ukraine: improvement of specialized legislation; raising the professional level of prosecutors; detailed selection for the position of the prosecutor; improvement of international cooperation of prosecutor's offices, the continuation of the process of their reformation.

Conclusions

After performing the analysis of the state of implementation of international legal standards of the prosecutor's office and the status of prosecutors in Ukraine, the theoretical and practical aspects of the direction of scientific work were analysed.

An important component is the identification of the place of the prosecutor's office in the public power of Ukraine. In general, the research is determined by some factors, among which the increase in the level of crime around the world, the

acquisition of the development of organized crime at the international and transnational levels, awareness by the international community of the high level of danger of such illegal acts as terrorist attacks, genocide, war crimes, other criminal offences against peace, security, and international legal order, the need to prosecute the persons who committed them. The conditional three stages of the reform of the prosecutor's office in Ukraine were considered, including the current stage of its development, the analysis of which is noted within the scope of the scientific work, and the positive and negative aspects of the relevant reform process were identified.

Among the main international legal acts that determine the standards of the prosecutor's office and the status of prosecutors, the article considered Recommendation Rec 19 of the Committee of Ministers of the Council of Europe to member states on the role of the prosecutor's office in the criminal justice system. It has been established that the international legal standards of prosecutorial activity and the status of prosecutors, which are enshrined in a number of international legal acts, are generally recognized and introduced into the national legislation of many countries. Conducting a study of these standards and their implementation in Ukraine will allow the prosecutor's office to perform their functions as efficiently as possible.

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