UDC 343.1
DOI https://doi.org/10.32849/2663-5313/2023.4.13

Oleksandra Strunevych,
Doctor of Law, Senior Researcher, Scientific Institute of Public Law, 2a, H. Kirpa street, Kyiv, Ukraine, postal code 03055, strunevych_oleksandra@gmail.com
ORCID: *orcid.org/0000-0002-2359-103X*

Strunevych, Oleksandra (2023). Positive foreign experience of the prosecutor's office and ways to adopt it for Ukraine. *Entrepreneurship, Economy and Law, 4*, 82–89, doi https://doi.org/10.32849/2663-5313/2023.4.13

POSITIVE FOREIGN EXPERIENCE OF THE PROSECUTOR'S OFFICE AND WAYS TO ADOPT IT FOR UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to analyse the foreign experience of the prosecutor's office and determine the areas for its implementation in Ukraine. ***Results.*** It is determined that there are many achievements in the US legal system which could be used as a basis for borrowing the positive foreign experience, such as: 1) development of prosecutorial self-government through the creation of prosecutors' associations of the same level in Ukraine; 2) prosecutors' ability to provide legal advice to other state bodies in Ukraine; 3) possibility to relate the concept of "moral and business qualities" in Ukrainian legislation to such "recommendations" from legal practitioners, which would be a condition for the selection of candidates for the positions of prosecutors; 4) so-called "solicitors" or "legal advisers" provided for among court consultants; 5) prosecutors' ability to formally practice law, except in cases of representation in certain categories of cases, including criminal cases. ***Conclusions***. It is concluded that borrowing positive foreign experience of the prosecutor's office is a quite appropriate way to improve the legislation on the prosecutor's office of Ukraine. It should be borne in mind that when drafting new legislation, the domestic legislator often refers to the legislation of foreign countries to study foreign experience and reproduce it in national legislation. Moreover, it is important to note that the Basic Law established Ukraine's course towards European integration, and as a result, since the proclamation of this course, new legal regulations have been undergoing the process of adaptation to European standards. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator. Moreover, the study reveals that the prosecutor's office in each of the countries being analysed has its own specificities, which could be adopted by the Ukrainian legislator, including changing approaches to the position of the Prosecutor General, ensuring the election of prosecutors and giving prosecutors additional functions and powers, expanding the functions of the Prosecutor General's Office of Ukraine, including giving it the right to legislative initiative, etc. All these, in our opinion, could solve the problems and shortcomings of the current legal regulation of prosecutorial activities in Ukraine being analysed above in this paper.

Key words: Prosecutor General, position, experience, legal regulation, electoral legislation of Ukraine.

1. Introduction

In the context of improving the work of the prosecutor's office, it is of particular interest to study the experience of organisation and activities of prosecutor's offices and other bodies performing similar functions in the EU member states and other countries, where the organisation of prosecutor's offices is a model for countries that develop like Ukraine. Improvement of certain processes and phenomena in society is impossible without comparing the legal principles of interaction between different legal systems and the results of their development. The experience of foreign countries is always perceived as a certain model for borrowing, since the historical specificities of the formation and development of a particular state contributed to its transition to a qualitatively different level of the regulatory framework. It should be noted that the level of democracy is measured not by the most progressive provisions embodied in legislation, but by the most realistic law enforcement, which guarantees the protection of human and civil rights in case of appeal to the court.

The literature review reveals that frequently domestic researchers see further improvement of prosecutorial activities in Ukraine in bor-

rowing foreign experience of the prosecution service, because, according to the experience of recent decades, a large number of novelties of the legislation on the prosecutor's office have been introduced with due regard to the models of the prosecutor's office functioning in foreign countries. That is why the issue of positive foreign experience of the prosecutor's office and ways to adopt it for Ukraine is relevant for our study.

The scientific and theoretical basis of the foreign experience of prosecutorial activities requires an updated substantive analysis, allowing for the adoption of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) and the update of criminal procedure legislation. Moreover, the creation of an appropriate legal framework for interaction between prosecutors and other public authorities in the context of using foreign experience will have a significant impact on Ukraine's compliance with its international obligations in terms of reforming the prosecution service.

2. US Attorney's Office

Describing the Anglo-Saxon system of prosecution, it should be noted that in the United States, the prosecutorial functions are performed by the Attorney General's Office. The U.S. Attorney General is appointed by the President of the United States "by and with the advice and consent of" the Senate, the upper house of the U.S. Congress, as provided for in Article 2 of the U.S. Constitution (Maklakov, 1997) (the same procedure is embodied in the Ukrainian Law "On the Prosecutor's Office"). According to L.R. Hrytsaienko, the Attorney General's Office performs both its own prosecutorial functions and the functions of the Ministry of Internal Affairs, counterintelligence, criminal investigation and prison department. The US Attorney General is directly subordinated to the Federal Bureau of Investigation. The Attorney General is also responsible for representing the interests of the US government in the US Supreme Court and other courts, including abroad (Hrytsaienko, 2013). The US attorney service is not characterised by strict centralisation and subordination. Local attorneys general are not subordinate to the State Attorney General, and the latter is also not subordinate to the US Attorney General (elected by the local population for a term of 4 years). However, the federal attorneys' service is centralised. The attorneys that are part of the federal service are subordinate to the US Attorney General but have autonomy in making and implementing many decisions (Khmelevskyi, 2013). Therefore, we can state that the federal level of the US attorney service is characterised by clear subordination, while the regional level is characterised by coordination. We believe that this is a feature of the US federal system and, since Ukraine is a unitary state, such proposal would not be appropriate.

At the level of relations between States, the activities of the attorneys' service are coordinated by the National Association of District Attorneys (NADA) in order to achieve the maximum level of cooperation (the development of prosecutorial self-government was not typical for Ukraine for a long time). The National Association of Attorneys General (NAAG) brings together state attorneys general and the US Attorney General. They hold annual conferences, organise committee meetings on various aspects of law enforcement, publish bulletins, a journal, a kind of methodological guidelines "National Prosecution Standards", etc. (Sukhonos, 2011). We believe that the development of prosecutorial self-government should be reflected in the Ukrainian legal system. The relevant provisions are already part of the national legislation, in particular, Section VIII of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) regulates the issue of prosecutorial self-government. The highest body of prosecutorial self-government is the All-Ukrainian Conference of Prosecutors, which is empowered to appoint members of the Council of Prosecutors of Ukraine (the body that conducts disciplinary proceedings against prosecutors); approve the Code of Professional Ethics and Conduct of Prosecutors and the Regulation on the Council of Prosecutors of Ukraine; adopt the Regulations on the Procedure of the Council of Prosecutors of Ukraine; address public authorities and their officials with proposals on solving issues of the prosecution service; consider other issues of prosecutorial self-government. However, similar to the American one, it would be worthwhile to establish a Ukrainian National Association of Prosecutors as an analogue of the National Association of Attorneys General. It should be borne in mind that the regular all-Ukrainian conference of prosecutors is convened by the Council of Prosecutors of Ukraine once every two years, while the National Association of Attorneys General is a permanent self-governing body. The association conferences are convened once a year, but the rest of the time the associations carry out activities aimed at protecting the rights and interests of prosecutors. In its turn, the all-Ukrainian conference of prosecutors is convened quite rarely, or only when necessary. That is why, in our opinion, it would be advisable to cre-

ate a National Association of Prosecutors in Ukraine as a permanent supreme body of prosecutorial self-government, which would have much broader powers than the All-Ukrainian Conference of Prosecutors.

To this end, we propose the following amendments to the current legislation:

A. Amend Article 67 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) and to formulate its content as follows:

"Article 67. National Association of Prosecutors.

1. The highest body of prosecutorial self-government is the National Association of Prosecutors.

The National Association of Prosecutors is a permanent body of prosecutorial self-government.

2. The National Association of Prosecutors:

1) holds all-Ukrainian conferences of prosecutors;

2) organises meetings of the committees of the National Association of Prosecutors;

3) performs other functions in accordance with the current legislation";

B. Supplement Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 with Article 67-1 and duplicate in its content the provisions of the current Article 67 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014);

C. Adopt a special provision to regulate the activities of the National Association of Prosecutors.

Therefore, there is a high level of cooperation in the US prosecutor's office and a significant amount of authority is vested in the prosecutor's office. However, it should be noted that the general list of attorneys' functions includes the following: 1) criminal prosecution of persons who have committed criminal offences; 2) legal advice to the government of the country, individual states, and other executive authorities; 3) representation in court of the interests of the federal government and state administrations in various fields; 4) enforcement of laws; 5) participation in legislative and judicial rule-making; 6) coordination of criminal prosecution bodies; 7) participation in the formation of the judiciary (Khmelevskyi, 2013). For comparison, in Ukraine, the powers of prosecutors include maintaining public prosecution in court; representing the interests of a citizen or the state in court; and supervising compliance with the law by bodies conducting operational and investigative activities, inquiries, and pre-trial investigations; supervision over the observance of laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens (Law of Ukraine On the Prosecutor's Office, 2014). Having analysed such a wide range of powers, we believe that in Ukraine prosecutors should be empowered to provide legal advice to other state bodies. We believe that such a practice would improve the interaction of the prosecutor's office with other state authorities and local self-government bodies.

When acting as a legal adviser to the federal government, the governor or the administration of local executive authorities, the attorney advises them on a wide range of law application issues and on the legal aspects of political decisions. Formalised as an official document, the opinion of the attorney general, although recommendatory in nature (and in this sense has much in common with the submission of a prosecutor in Ukraine), is usually implemented by the relevant administrative services. Performing the function of representing the interests of the relevant executive authorities, the President and the Government, the attorneys prepare, file and maintain lawsuits in court on a wide range of civil legal relations (Hrytsaienko, Sereda, Yakymchuk, 2010). In order to implement this practice in Ukrainian legislation, we believe that the following amendments to the current legislation of Ukraine would be appropriate:

1) Supplement Section IV of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 [298] with another article as follows:

"Article 27: Provision of Legal Advice to Other State Bodies.

1. The prosecutor shall provide legal advice to other state bodies on law application or other legal matters.

2. The legal advice of the prosecutor shall be provided in response to a written request executed and submitted in accordance with the procedure established by law.

3. The response to a written request is provided in the form of an official document and is advisory in nature";

2) Bring the content of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) in line with these amendments;

3) Adopt standard forms for a written request to the prosecutor on law application issues and for the prosecutor's response to a written request."

U.S. prosecutors investigate crimes under federal law (treason, espionage, terrorism, crimes related to crossing U.S. and state borders, federal property, bank robbery – Congress has recognised this crime as a federal offence). District prosecutors are responsible for cases under state law, i.e. the bulk of crimes (approximately 90% of cases) (Hrytsaienko, Sereda, Yakymchuk, 2010). Interestingly, attorneys are allowed to engage in private practice of law to the extent that it does not contradict their powers and except for representation in criminal cases. Moreover, unusual for the Ukrainian legal understanding are the requirements for a candidate for the position of prosecutor. The review of the US Constitution (Maklakov, 1997) reveals that it is mandatory to be a member of an association of lawyers (notaries, attorneys, prosecutors, judges), which immediately guarantees language skills and legal education. In the United States, a residency requirement and a good reputation in the community are set for applicants to the bar, which is confirmed by letters of recommendation. It seems that the concept of "moral and business qualities", which appears in Ukrainian law, could also be related to such "recommendations" from legal practitioners. In addition, the salary of prosecutors in Ukraine does not allow them to actually engage in this type of activity only, and it would be logical to allow them to practice representation in courts in some cases as lawyers, provided there is no conflict of interest with their main occupation.

In addition, it should be noted that the Attorney General's function of representing the executive branch in courts is delegated to the Solicitor General of the United States – the third official (after two deputies). The Solicitor General is appointed by the President on the recommendation of the Attorney General and approved by the Senate (William Burnham, Introduction to the Law and Legal System of the United States, 4th ed., 2006). The Solicitor General is also entitled to intervene in proceedings before any federal court of appeal, including the Supreme Court, on his own initiative and at the direction of the Supreme Court itself (literally, as a "friend of the court" – a specialist, legal adviser). Without being a party, a solicitor as a "friend of the court" receives permission from the court to enter into the proceedings and present his or her opinions. Due to the growing volume and complexity of the state's functions, the number of cases in which the Solicitor General's Office acts as a party or a legal expert in court is constantly growing (William Burnham, Introduction to the Law and Legal System of the United States, 4th ed., 2006). Obviously, as a specialist, a solicitor provides great assistance to the court by providing information that is crucial to the case.

The human rights function implies the attorneys' office prosecution of perpetrators of crimes. In addition, the attorneys are empowered to open criminal proceedings, investigate crimes, conduct inspections, prosecute, and support the prosecution in court.

Therefore, we can state that the US attorney service functions as a comprehensive public authority that performs representative, controlling, investigative, supervisory, advisory, and procedural functions. Attorneys are respected persons in the US civil society, and consequently they are subject to particularly important requirements.

Therefore, the above analysis enables to state that there are many achievements in the US legal system which could be used as a basis for borrowing the positive foreign experience such as:

1) Development of prosecutorial self-government through the creation of prosecutors' associations of the same level in Ukraine;

2) Prosecutors' ability to provide legal advice to other state bodies in Ukraine;

3) Possibility to relate the concept of "moral and business qualities" in Ukrainian legislation to such "recommendations" from legal practitioners, which would be a condition for the selection of candidates for the positions of prosecutors;

4) So-called "solicitors" or "legal advisers" provided for among court consultants;

5) Prosecutor' ability to formally practice law, except in cases of representation in certain categories of cases, including criminal cases.

With regard to prosecutorial activities in the UK, it should be noted that traditionally, prosecution in England has been carried out by the Crown Prosecution Service since 1985, the main function thereof has been to support prosecution at all levels, as well as in some cases to initiate criminal proceedings and participate in their investigation (Crown Prosecution Service: Effective use of Magistrates' Court Hearings, 2006). In other words, the analogue of the UK prosecutor's office performs exclusively the function of supporting public prosecution. In this context, as we have established above, Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) provides prosecutors of Ukraine with a much wider range of powers.

In England and Wales, other law enforcement (governmental) agencies also have the power to prosecute. Furthermore, they carry out police and prosecution functions simultaneously, which is considered one of the paradoxes

of the modern English justice system, which requires the separation of these functions (Staple, 2019). However, due to the dominance of the Crown Prosecution Service, this does not matter in principle.

Similar to the Attorney General, who is the highest official for all English (and British) attorneys, English criminal prosecutors (employees of the Crown Prosecution Service) are part of the advocate (juridical) social class, which effectively unites all lawyers. Therefore, it is quite acceptable and widespread in England and Wales to have private barristers instructed by the Crown Prosecution Service but not employed by it to support the public prosecution in the higher courts (Wyngaert, 1993). Since the system of "barrister-solicitor" is not peculiar to Ukraine as such, it would be worth initiating the option of consultation days for lawyers with prosecutors. Such interaction would improve both the conditions for ensuring human and civil rights in court and the conditions for supporting public prosecution. Moreover, it should be considered that such consultations should not be one-sided but should be reciprocal. In our opinion, in order to implement such a practice in Ukrainian legislation, it would be advisable to introduce the following amendments to the current legislation of Ukraine:

1) In view of the previously proposed amendments to the legislation, to supplement Section IV of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 with an article as follows:

"Article 28. Provision of Legal Advice to Advocates.

1. The prosecutor shall provide legal advice to advocates on law application on the days determined by his/her working schedule.

2. The legal advice of the prosecutor shall be provided in response to a written request drawn up and submitted by the advocate in accordance with the procedure established by law.

3. The response to the written request shall be provided by the prosecutor personally within the time limits specified in his/her work schedule. In addition, the advocate's consulting may be reciprocal;

2) Bring the content of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) in line with these amendments;

3) Adopt standard forms for a written request from a lawyer to a prosecutor for legal advice."

Another significant component of the UK prosecution service is the Attorney General of the United Kingdom, which has a special legal status. On the one hand, he/she has a status equal to that of a member of parliament (without the right to join the Cabinet of Ministers), i.e. he/she is a political figure. On the other hand, he/she is a lawyer (barrister) who heads the community of advocates (barristers and solicitors). That is why his/her "prosecutorial" powers include representation of exclusively government interests in criminal and civil courts (i.e. he cannot be a lawyer in private practice, unlike US attorneys) (Crown Prosecution Service: Effective use of magistrates court hearings, 2006). Relying on an analysis of the provisions of the Queen's Acts, in criminal cases, the Attorney General represents the interests of the state in the form of supporting the prosecution in court on behalf of Her Majesty's Government in cases of particular importance to society (for example, in cases of especially dangerous state offences). In civil cases, it takes the form of appearing in court as a plaintiff (due to the special significance of the case for society) or a defendant (in the case of claims against the government). In addition, the Attorney General has the right to refuse (apply for) criminal prosecution or to file a lawsuit in court (Wyngaert, 1993). Therefore, we believe that this legal state of affairs in development of prosecutorial relations served as a basis for distinguishing the peculiarity, "duality" of the prosecution system in the UK. It should be considered that there are no district attorneys in the UK. There are only the Attorneys General for England, Wales and Northern Ireland.

Therefore, we can state that the experience of establishing and defining prosecutorial activities in the UK suggests the following ways of borrowing foreign experience for Ukraine:

1) Requirements for the position of the Prosecutor General should be enforced in terms of participation of the respective candidate in the prosecutorial self-government bodies;

2) It would be worthwhile to initiate the possibility of mutual consultation days for lawyers with prosecutors.

3. Prosecutor's offices in post-Soviet states

The study of foreign experience of the regulatory framework for the prosecutor's office in post-Soviet states enables to identify certain specific features of such framework. For example, these countries are in fact close to Ukraine in terms of their traditions, social composition of society, understanding of the problems of the transition period we are currently experiencing, which makes it possible to compare individual state institutions (prosecution systems), analyse the shortcomings and advantages of their development, and introduce

the best in the process of building our statehood (Hrytsaienko, 2013). It should be noted that the Constitution of Ukraine (1996) defines the prosecutor's office as an independent branch of government. The same position is reflected in the constitutions of Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. The Constitution of Georgia in its Article 91 explicitly refers to the prosecutor's office as an "institution of the judiciary" (Okunkov, Oksamyitnyiy, Buloshnikov, 2001).

L.R. Hrytsaienko argues that only the functions of commencing criminal prosecution and supporting public prosecution in court are universal for the prosecutor's offices of Azerbaijan, Turkmenistan, Kazakhstan, Georgia, Moldova, Armenia, Tajikistan, Kyrgyzstan and Uzbekistan (Hrytsaienko, 2013). We consider the experience of Georgia, Kyrgyzstan, Moldova, and Turkmenistan in vesting the prosecutor with the function of investigating criminal offences independently and with the participation of pre-trial investigation bodies to be positive. It is also interesting that the legislation of Azerbaijan, Armenia and Georgia allocates the function of procedural guidance to the preliminary investigation.

Interestingly, prosecutorial supervision over the legality of court decisions (in the broad sense) usually involves the possibility of appealing against them to a higher court. This function is a direct extension of the procedural powers of the prosecutor in all types of legal proceedings and is therefore enshrined in the constitutions and laws of many states, including Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan. However, it is not mentioned in the Law of Ukraine "On the Prosecutor's Office" (2014).

We believe that the experience of post-Soviet states in enshrining the prosecutor's protest, which is not currently envisaged in Ukraine, is positive. It would also be advisable in Ukraine, as provided for in the constitutions of most CIS states, to provide the Prosecutor General's Office with the right of legislative initiative. To do this, it is necessary to amend the current legislation of Ukraine:

1) Article 93 of the Constitution of Ukraine should be amended to read as follows:

"Article 93. The right of legislative initiative in the Verkhovna Rada of Ukraine shall be vested in the President of Ukraine, people's deputies of Ukraine, the Cabinet of Ministers of Ukraine and the Prosecutor General.

Draft laws identified by the President of Ukraine as urgent are considered by the Verkhovna Rada of Ukraine out of turn."

2) Part 1 of Article 9 of Law of Ukraine "On the Prosecutor's Office" No. 1697-VII of 14 October 2014 (Law of Ukraine On the Prosecutor's Office, 2014) should be amended as follows:

"1. The Prosecutor General:

[...] 93) submits draft laws to the Verkhovna Rada of Ukraine in accordance with the requirements of the Rules of Procedure of the Verkhovna Rada of Ukraine [...]."

3) Part 1 of Article 89 of Law of Ukraine No. 1861-VI On the Rules of Procedure of the Verkhovna Rada of Ukraine of 10 February 2010 (Law of Ukraine On the Rules of Procedure of the Verkhovna Rada of Ukraine, 2010) should be amended as follows:

"1. The right of legislative initiative in the Verkhovna Rada of Ukraine shall be vested in the President of Ukraine, the People's Deputies of Ukraine, the Cabinet of Ministers of Ukraine and the Prosecutor General [...].

The review of foreign legislative acts of post-Soviet states in terms of defining the functions of the prosecutor's office reveals that it performs the following functions: support of public prosecution, supervisory powers in places of detention and over operational and investigative activities, support of prosecution in court, general supervision over the observance of laws. With regard to the latter, it should be noted that post-Soviet countries are gradually removing this power of the prosecutor from national legislation. At present, the supervisory function of the prosecutor's office in relation to the preliminary investigation has indeed become true to its name, and the prosecutor has lost not supervisory but controlling powers.

Therefore, due to the fact that Ukraine has acquired the status of a European state, it can be argued that, compared to others, our country has made several steps forward, including the democratisation of the criminal process and optimisation of the functions of the prosecutor's office. Considering the above, we can identify the following ways for Ukraine to borrow positive foreign experience of post-Soviet states:

1) Vest the prosecutor with the function of investigating criminal offences independently and with the participation of pre-trial investigation bodies;

2) Expand supervisory powers in terms of control over the legality of court decisions;

3) Grant the Prosecutor General's Office the right of legislative initiative.

It should be noted that above we pointed out that the election of the Prosecutor General in Ukraine could solve many of the existing problems. In particular, the Prosecutor General will be free from political influence from the President of Ukraine, and his or her tenure will not depend on the decisions of the Verk-

hovna Rada of Ukraine. In order to implement this experience in Ukraine, it is necessary, first of all, to adopt the Law of Ukraine "On Election of the Prosecutor General". The electoral legislation of Ukraine can be used as a basis for such a legal regulation.

Interestingly, the Chinese prosecutor's office has been quite active in the fight against corruption. For example, in 2013, China conducted an active campaign to combat corruption and bureaucracy, led by the new leadership of the country and the Communist Party. In the first 11 months of 2014, Chinese prosecutors investigated nearly 37,000 officials suspected of corruption. Chinese prosecutors suggest that these officials were involved in 2,7236 cases of bribery, of which more than 80% were deemed serious. In 12,824 cases of bribery, the amounts involved were more than 5,510 million yuan ($910,600,000) (Website of the Multimedia Platform of Ukraine "Ukrinform", 2020).

Therefore, we can state that the People's Republic of China, despite the dominance of the communist system, has a positive experience of the prosecutor's office, which Ukraine lacks. In particular, in terms of fighting and combating corruption, the Chinese prosecutor's office has achieved considerable success. Ukraine is now striving for this format.

Therefore, the following ways of borrowing the positive experience of the People's Republic of China in the regulatory framework for the prosecution service can be identified:

1) Election of prosecutors;

2) Legal incentives for active anti-corruption activities;

3) The ability to control the legality of court decisions.

4. Conclusions

Therefore, in the course of the study, we found that borrowing positive foreign experience of the prosecutor's office is a quite appropriate way to improve the legislation on the prosecutor's office of Ukraine. It should be borne in mind that when drafting new legislation, the domestic legislator often refers to the legislation of foreign countries to study foreign experience and reproduce it in national legislation. Moreover, it is important to note that the Basic Law established Ukraine's course towards European integration, and as a result, since the proclamation of this course, new legal regulations have been undergoing the process of adaptation to European standards. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator. In other words, borrowing positive foreign experience of the prosecutor's office is not something new for the national legislator, but rather represents a trend that is consistently implemented in the activities of the legislator.

Moreover, the study reveals that the prosecutor's office in each of the countries being analysed has its own specificities, which could be adopted by the Ukrainian legislator, including changing approaches to the position of the Prosecutor General, ensuring the election of prosecutors and giving prosecutors additional functions and powers, expanding the functions of the Prosecutor General's Office of Ukraine, including giving it the right to legislative initiative, etc. All these, in our opinion, could solve the problems and shortcomings of the current legal regulation of prosecutorial activities in Ukraine being analysed above in this paper.

References:

Crown Prosecution Service: effective use of magistrates courts hearings: sixty-first report of Session 2005-06 // Great Britain. Parliament. House of Commons. Committee of Public Accounts. London: Stationery Office, 2006 [in English].

Hrytsaienko, L.R. (2013). Prokurorska diialnist v Ukraini ta zarubizhnykh krainakh [Prosecutorial activities in Ukraine and foreign countries]. Kyiv: Yuryd lit-ra [in Ukrainian].

Hrytsaienko, L.R., Sereda, H.P., Yakymchuk, M.K. (2010). Pidtrymannia derzhavnoho obvynuvachennia [Maintenance of state prosecution]. Kyiv: Vydavnytstvo "Iurydychna dumka" [in Ukrainian].

Khmelevskyi, D. (2013). Porivnialna kharakterystyka povnovazhen prokuroriv v okremykh derzhavakh Yevropy, SShA ta v Ukraini na dosudovomu rozsliduvanni [Comparative characteristics of the powers of prosecutors in certain European states, the USA and Ukraine in pretrial investigation]. Visnyk prokuratury, no. 12, pp. 179–184 [in Ukrainian].

Konstytutsiia Ukrainy: vid 28 chervnia 1996 roku № 254k/96-VR [Constitution of Ukraine: dated June 28, 1996] (1996). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text [in Ukrainian].

Maklakov, V.V. (1997). Konstitutsii zarubezhnyih gosudarstv: SShA, Velikobritaniya, Frantsiya, Germaniya, Italiya, Ispaniya, Gretsiya, Yaponiya, Kanada [Constitutions of foreign countries: USA, Great Britain, France, Germany, Italy, Spain, Greece, Japan, Canada]. Moskva: BEK [in Russian].

Okunkov, L.A., Oksamyitnyiy, V.V., Buloshnikov, M.Ya. (2001). Konstitutsii gosudarstv – uchastnikov SNG [Constitutions of the CIS member states]. Moskva: Norma [in Russian].

Sait Multymediinoi platformy inomovlennia Ukrainy "Ukrinform" [Sait Multimediinoi platformy inomovlennia Ukrainy "Ukrinform".

Staple, G. (2019). Serious and Complex Fraud: A New Perspective. Modem Law Review, no. 56, pp. 126–135 [in English].

Sukhonos, V.V. (2011). Konstytutsiino-pravovi zasady orhanizatsii i diialnosti prokuratury v Ukraini ta zarubizhnykh krainakh: porivnialnyi analiz [Constitutional and legal foundations of the organization and activity of the prosecutor's office in Ukraine and foreign countries: a comparative analysis]. Chasopys Kyivskoho universytetu prava, no. 1, pp. 75–80 [in Ukrainian].

Website of the Multimedia Platform of Ukraine "Ukrinform"]. (2020). *ukrinform.ua*. Retrieved from https://www.ukrinform.ua/rubric-world/1600938-prokurorski_organi_kitayu_rozsliduvali_mayge_37_tisyach_vipadkiv_korupt-siii_1897078.html [in Ukrainian].

William Burnham, Introduction to the Law and Legal System of the United States, 4th ed. (St. Paul: Thomson West, 2006). [in English].

Wyngaert, C. (Ed). (1993). Criminal procedure systems in the European Community. L.: Butterworths [in English].

Zakon Ukrainy Pro prokuraturu: vid 14 zhovtnia 2014 roku № 1697-III [Law of Ukraine On the Prosecutor's Office: dated October 14, 2014 № 1697-III] (2014). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text [in Ukrainian].

Zakon Ukrainy Pro Rehlament Verkhovnoi Rady Ukrainy: vid 10 liutoho 2010 roku № 1861-VI [Law of Ukraine On the Regulations of the Verkhovna Rada of Ukraine: dated February 10, 2010 No. 1861-VI] (2010). rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/1861-17#Text [in Ukrainian].

Олександра Струневич,
доктор юридичних наук, старший науковий співробітник, Науково-дослідний інститут публічного права, вул. Г. Кірпи, 2а, Київ, Україна, індекс 03035, strunevych_oleksandra@gmail.com
ORCID: *orcid.org/0000-0002-2359-103X*

ПОЗИТИВНИЙ ЗАРУБІЖНИЙ ДОСВІД ДІЯЛЬНОСТІ ПРОКУРАТУРИ ТА ШЛЯХИ ЙОГО ЗАПОЗИЧЕННЯ ДЛЯ УКРАЇНИ

Анотація. ***Мета.*** Мета статті полягає в аналізі зарубіжного досвіду діяльності прокуратури та визначенні напрямів його запровадження в Україні. ***Результати.*** Визначено, що у правовій системі США існує дуже багато здобутків для запозичення такого позитивного зарубіжного досвіду: 1) розвиток прокурорського самоврядування через створення в Україні асоціацій прокурорів одного рівня; 2) в Україні потрібно було б наділити прокурорів повноваженням надавати юридичні консультації іншим державним органам; 3) поняття «морально-ділові якості», яке фігурує а українському законодавстві, також могло б прив'язуватися до таких «рекомендацій» від кола юристів-практиків, які були б умовою добору кандидатів на посади прокурорів; 4) передбачити серед консультантів судів так званих соліситорів, або радників з правових питань; 5) слід передбачити можливість прокурорських працівників формально займатися й адвокатською практикою, крім випадків представництва в окремих категоріях справ, зокрема кримінальних. ***Висновки.*** Зроблено висновок, що запозичення позитивного зарубіжного досвіду діяльності прокуратури є цілком доцільним шляхом для вдосконалення законодавства про прокуратуру України. Варто враховувати те, що вітчизняний законодавець під час розробки нового законодавства досить часто звертається до законодавства іноземних держав для дослідження зарубіжного досвіду і його відтворення в актах національного законодавства. Також важливо зазначити те, що Основним Законом було встановлено курс України до євроінтеграції, і, як наслідок, з моменту проголошення цього курсу нові акти законодавства проходять процеси адаптації до європейських стандартів. Тобто запозичення позитивного зарубіжного досвіду діяльності прокуратури не є чимось новим для вітчизняного законодавця, а радше являє собою тенденцію, яка стабільно знаходить свою реалізацію в діяльності законодавця. Також дослідження засвідчило, що діяльність прокуратури в кожній проаналізованій нами країні має свої особливості, які було б доцільно запозичити вітчизняному законодавцю, а саме змінити підходи до посади Генерального прокурора, забезпечити виборність посад прокурорів і наділити прокурорів додатковими функціями та повноваженнями, розширити функції Генеральної прокуратури України, зокрема наділити її правом законодавчої ініціативи тощо. Усе наведене, на нашу думку, могло би вирішити проаналізовані нами раніше в цій роботі проблеми та недоліки чинного правового регулювання прокурорської діяльності в Україні.

Ключові слова: Генеральний прокурор, посада, досвід, нормативно-правовий акт, виборче законодавство України.

The article was submitted 16.10.2023
The article was revised 07.01.2023
The article was accepted 27.11.2023