

Independence of Prosecutors and Judges in Criminal Proceedings in Ukraine and Foreign Countries in the Context of International Practices

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Abstract

The purpose of this study was to identify the main international standards for the application of the principle of independence in the judicial process and the specifics of its implementation in Ukraine. The main methods used for scientific cognition included analysis and synthesis, formal-logical, historical-formal, induction and deduction, specification and generalisation, comparison. The study identified the principal international standards for the implementation of the principle of independence of participants in criminal proceedings, including judges and prosecutors, which include proper legal regulation of the status of judges and prosecutors, direct prohibition of influence from other branches of power. The study found certain differences between the independence of judges and prosecutors, which include the following features: the independence of a judge means being subject to the law and impartiality in relation to any party to the trial, while a prosecutor cannot be independent in this sense, since they represent the prosecution.

Keywords: Principles of Justice; International Standards; Freedom of the Judiciary; Criminal Proceedings; External Influence.

Introduction

Ensuring the welfare and security of citizens is the main task of every democratic state, and the judiciary plays a key role in the public security system. A fair and just trial is a guarantee of high trust in state institutions, an increase in the level of security among citizens, and a guarantee of inevitable punishment for crimes. In all developed democracies, the principles of independence and impartiality of participants in criminal proceedings, including judges and prosecutors, have long been established (Basic principles of..., 1985). In Ukraine, during the period of full-scale military operations, the issue of independent and

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transparent judicial proceedings has become even more relevant, as the judicial system has faced new challenges and problems during martial law, including remuneration, funding of organisational activities, election, and resignation procedures. Therefore, the application of international practices in ensuring the independence of judges and prosecutors is valuable and necessary.

The problem with this subject is that, despite the reform of the judicial and law enforcement systems in connection with the European integration process, the principles of judges and prosecutors in Ukraine do not fully meet international and European standards of independence of participants in the criminal procedure. Legislative acts still do not consider a significant amount of the guarantees and recommendations that set out the principles of the work of the court and the prosecutor's office at the international level.

In the current context of globalisation and modernisation of Ukraine's economy, effective economic management, minimising the consequences of possible crises, overcoming recession, and restoring economic growth are key tasks of the state to ensure the welfare of citizens (Oliinyk et al., 2022). However, using the recommendations of leading economists without considering the processes of globalisation, market monopolisation, and the growing influence of the state on economic processes in the context of economic modernisation to European standards may lead to negative consequences and slow down dynamic development.

Many Ukrainian researchers have investigated the issue. R.V. Mazuryk (2021) analysed international standards of prosecutorial activity and their implementation at the level of regional prosecutor's offices. The author thoroughly examined the fundamental principles of prosecutorial activity and the specific features of their application at the regional prosecutor's offices level and investigated the norms of national and international law governing these principles. Ukrainian researcher M. Stefanchuk (2023) investigated the current trends in the formation of the prosecutorial corps in Ukraine, including the procedure for selecting and training qualified personnel for the position of a prosecutor, considered controversial aspects of simplifying the selection of young professionals and the possible consequences of such simplification for the professionalism and independence of the prosecutorial corps. S.S. Korniyushchenko (2023) considered the historical background of the formation and development of the institution of prosecutorial independence in Ukraine. The author examined the genesis of this legal phenomenon, its preconditions, and factors of development, and explored the legal acts in force in Ukraine over the past 300 years. The study highlighted the doctrinal views on the periodization of the stages of development of the institution of prosecutorial independence.

P. Boiko (2023) investigated the basic European standards for ensuring the principle of independence of prosecutors. The author notes that the current trends in strengthening the independence of the prosecutor's office are to turn to international standards and recommendations to ensure this principle. The proper functioning of the prosecutor's office is an essential element of building a state governed by the rule of law. According to O.Y. Amelin et al. (2023), the reform of the Ukrainian prosecutor's office is ongoing to "bring it in line with the best international legal standards". The key tasks are to increase public trust, restore the image of the prosecutor's office and introduce international aspects into its activities. Building a positive image of public authorities is a crucial task in a democratic society. According to O.Y. Amelin (2022), the relevance of investigating the image of prosecutors and the prosecutor's office in Ukraine is particularly acute in the context of military aggression against Ukraine. A properly formed positive image can become an effective tool for preventing criminal offences and an additional component of the effective performance of prosecutors' functions.

N. V. Savytska (2023) considered the place of the principle of judicial independence in the structure of the principles of judicial proceedings. The author has investigated all basic principles underlying the judicial process in democratic states and pays special attention to the principle of independence, identifying its interconnection and interdependence with other principles. In their studies, the authors mainly consider the principles of judicial proceedings and the place of the principle of independence among them, investigating international and European standards applicable to democratic states. However, the studies pay little attention to the compliance of Ukrainian legislation with international requirements and identification of concrete steps to improve the implementation of the principle of independence in the work of judges and prosecutors.

The purpose of this study was to analyse the international practices of implementing the principle of independence of judges and prosecutors in criminal proceedings and the specifics of its application in Ukraine.

Materials and Methods

During the study, the Google Scholar and Scopus databases were used to search for materials on this subject. The study used the principal regulations governing the independence of judges and prosecutors in Ukraine, namely, the Constitution of Ukraine (1996), Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges" (2016), Law of Ukraine No. 1697-VII "On the Prosecutor's Office" (2015). The judgement of the European Court of Human Rights in the case of *Findlay v. the United Kingdom* (Application No. 22107/93)

(1997) was used in this paper. Furthermore, the study examined some international legal acts regulating the standards of judicial and law enforcement agencies, specifically, the Montreal Universal Declaration on the Independence of Justice (1983), UN General Assembly resolutions 40/32 and 40/136, which set out the basic principles of the independence of the judiciary (Basic principles of..., 1985), the European Charter "On the Status of Judges" (1998), UN Economic and Social Council resolution no. 2006/23 of 27 July 2006 on the adoption of the Bangalore Principles of Judicial Conduct (2006), Standards of professional responsibility and basic duties and rights of prosecutors (1999), Declaration on minimum standards for the safety and protection of prosecutors and their families (2008). The experience of such leading countries as Germany, France, and Poland was investigated to examine the generally accepted principles of guaranteeing the independence of the judiciary.

General theoretical methods of scientific knowledge were used to conduct a complete and comprehensive study. Using the historical-formal method, the study examined the evolution of international guarantees and recommendations that exist in the field of ensuring the independence of the judiciary and prosecution. The study uses the formal logical method to investigate the main standards ensuring independence for judges and prosecutors in criminal proceedings both at the level of international legal instruments and at the level of national legal norms. Using the method of analysis, the study found the specific features of implementation of the principle of independence of participants to the judicial process in the context of international experience, examined certain aspects of ensuring this principle in practice, and identified the features inherent in the independence of both judges and prosecutors.

Using the method of synthesis, based on the research of foreign practices, the study examined the main generally accepted standards which guarantee the independence and impartiality of participants to criminal proceedings and identifies the main problems of their implementation. Using the method of induction, the study investigated certain legal provisions that establish legal guarantees for the implementation of the rule of law and judicial independence. Having reviewed certain provisions of international law, the study found the main standards in the field of legal regulation of the independence of judges and prosecutors. By means of deduction, the study examined the very concept of independence of courts and prosecutors, its content, and features, and found certain aspects of independence for different participants in the judicial process.

Using the method of concretisation, individual cases and particular examples of violations of the principle of independence of both judges and prosecutors were investigated. Concrete legal norms in the context of the

application of the principle of independence and impartiality were studied, as well as some international norms that establish certain guarantees for the judiciary and law enforcement agencies. Using the method of generalisation, the study identified the main features and standards crucial for the implementation of the principles of judicial proceedings in practice and found common issues inherent in the implementation of the standards of independence in Ukraine. Using the method of comparison, the study reviewed the specifics of independence for judges and prosecutors separately, comparing them based on the main functional responsibilities of the judiciary and prosecution and the place of these bodies in the legal system.

Results

The principles of judicial proceedings prescribed in law underlie effective and fair trials. The principle of independence of participants in the judicial process plays a key role in making professional and impartial decisions in criminal proceedings. In all democracies where the rule of law prevails, the principle of independence of judges and prosecutors is not only consolidated in the legal framework, but also backed by a corresponding mechanism for its implementation. In the context of the rapid European integration process, the real application of this principle, and not just its declarative nature, is of paramount importance for the Ukrainian judiciary.

The principle of independence means, first and foremost, that judges and prosecutors must be impartial in the exercise of their powers and must base their decisions solely on the law, facts, and evidence. The principle of independence also includes the prohibition of interference in the work of the judiciary and prosecutor's office by representatives of other branches of government, political parties, private organisations, or individuals. In general, the independence of the judicial process includes freedom from any external influence that may compromise the fair and professional judgement of judges or prosecutors (Peterson, 2020). Some examples of interference with the activities of participants in the criminal process are as follows (Savytska, 2023):

–political influence (when judges or prosecutors are subjected to pressure from the ruling political party or from the legislative or executive branches of government to obtain a decision that favours a concrete political elite. This can take the form of interference with the procedure for hiring or dismissing judges, as well as threats to reduce funding, which can also affect the functioning of the judiciary and prosecution service);

–external influence (pressure from private influencers in the form of lobbying for private interests in concrete court cases);

–influence from the media or the public (sometimes judges or other participants in the court process may be subjected to great pressure from the media, which can potentially affect the outcome of the decision);

–internal factors (participants in criminal proceedings may face a situation where they need to act contrary to their internal beliefs or may have a conflict of interest, which may also be an obstacle to making an impartial and fair decision).

In a democratic state, the judiciary is a separate and independent branch of government that is designed to ensure accountability for the legislative and executive branches of government and to ensure that the legislature implements the laws it passes. To understand whether any branch of government is independent, it is necessary to identify the criteria for independence. The European Court of Human Rights in the Case of Findlay v. the United Kingdom (Application No. 22107/93) (1997) noted that to consider a court as independent, the following factors must be considered: the manner of appointment of judges and their term of office, qualification requirements, guarantees of protection from external pressure, and whether the judicial body has the appearance of an independent one. Considering the wording “judge’s independence”, it should be noted that in theoretical studies the term “judicial independence” is used in a broader sense and includes the independence of all participants in the judicial process, including judges, prosecutors, and other parties. In turn, “judge’s independence” means the direct independence of a particular person in carrying out procedural activities (Sunnqvist, 2022). It can be assumed that an analogous correlation applies to prosecutor’s offices and prosecutors themselves.

Due independence is primarily ensured by effective legal regulation. The independence and immunity of judges are guaranteed by the Constitution of Ukraine and the laws of Ukraine. According to Part 1, Article 129 of the Constitution of Ukraine (1996), a judge shall be independent in the administration of justice and shall be guided by the rule of law. According to Part 5, Article 48 of the Law of Ukraine No. 1402-VIII “On the Judiciary and the Status of Judges” (2016), the independence of judges is ensured by the following conditions: special procedure for appointment, dismissal, prosecution; immunity and immunity; prohibition of interference in the exercise of judicial activity; special procedure for financing and organisational support of judges; proper material and social security; establishment of judicial self-government bodies; use of personal security means for judges, their family members, property; the right of a judge to resign. Unlike judges, the independence of prosecutors is only consolidated at the level of a law. According to Art. 16 of the Law of Ukraine No. 1697-VII “On the Prosecutor’s Office” (2015), the independence of prosecutors is ensured by a special procedure for appointment and dismissal, prohibition of unlawful influence

on the activities of prosecutors, the procedure for financing established by law, proper material and social security, and the ways of ensuring the personal security of the prosecutor determined by law.

Analysing the international legal regulation of the independence of professional participants in the judicial process, it should be noted that there are many global or European regulations, treaties, charters relating to the independence and objectivity of judges and prosecutors in the exercise of their professional activities. Notably, the main documents that define the basic principles of a democratic state, including the judicial and law enforcement systems. In the field of judicial activity, the first document to define international standards is the Montreal Universal Declaration on the Independence of Justice (1983), which set out standards for the independence, election, and training of judges, immunity and privileges, disciplinary liability and dismissal procedure. Subsequently, in 1985, UN General Assembly resolutions 40/32 and 40/136 proclaimed the basic principles of judicial independence (Basic principles of..., 1985). The UN Congress called on all governments to make efforts to translate these principles into the actual administration of justice. In 1998, the Council of Europe adopted the European Charter "On the Status of Judges" (1998), according to which the laws on judges of all European countries had to comply with this official document. Next, the UN Economic and Social Council Resolution No. 2006/23 dated 27 July 2006 adopted the Bangalore Principles of Judicial Conduct (2006), which are addressed as a guideline for them. The document is a guide to understanding the professional activities of judges. Based on international legal instruments, it is possible to identify the main standards of judicial independence that have emerged as a result of the development of international norms:

1. Consolidation of the status of judges in higher-level regulations, and the rules of their activity in legislative norms.
2. Prohibition of influence from other branches of government.
3. Ensuring physical protection for judges and their families, if necessary.
4. Proper remuneration, social guarantees, and tenure should be defined by law and should not be changed downwards.
5. Sufficient funding for the organisational activities of the court.
6. Maintaining public confidence in the judiciary.
7. The issue of disciplinary liability of judges should be resolved only by judicial self-government bodies.

Notably, all states seeking to have an independent and impartial judiciary should strictly adhere to these principles as a basis formed from the best international practices of leading democratic countries. The establishment of the

International Association of Prosecutors in 1995 was crucial in shaping international standards of prosecutorial independence, which in 1999 adopted the Standards of professional responsibility and basic duties and rights of prosecutors (1999), and in 2008 – the Declaration on minimum standards for the safety and protection of prosecutors and their families (2008). Analysing these documents, the main guarantees of prosecutors' independence can be identified as follows (Aung, 2022):

1. The selection and promotion of prosecutors should be carried out following clearly established rules that exclude discrimination on any grounds and that exclude the pursuit of the interests of any outside parties.
2. Professional development and promotion should be based on criteria such as competence and experience.
3. Decent working conditions and remuneration, social guarantees, and protection.
4. Procedure for disciplinary liability of prosecutors should be fair and independent.
5. Prosecutors are entitled to appeal in case of violation of their legal status.
6. Protection of prosecutors and their families in case of threats to their physical security.

Furthermore, the law consolidates the right of prosecutors to freely express their opinions, views, and beliefs, as well as the right to freedom of assembly and association. Prosecutors in all European countries, including Ukraine, are a key participant in the criminal process. The effectiveness of criminal proceedings depends on the independence of prosecutors in carrying out their professional activities, as they have rather broad powers, and therefore it is unacceptable for other branches of power to influence the work of the prosecutor's office. Researchers distinguish between different types of prosecutorial independence: functional independence (which refers to an individual prosecutor exercising powers in a particular case) and institutional independence (i.e., independence relating to the prosecution service as a separate state institution) (Voigt and Wulf, 2019).

When examining the content of the independence of judges and prosecutors, at first glance it may seem that it is absolutely identical for these participants in the criminal procedure. However, when considering the principle of independence through the functions and powers vested in judges and prosecutors, some distinctive features can be found. Table 1 summarises the specific features of the content of the independence of judges and prosecutors.

Table 1: The content of the principle of independence of judges and prosecutors

| Specific features of judicial independence | Specific features of prosecutors' independence |
|---|--|
| 1. The judge is subject to the law and cannot have a biased opinion on either party. | 1. In this respect, the prosecutor can never be independent, as they are on the side of the prosecution. However, such activities should be carried out exclusively within the framework of the law. |
| 2. The courts are hierarchically independent of each other, i.e., the independence of each court is functional. | 2. The prosecutor's office is a hierarchical body, meaning that lower-level bodies are subordinate to higher-level ones. |

Source: compiled by the author of this study

The activities of the prosecutor's office and the courts are designed to administer justice and restore fairness in the legal systems of countries around the world. With the growing number of transnational crimes, compliance with international standards of justice is becoming even more significant. Since the principle of independence of law enforcement and judicial authorities is one of the key guarantees of effective and fair trial, governments of all states and supranational institutions are developing mechanisms to ensure this principle in criminal proceedings. Notably, the independence of judges and prosecutors is interdependent, as the independence of prosecutors is a consequence of the independence of the judiciary as a whole (Gersdorf and Pilich, 2020). The international standards for ensuring the principle of independence of judicial actors, which have emerged as a result of the positive experience of various states, are a guideline for the professional activities of judges and prosecutors, and all democratic states shall be obliged to implement these recommendations in a certain way (Aung, 2022).

Ukraine is no exception, and therefore work is constantly underway to develop legal safeguards to ensure the independence of the judiciary and the prosecutor's office. Today, there are many documents that regulate the legal status of litigants and the rules of their ethical behaviour. However, in practice, the implementation of the principle of independence is an extremely difficult task, especially in the context of martial law and the economic crisis in Ukraine. For the effective implementation of the principle of independence, legal consolidation alone is insufficient; effective mechanisms and guarantees that will ensure this principle in practice are also needed. In Ukraine, apart from constitutional and legislative regulation, the independence of judges is ensured by the activities of

certain state authorities. The Constitution of Ukraine vests the authority to ensure the independence of judges in the High Council of Justice. Article 3 of the Law of Ukraine “On the High Council of Justice” defines the powers of this body, which include taking measures to ensure the authority of justice and independence of the judiciary. The Council of Judges of Ukraine, which organises and carries out measures to ensure judicial independence, and the State Judicial Administration of Ukraine, which is responsible for organisational support of the judiciary, also take part in ensuring judicial independence. The specific features of the implementation of the principle of judicial independence include certain problematic aspects that are typical for Ukraine today. Specifically, in some cases, there may be violations of constitutional guarantees of judicial proceedings, as in recent years there has been a situation of considerable underfunding of the judiciary. The conditions of martial law do not allow for the full financial support of court employees and their organisational activities.

The specific features of the legal status of prosecutors and the specifics of their independence are that in Ukraine the prosecutor’s office does not belong to any of the branches of power, and therefore it should not be subject to pressure from any state authorities. However, in practice, pressure on prosecutors is still quite common. For this, certain legislative loopholes are used, which allow the use of legal mechanisms of indirect influence on the activities of prosecutors. For instance, the mechanism for submitting complaints in criminal proceedings by Members of Parliament of Ukraine. Due to the absence of a direct prohibition on interference by the latter in the work of the prosecutor’s office, there is a possibility of pressure from the deputy corps. Furthermore, there is a downward trend in the level of requirements for the position of prosecutor. Reducing the qualification requirements, on the one hand, will allow young and motivated professionals to enter the profession, but on the other hand, it will put at risk the qualifications and professionalism of candidates that are critically important for the prosecution. Similarly to the judiciary, the funding and organisational support of the prosecutor’s office is not a priority under martial law, which greatly affects the independence and impartiality of prosecutors in the course of their professional activities.

Therefore, in practice, the implementation of the principle of independence of judges and prosecutors is a much more complicated process than the approval of documents that are declarative in nature. The content of independence is complex, multi-level and includes many aspects of the professional activity of prosecutors and judges, ranging from the selection procedure to social guarantees. In this regard, governments of all countries are constantly working to improve the

legal mechanism for the implementation of the independence of the judiciary and law enforcement agencies based on universally recognised established principles.

Discussion

Legal scientists from different countries have been investigating the issues of implementing the principle of independence of participants in criminal proceedings both at the level of international standards and at the national level of each state. B.C. Smith (2022) devoted his book to the issue of judicial independence and the importance of this principle for democratic states. The researcher is convinced that any democracy cannot exist without the rule of law, an integral part of which is the independence of the court and judges from any interference. The author believes that there is a tendency of increasing authoritarianism in the new democracies of Eastern Europe, Latin America, Asia, and Africa, resulting in a certain imbalance between the judiciary and the rights of citizens, which are provided by post-authoritarian constitutions. Therefore, sharing the author's opinion, it is worth noting that a critically important task in creating a mechanism for implementing the independence of the judiciary is to balance the issue of accountability of the judiciary and its unconditional independence.

M. Ovádek (2023) thoroughly investigates the issue of landmark judgments in the European Union on the independence of the judiciary. The author analyses the 2018 judgment of the European Court of Justice, which was based on the decision of Portuguese judges. Ovádek notes that the European Union has recently been experiencing a crisis of the rule of law, and the European Court of Justice has made a lot of efforts to address this issue. Sharing the author's views, the unique features of the European Court's judgment can be highlighted, which was based on a very minor national case in Portugal.

The Polish researchers M. Krajewski and M. Ziółkowski (2020) analysed concrete judgments of the European Court of Justice, which were used to test the independence of Polish court decisions, their compliance with democratic standards and generally accepted principles of justice. The researchers examine some aspects of the judicial system that call into question the independence of participants in the judicial process and concrete signs of violation of the rule of law in decision-making. Specifically, the authors conclude that the judicial system in Poland is in a destabilised state, and this is due to the fact that the powers of judges appointed before and after the judicial reform differ significantly. Judges who were elected after 2018 have a considerable personal interest in retaining their positions. Agreeing with the authors, it should be noted that the difference in powers greatly affects the independence and impartiality of the court.

The book by the French author F. van Dijk (2021) analyses the perception of the judiciary in Europe. The author tries to answer the question whether judges and citizens perceive independence in the same way, whether judges have a sense that their independence is respected, and whether the level of trust in judges is higher than in other state institutions. Like previous researchers, the author points to the fact that in some European countries there is a decline in democracy and significant pressure on the judiciary, specifically in Poland and Hungary. Using sociological surveys, the study found that the level of trust in judicial institutions in the European Union is not very high. The author also emphasises that Poland and Hungary are examples of countries that have managed to radically change the judicial system to restore the principle of independence and impartiality.

German scholars J. Gutmann and S. Voigt (2020) also investigate the analysis of the principle of judicial independence in the European Union. Based on the performance indicators of justice in the EU, the authors conclude that proper legislative regulation is not always the key factor in strengthening the authority of the court among the population. It is worth agreeing with the opinion of researcher that the level of independence of the judiciary is greatly influenced by the cultural characteristics of the development of states. In other words, in countries with a higher level of general trust, there is a considerably higher level of judicial independence. Therefore, sharing the authors' views, it can be argued that reforms that should be unquestionably effective do not always show such a positive effect.

R. Spano (2021) examines the rule of law as a fundamental constitutional principle and as the basis for the activities of the European Court of Human Rights. The author points out that recently the normative impact of this principle has been significantly strengthened in the case law of the European Court of Justice, especially in those cases relating to the independence of judges. Based on the findings of this study, it can be concluded that the rule of law is a fundamental component of the European public order, and the independence of the judiciary is a key component of the rule of law.

M. Pajčić (2020) examines the legal regulation of the activities of the European Public Prosecutor's Office, which is called upon to prosecute crimes in the field of financial interests of the European Union. Analysing the adoption of the EU Regulation on the establishment of the Public Prosecutor's Office, the author raises the issue of independence of this body from any pressure from national or supranational institutions. The study points out that legal regulation of the independence of the European Public Prosecutor's Office is a complex and delicate task, given the considerable differences in the legal regulation of each state and the fact that European prosecutors are active members of national

prosecutor's offices or judicial authorities. While one can agree with the author that the institution of the European Public Prosecutor's Office is a major contribution to the development of European criminal law, this model of prosecution leaves the risks of pressure from national governments.

German author A. Seibert-Fohr (2021) investigates such principles of judicial activity as freedom of expression and independence and correlates them. It is worth agreeing with the author's opinion that today judges are expected to be much more public and in most cases the public expects explanations of court decisions. However, such public expression of personal views may pose certain risks to the impartiality of the judge and the authority of the judiciary in general. Therefore, the big question is how to balance the principle of freedom of opinion and judicial independence.

K. Lenaerts (2019) addresses the issue of fair national and transnational justice. The author notes that achievement of justice is the main purpose of judicial proceedings, and the principle of independence of the judiciary is one of the foundations on which the judicial system is based. While agreeing with the author's conclusions, it is worth noting that it is the independence of the judiciary and other participants in the judicial process aimed at achieving justice that is the true purpose and means of the activities of various public authorities.

Having reviewed the scientific studies of authors from different countries, it is worth noting that the issue of independence of participants in the criminal process, specifically judges and prosecutors, is still relevant throughout the world. The problem of ensuring the independence of the judiciary and prosecution has been investigated in many articles, publications, and even textbooks, and the issue has been studied from the legal standpoint as well as from the moral and ethical perspective. After all, as many authors agree, the issue of independence and impartiality of prosecutors and judges is complex and includes many factors and conditions. What this study has in common with the works of other authors is that it also analyses the implementation of the principle of independence of the judiciary and prosecution at the national level, examines the main standards that have been developed in international practice, and are generally accepted by all democratic states. The study analysed the general international practices of implementing this principle in practice and examines the main risks associated with the professional activities of judges and prosecutors. Notably, the majority of studies address the issue of independence of the judiciary, while the independence of the prosecution service has been studied much less. The legal status of judges and guarantees of their activities should be more fully and thoroughly prescribed in law and theoretically defined. Only in recent years, scholars from different countries have started addressing the issue of ensuring the independence of

prosecutors in criminal proceedings as self-sufficient and autonomous participants in the proceedings. Unlike other studies, this paper combines the investigation of the independence of both the judiciary and the prosecution, thus emphasising the significance of ensuring the basic principles of criminal justice for impartial and effective decision-making.

Conclusions

The study found that to implement the rule of law, there are many international documents that establish the principles of the judiciary and law enforcement agencies. These standards reflect international legal practices and are the result of the evolution of the court and prosecution service in all developed democratic states. Since both judges and prosecutors, as key players in the judicial process, may be subject to unlawful influence from other persons or bodies, standards of independence are binding on all states. Scholars distinguish between different types of influence and different types of independence, as well as certain characteristics of each of the participants in the judicial process. Implementation of independence and impartiality in practice is an extremely complex process, as it covers all aspects of the professional life of judges and prosecutors. Notably, proper legal regulation is not the only factor in ensuring the principle of independence in real life. The moral and ethical characteristics of an individual judge or prosecutor exercising their powers in a concrete criminal proceeding also play an essential role.

In Ukraine, due to the rapid process of European integration, most international standards of independence of judicial actors have been reflected in national regulations. In addition, the existence of specialised bodies mandated to ensure the independence of judges, such as the High Council of Justice, the Council of Judges of Ukraine, the Council of Prosecutors of Ukraine, which promotes the independence of prosecutors, and the State Judicial Administration, guarantees that fundamental principles in the administration of justice are upheld. However, in practice, there are many problematic aspects that impede the full and guaranteed implementation of this principle in the work of judges and prosecutors. These include inadequate funding of salaries and organisational activities of court and prosecution staff, legal gaps in the regulation of the status and activities of judicial and prosecutorial self-government bodies, as well as the procedure for selection and resignation.

Therefore, the prospect of further research is to investigate the problematic aspects of implementation of international standards of independence of judges and prosecutors in the modern Ukrainian context.

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