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CURRENT DIRECTIONS FOR THE IMPROVEMENT OF PROSECUTORIAL ACTIVITIES IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to identify directions for the improvement of prosecutorial activities. ***Results***. It is determined that the very concept of prosecutors' liability embodied in the new law needs to be improved. It seems that the regulatory mechanism for only disciplinary liability of prosecutors at the level of the basic law calls into question the existence of legal grounds for bringing prosecutors to other types of legal liability. Therefore, we believe that it is necessary to provide for a general section on «Prosecutors' Liability» and to state that they bear criminal, administrative, civil, disciplinary and material liability. In terms of exercising supervisory powers over persons held in places of apprehension, prosecutors have the authority to supervise the execution of court decisions in criminal proceedings, as well as the application of other coercive measures related to the restriction of personal liberty of citizens. To increase the effectiveness of supervision, the law should clearly define the grounds for the prosecutor to submit certain acts of prosecutorial response to identified violations of the law in penal institutions. ***Conclusions***. It is concluded that liability of prosecutors should be optimised by structuring it in the relevant section of the basic law and creating a legal framework for delineating all types of liability imposed on prosecutors by virtue of the provisions of the new law. Moreover, it is important to bring substantive laws establishing specific corpus delicti into line with the updated legislation governing prosecutorial activities. The key role of the prosecutor's office in the process of ensuring fundamental human and civil rights, the need to determine a gradual strategy of transition to a separate, independent prosecutor's office with interests in ensuring guarantees of equal and objective treatment of everyone who seeks protection from the prosecutor through the directions for improving the prosecutorial activities. Since prosecutorial activities are the type of governmental activities, we believe that it is necessary to define key criteria for interaction between civil society, the state and the prosecutor's office on a partnership basis.

Key words: function, coordination, law enforcement bodies, regulatory framework, public relations.

1. Introduction

The system of prosecution bodies is dynamic, constantly transforming, improving and requiring changes in its regulatory and legal support. Prosecutorial activities are regulated by Law of Ukraine No. 1697-VII «On the Prosecutor's Office» of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014), other laws, international treaties and agreements, orders of the Prosecutor General of Ukraine, etc. The issue of reforming the criminal justice system, prosecution authorities and prosecutorial activities, improving the current legislation on prosecution, improving law enforcement and other important issues has been discussed in academic circles for a long time, and moreover, the national legislator is actively working on drafting legislation in these areas. Therefore, the search for ways to improve the functioning of the prosecutor's office is carried out simultaneously by a large number of actors, since today, obviously, the legislation on the prosecutor's office is not perfect.

2. Justification for the need to reform the prosecution service

Analysing the concept of «direction», we note that this concept has a rather large number of different interpretations. For example, in one of the dictionaries of the Ukrainian language, this concept finds its three-dimensional understanding: 1) a line of movement or a line of location of someone or something; 2) the way of activities, development of someone, something; the focus of an action, phenomenon; 3) the focus of thoughts, interests (Order of the Prosecutor General of Ukraine on approval of the Regulations on the procedure of internship in the prosecutor's office of Ukraine, 2009). Instead, the term «improve» means to make something/someone more per-

fect, better (Bilodida & Buriachok, 1979). According to Ye.V. Pohorielov, improvement of the regulatory mechanism is the activities of the competent state authorities to maintain the quality of the legal framework (quality of its content and form) in accordance with the needs of development of social relations, aimed at ensuring the effectiveness of regulatory mechanism (Pohorielov, 2007). The comprehensive analysis of these concepts enables to state that the regulatory mechanism for prosecutorial activities in Ukraine requires significant reformatting with the use of the content and essence of the basic concepts. Since the features of the direction for improving the regulatory mechanism are the presence of a clear goal, legal security, certainty of the latest approach to the regulatory mechanism, and deepening trends towards updating the legal framework, the analysis of the above positions, allowing for their essential characteristics, enables to define the direction of improving the functioning of the prosecutor's office as a way of developing the regulatory mechanism for the prosecutor's office aimed at achieving the results of transition to an optimised organisational, legal and functional structural features of the prosecutor's office.

Relying on the analysis of the essential characteristics of the basic concept, we believe that it is necessary to consider the system of areas for improvement of legislation in a holistic manner, considering the features identified above:

1. Establishment of legal mechanisms to implement general supervision in certain specific areas, along with its general abolition (amendments to the Law of Ukraine «On the Prosecutor's Office» to extend general supervision to the area of access to public information, citizens' appeals, protection of state secrets, etc.);

2. Improvement of the procedure for selection, appointment, promotion and transfer of prosecutors, as well as improvement of the procedure for their disciplinary liability (defining the criteria of «moral and business qualities», differentiating between types of liability);

3. Establishment of public control over prosecutorial activities (defining in the Section «State and public control over prosecutorial activities» of the Law of Ukraine «On the Prosecutor's Office» the powers of the territorial community to express no confidence in the prosecutor of the appropriate level);

4. Improvement of the powers of the prosecutor within the scope of pre-trial investigation;

5. Modernisation of the functions of the prosecutor's office in line with the needs of civil society, including: a) the organisational structure of the system of prosecutor's offices of different levels regulated by the legislation of; b) improvement of the prosecutor's human rights function; c) improvement of the judicial and representative function; d) improvement of supervisory functions; e) improvement of the public prosecution function; f) improvement of coordination and other functions.

6. Establishment of new requirements for prosecutors to be held legally liable for offences.

According to L.R. Hrytsaienko, the elimination of the supervisory function of the prosecutor's office deprives it of supervision not only over the implementation of laws, but also over the observance of human and civil rights and freedoms, thus creating an obstacle to Ukraine's transformation into a legal State (Hrytsaienko, 2009). Moreover, S. Kholmes argues that liberal democratic freedoms cannot be achieved by simply reducing the powers of the prosecutor's office. In all Western European countries, the goal of reforming the prosecutor's office is to transfer its powers to other bodies, including pre-trial investigation bodies, courts and ombudsmen. However, changes in criminal procedure legislation alone will not automatically entail corresponding changes in the way of thinking, expectations or professional skills. If an individual finds himself or herself in a situation where his or her rights are illegally violated by an official, he or she will be forced to go to the prosecutor's office rather than to court. The main reason may be the fact that the first way is not formally associated with financial costs, while the second way involves the participation of a lawyer, and therefore entails costs» (Kholms, 2009). Therefore, when applying to the prosecutor, a person does not need to hire a representative or another attorney, as these functions are performed by the prosecutor. However, when applying to the court, a person shall pay a court fee and, of course, the best way out is to choose a trained lawyer to represent his/her interests.

According to M.I. Mychko, at the stages of pre-trial investigation, the prosecutor acts in two ways: on the one hand, he is a guardian of law and order, and on the other hand, he is a body for the criminal prosecution of persons who have committed crimes (Mychko, 2002).

It should be noted that there are no grounds or provisions in the constitutional and legal norms that would make it impossible for prosecutors to conduct pre-trial investigations. In this regard, it is difficult to agree that the investigation of criminal proceedings by the prosecutor is unconstitutional, as this would call into question the essence of prosecutorial supervision in general. Moreover, the national doctrine has repeatedly determined that from the perspective of prosecutorial supervision law,

the prosecutor's authority to personally investigate criminal proceedings is the highest form of prosecutorial supervision over the observance of laws within the pre-trial investigation (Mychko, 2002).

Another direction for improving the regulatory mechanism for the functioning of the prosecutor's office is the modernisation of the functions of the prosecutor's office allowing for the needs of civil society. The *Dictionary of foreign words* defines «modernisation» as derived from the French word «modernisation» (updating) with the meaning: 1) a general name for trends that are characterised by the rejection of traditional forms, the search for new principles, and a break with realism; 2) updating, improving, giving a more modern look, processing in accordance with modern requirements; 3) transferring modern concepts, terminology, etc. to the concepts of the past (Morozov and Shkaraputa, 2000).

O.V. Muza argues that it is required to provide for a direction of modernisation of the management work of law enforcement bodies such as the regulatory framework for the organisational structure of the system of prosecutor's offices of different levels in Ukraine (Muza, 2011). In addition, O.F. Yefremov emphasises that prosecutorial supervision as a special type of state power in Ukraine should be strengthened in the current conditions, and first of all, in the direction of protection of human and civil rights and freedoms (Yefremov, 2007).

In connection with the reorientation of the prosecutor's office from a pre-trial investigation body to the exercise of procedural control, it should be noted that the implementation of the prosecutor's human rights function needs to be improved in this regard. In particular, Part 5 of Article 208 of the Criminal Procedure Code of Ukraine (2012) provides that the prosecutor shall be notified in case of apprehension of a person on suspicion of committing a crime. This implies that the prosecutor does not have to be notified of the facts of apprehension of a person for criminal misdemeanours. In this context, E.F. Iskenderov argues that the textual interpretation of Part 5 of Article 208 of the CPC of Ukraine enables to conclude that the requirement to serve the apprehension report immediately applies only to the person himself, and the prosecutor is stated to be «sent» the report. Therefore, there should be a legislative requirement to immediately notify the prosecutor of the apprehension of a person on suspicion of committing a criminal offence (Iskenderov, 2013). The fact that the prosecutor is not mentioned among the persons who should be immediately notified of a person being apprehended on suspicion of committing a criminal offence is generally illogical, since the prosecutor shall prove the need to apply measures to ensure criminal proceedings, one of which is apprehension, and he/she also personally applies to the court for permission to apprehend a person suspected or accused of committing a criminal offence, for the purpose of bringing him/her to participate in the consideration of a motion for a preventive measure in the form of apprehension, or approves the submission of such a motion by the investigator or applies to the court for the application of a preventive measure to the person, apprehended without a warrant for apprehension on suspicion of a criminal offence or approves the submission of such a request by the investigator.

In this respect, the prosecutor also has certain powers that should be distributed in the human rights field (the prosecutor's duty to take measures to assist a person in contacting a defence counsel) (Criminal Procedure Code of Ukraine, 2012).

Regarding the redistribution of the functional purpose of the prosecutor's powers, Kovalova argues that the current Criminal Procedure Code of Ukraine should provide for the duty of the prosecutor participating in the trial and supporting the prosecution to respond to violations of the law committed by the participants in the process during the trial (Kovalova, 2009). We advocate this proposal and support the expansion of the procedural powers of the prosecutor in court proceedings with the indication of the grounds for exercising his/her powers in the trial.

3. Regulatory and legal framework for the powers of the Prosecutor's Office of Ukraine

E.F. Iskenderov suggests that it is advisable to introduce a special instruction of the Prosecutor General on the procedure for registration of applications and reports of criminal offences in case of emergency situations, in particular, due to man-made or natural causes that do not allow using the Unified Register of Pre-trial Investigations (Iskenderov, 2013). Furthermore, we advocate this opinion and, relying on the above analysis, argue that the procedure for maintaining public prosecution should be well analysed, thought out, and significantly improved in view of the needs to ensure human and civil rights and freedoms within criminal proceedings. It should also be noted that when assisting the court in fulfilling the requirements of the law on comprehensive, full, objective and fair (impartial) trial, the prosecutor shall provide a proper legal assessment of both the circumstances that incriminate and exonerate the participant in the trial. It should be borne in mind that the prosecutor's exercise

of human rights powers continues at the stage of appeal and cassation proceedings.

The exercise of supervisory powers by the prosecutor's office is also quite important and requires modernisation in other fields. For example, the function of control and supervision implies the exercise of administrative supervision over persons released from prison by law enforcement bodies, on the basis of the current legislation, and the exercise of other control and supervision powers (Dikhtiievskyi, 2009). In terms of exercising supervisory powers over persons held in places of apprehension, prosecutors have the authority to supervise the execution of court decisions in criminal proceedings, as well as the application of other coercive measures related to the restriction of personal liberty of citizens. To increase the effectiveness of supervision, the law should clearly define the grounds for the prosecutor to submit certain acts of prosecutorial response to identified violations of the law in penal institutions.

In this context, the internal affairs bodies do not comply with the requirements of the European Committee against torture, expressed during the last visit of the delegation in October 2014, to immediately end the illegal and long-term detention of apprehended and arrested persons in the institutions of the internal affairs bodies, which may result in the application of Article 10(2) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to Ukraine in the form of a public statement on the matter.

The unsatisfactory state of compliance with the laws on the involvement of convicts in work in penitentiary institutions, which makes it impossible for them to compensate for damages and pay alimony, significantly violates the rights of convicts and the interests of the state. Therefore, it is necessary to expand the powers of prosecutors in exercising the function of supervision over the observance of laws in the enforcement of court decisions in criminal proceedings, as well as in the application of other coercive measures. According to Ye.M. Popovych, the prosecutor's office may be able to increase the effectiveness of this function by vesting it with the following powers: to demand explanations for the violations committed from officials of bodies, penal and other institutions that enforce court decisions in criminal proceedings, as well as to conduct inspections; to immediately stop the unlawful use of special means (straitjackets, handcuffs, etc.) on persons held in places of detention; to take measures to bring to justice those who have violated the law (Popovych, 2009). In support of this position, we argue that the following amendments to Law of Ukraine No. 1697-VII «On the Prosecutor's Office» of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) are required due to the increase in the effectiveness of prosecutorial supervision in the area under study and will more reliably ensure compliance with the procedure and conditions of detention and serving of sentences by persons in these institutions, their rights and performance of their duties.

Considering the modernisation of the function of coordination of law enforcement bodies, we argue that there is currently a problem of determining the list of bodies covered by the coordination function of the prosecutor's office. This list is open-ended, as it applies to «all other bodies performing law enforcement functions». Moreover, the provision on the inclusion of fishery protection bodies and control and audit service bodies in this list deserves justified criticism, since for them the performance of law enforcement functions is not the main activity. In addition to the theoretical importance, this problem is also of considerable practical one, since the list of bodies covered by the coordination function of the prosecutor's office needs to be improved. We believe it is necessary to provide for a closed list of such bodies and define their clear functional focus. For such bodies, the performance of the law enforcement function should be a priority.

In our opinion, the next direction of improvement of the functioning of the prosecutor's office is the establishment of new requirements for bringing prosecutors to legal liability for offences. It should be noted that liability as a social category is the most important measure ensuring the normal functioning of social relations.

It should be noted that according to Section VI of the new basic law, the disciplinary liability of prosecutors is already regulated by law, not by the Disciplinary Statute, which is a positive novelty. However, the title of Section VII of this law «Dismissal of a prosecutor from office», termination, suspension of his powers in office is illogical. It is well known that dismissal is one of the measures of disciplinary sanction. It is not clear why the law distinguishes between these concepts.

Furthermore, the very concept of prosecutorial liability embodied in the new law is rather ambiguous and requires improvement. It seems that the regulatory mechanism for only disciplinary liability of prosecutors at the level of the basic law calls into question the existence of legal grounds for bringing prosecutors to other types of legal liability. Therefore, we believe that it is necessary to provide for a general section on «Prosecutors' Liability» and to state that they bear criminal, administrative,

civil, disciplinary and material liability.

In addition, it is problematic that the Code of Ukraine on Administrative Offences currently defines the offence in Part 2 of Article 15 as follows: «Liability of military men and other persons subject to disciplinary statutes for committing administrative offences» (Code of Ukraine on Administrative Offences, 1984). The sanctions of this article provide for enhanced liability for such persons. Previously, before the adoption of the basic law, liability of prosecutors was covered by Article 15(2) of the Code of Administrative Offences. However, this article now needs to be clarified, as liability of prosecutors is currently regulated by law. Moreover, the issue of the correlation between disciplinary and administrative liability will be difficult in this case. The grounds for distinguishing between the criteria for bringing prosecutors to each type of liability should be defined at the level of the basic law.

In our opinion, the new provisions of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) are aimed at strengthening official discipline and substantial democratisation of relations between employees in the prosecutor's office. The latter is particularly important in terms of reforming and improving the functioning of the prosecution service, as it covers important procedural aspects. All of this calls for the establishment of strong legal guarantees of immunity of prosecutors from unreasonable and unfair disciplinary proceedings. According to Recommendation No. 19 (2000) of the Committee of Ministers to the members of the Council of Europe: «States should take effective measures to ensure that disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review» (Recommendation No. 19 (2000) of the Committee of the Council of Ministers to the member states of the Council of Europe regarding the role of the public prosecutor's office in the criminal justice system: adopted by the Committee of Ministers of the Council of Europe, 2000). Relying on the analysis of the content of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014, it should be noted that according to Article 20 of this legal act, «damage caused by unlawful decisions, actions or inaction of the prosecutor shall be compensated by the state regardless of his/her guilt in the manner prescribed by law» (Law of Ukraine On the Prosecutor's Office, 2014). However, the Law does not specify what this liability may be, except for the section on disciplinary liability. In practice, prosecutors may be subject to other types of legal liability. For example, as can be understood from the provisions of Law of Ukraine No. 266/94-VR «On the Procedure for compensation for damage caused to a citizen by illegal actions of bodies carrying out operational-investigative activities, pretrial investigation bodies, the prosecutor's office, and the court» of 01 December 1994 and Article 20(2) of Law of Ukraine No. 1697-VII "On the Prosecutor's Office" of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014), prosecutors may be held financially liable. Thus, the state compensates for the damage caused by the prosecutor in the course of his/her official activities, but the state has the right to claim back the compensation paid to him/her. It is also clear that prosecutors can be held criminally and administratively liable. According to the Note to Article 364 of the Criminal Code of Ukraine (2001), prosecutors are officials within the meaning of this code, and therefore they are subject to all articles of this legal regulation on criminal liability of officials. In addition, prosecutors can be held administratively liable.

4. Conclusions.

Therefore, we believe that liability of prosecutors should be optimised by structuring it in the relevant section of the basic law and creating a legal framework for delineating all types of liability imposed on prosecutors by virtue of the provisions of the new law.

Moreover, it is important to bring substantive laws establishing specific corpus delicti into line with the updated legislation governing prosecutorial activities.

Thus, the key role of the prosecutor's office in the process of ensuring fundamental human and civil rights, the need to determine a gradual strategy of transition to a separate, independent prosecutor's office with interests in ensuring guarantees of equal and objective treatment of everyone who seeks protection from the prosecutor through the directions for improving the prosecutorial activities. Since prosecutorial activities are the type of governmental activities, we believe that it is necessary to define key criteria for interation between civil society, the state and the prosecutor's office on a partnership basis.

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АКТУАЛЬНІ НАПРЯМИ ВДОСКОНАЛЕННЯ ФУНКЦІОНУВАННЯ ПРОКУРОРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Анотація. ***Мета.*** Метою статті є визначення напрямів удосконалення функціонування прокурорської діяльності. ***Результати.*** Визначено, що потребує удосконалення сама концепція відповідальності прокурорських працівників, що втілена у новому законі. Видається, що правове регулювання лише дисциплінарної відповідальності прокурорів на рівні базового закону ставить під сумнів наявність правових підстав для притягнення прокурорів до інших видів юридичної відповідальності. Тому вважаємо, що необхідно передбачити загальний розділ «Відповідальність прокурорів» і зазначити, що вони несуть кримінальну, адміністративну, цивільну, дисциплінарну та матеріальну відповідальність. У частині здійснення наглядових повноважень за особами, що перебувають у місцях позбавлення волі, у прокурорів наявні повноваження щодо нагляду за виконанням судових рішень у кримінальних провадженнях, а також під час застосування інших заходів примусового характеру, пов'язаних з обмеженням особистої свободи громадян. Для підвищення ефективності нагляду необхідно в законі чітко сформулювати підстави для внесення прокурором окремих актів прокурорського реагування за виявленими порушеннями закону в установах кримінально-виконавчої системи. ***Висновки.*** Зроблено висновок, що відповідальність прокурорів підлягає оптимізації шляхом структурування її у відповідний розділ базового закону та створення правових засад для розмежування всіх видів відповідальності, що покладається на прокурорських працівників у силу положень нового закону. Також важливо привести у відповідність акти матеріального права, що встановлюють конкретні склади правопорушень у зв'язку з оновленням законодавства, що регулює прокурорську діяльність. Ключова роль прокуратури полягає у забезпеченні основоположних прав людини і громадянина, необхідності через напрями вдосконалення функціонування прокурорської діяльності визначити поступову стратегію переходу до відокремленої, самостійної, незалежної прокуратури з інтересами щодо забезпечення гарантій однакового й об'єктивного ставлення до кожного, хто звернеться за захистом до прокурора. Оскільки прокурорська діяльність є одним із різновидів владної діяльності, на нашу думку, необхідно визначити ключові критерії взаємодії громадянського суспільства, держави і прокуратури на партнерських засадах.

Ключові слова: функція, координація, правоохоронні органи, правове регулювання, суспільні відносини.

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