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PRINCIPLES OF THE ORIGIN, FORMATION, AND DEVELOPMENT OF THE PROSECUTION SYSTEM ON THE TERRITORY OF UKRAINE

***Abstract*. Purpose.** The purpose of this article is to characterize the historical periods of the formation of the prosecution institution on the territory of Ukraine. ***Results*.** Until the 18th century, there were multiple attempts on the territory of modern Ukraine to establish state institutions whose functions were similar to those of classical prosecutorial bodies. However, by the late 17th and early 18th centuries, most of Ukraine's territory had already been incorporated into the Tsardom of Russia, and the country lacked a centralized and effective prosecution system at that time. It has been established that Ukraine's declaration of independence necessitated the formation of its own institutional and regulatory framework for the functioning of the prosecution system. Against the backdrop of the dissolution of the Soviet Union, this framework was essential to uphold and ensure legality within the newly independent state. Consequently, the 1990s became the starting point of a new, modern stage in the reform of prosecution bodies. It is emphasized that in 1996, the legal status of the prosecution service as a specific system of public authorities was enshrined at the constitutional level. In particular, Section VII of the Constitution of Ukraine, entitled "The Prosecution," clearly defined the prosecution's functions: the maintenance of public prosecution in court; representation of the interests of citizens or the state in court in cases determined by law; supervision over compliance with the law by bodies conducting operative and investigative activities, inquiry, and pre-trial investigation; and oversight of the legality of the execution of court decisions in criminal cases and the application of other coercive measures involving the restriction of personal liberty. ***Conclusions*.** It is concluded that the modern period, which began with Ukraine's independence in the 1990s and continues to this day, has been marked by significant improvements to the legal framework governing the prosecution system. These improvements include the development and adoption of new legal instruments that align with European standards and the constitutional enshrinement of the prosecution's legal status.

Key words: supervision, law, people's commissariat, officials, prosecution, reform, court decision.

1. Introduction

The activities of the prosecution service have consistently been the subject of scholarly research. However, no less important is the issue of its reform, as over the years the significance and role of the prosecution within the system of state law enforcement agencies have often been reoriented and, in some cases, radically transformed. Thus, the process of reforming the prosecution service is not a one-time event, but rather a series of deliberate actions rooted in a historical trajectory that mirrors the establishment and development of this institution as a whole.

When we look beyond the national experience of the development of prosecutorial bodies and consider the role of this institution globally, it becomes evident that the prosecution service has long been known to societies around the world.

The institution of the prosecution, in its modern sense, originated in 13th-century France. The first "prosecutors" were essentially lawyers hired by kings and feudal lords to represent them in specific cases and later to act as permanent legal representatives in court (Niroda, 2015). In its operations, the prosecution was subordinate to the French king. King Philip IV the Fair of France is considered the direct founder of the European prosecution system; he legally established the status and functions of the prosecution. On March 25, 1302, he issued an ordinance on permanent royal prosecutors, who operated in parliaments (judicial bodies in Paris, Tours, and Rouen) as well as before bailiffs and seneschals (local judges) (Sukhonos, 2001).

In medieval France, the primary purpose of the prosecution was to carry out criminal

prosecution of individuals deemed undesirable by the monarch. The prosecution's core mission was to implement the will of the king, who determined the directions of its activities, organizational structure, and institutional framework. As early as 1586, a law on the prosecution was adopted, establishing its position within the system of state authorities (Kholodnytskyi, 2014).

Therefore, an analysis of global historical experience demonstrates that prosecutorial bodies not only evolved over centuries but also played a significant role in the mechanisms of state governance in various countries.

The purpose of this article is to characterize the historical periods of the formation of the prosecution institution on the territory of Ukraine.

2. The Emergence of Prosecutorial Bodies on the Territory of Ukraine

At the same time, the prosecution service, as a unified and organized structure of special governmental bodies, began functioning on the territory of Ukraine considerably later. This, in our view, was due to several adverse factors that significantly hindered the overall development of Ukraine as an independent actor on the international stage, including:

– the fragmentation of the state's territory;

– the absence of a centralized governmental apparatus;

– continuous political and military interference by foreign powers.

In light of the above, it can be stated that prosecutorial bodies, in the modern sense and form, did not exist in Ukraine for a long period. Nevertheless, the history of their formation includes a wide range of notable and instructive developments. Therefore, we propose dividing this historical process into four distinct periods, each with its own temporal boundaries, as follows:

– The first period: from the emergence of state formations on the territory of Ukraine until the 18th century;

– The "Imperial" period: from the 18th century to the 1920s;

– The "Soviet" period: from the 1920s to the 1990s;

– The modern period: from the 1990s to the present day.

When analyzing the first period of development and transformation of the prosecution service, it is important to note that within these chronological boundaries, the prosecution–as a specialized system of public authority–was only beginning to take shape. In particular, on the territories of states that included Ukrainian lands, there were numerous attempts to establish supervisory and control institutions. For example, the Code of Law (Sudebnik) of Grand Prince Ivan III of Moscow from 1487 stated: *"If a petitioner comes to a boyar, the boyar shall not dismiss him, but shall provide redress to all entitled to it"* (Lyskova, 2007). In essence, this provision granted boyars the authority to represent the state in various legal disputes.

During the period when large parts of Ukraine were under Polish and Lithuanian rule, a notable development occurred in 1578, when a special tribunal was established in Lutsk during one of the sessions of the Sejm of the Polish–Lithuanian Commonwealth. At the beginning of its activity, this tribunal annually elected a prosecutor (instigator). Supervisors of private estates would report to the prosecutor about claims and types of offenses. The prosecutor supervised the proper submission of claims to the tribunal court (Sverbyhuz, 1999).

A unique form of prosecutorial institution also existed in the Zaporizhian Sich. Regarding this, M.O. Potebenko noted: *"The position of prosecutor in the Zaporizhian Sich was held in high esteem. In the person of the prosecutor, the Kosh Otamans and Hetmans of the Ukrainian Cossacks–Ivan Pidkova, Yakiv Shakh, Severyn Nalyvaiko, Samiylo Kishka, Petro Sahaidachny, Hryhorii Chornyi, Mykhailo Doroshenko, among others–had a reliable assistant and guarantor of legality in the Sich"* (Potebenko, 2000).

Certain aspects of state oversight and legality on the territory of the Tsardom of Russia were codified in the Sobornoye Ulozhenie of 1649. This legal act granted subjects the right to address the Tsar with petitions (chelobitnye)–that is, with requests, complaints, or denunciations. These petitions were submitted by individuals and collective groups of nobles, townspeople, peasants, and other social strata, not only to the head of state but also to central and local authorities (Kovalchuk, 2008).

Thus, on the territory of present-day Ukraine, until the 18th century, repeated attempts were made to establish state institutions whose functions resembled those of classical prosecutorial bodies. However, by the late 17th and early 18th centuries, most of Ukraine's territory had already become part of the Tsardom of Russia, and the country in this period did not, in fact, possess a centralized and effective prosecutorial system.

Therefore, starting from the 18th century, the second, "Imperial" period of the development of the prosecution service began, marking its emergence as an independent state authority. This stage fully coincides with the "Petrine era"–a phase in Russian history characterized by numerous reforms initiated by Peter I. In the course of combating widespread official misconduct, embezzlement, bribery, and noncompliance with

imperial decrees, the first Russian Emperor established a fiscal service in 1711, which effectively performed prosecutorial functions.

According to the Decree "On Fiscals and Their Duties" of 1714, the responsibilities of fiscals included handling all "silent cases." Specifically, they were obliged to uncover and report–both secretly and openly–all offenders who had harmed the state and to prosecute them in court. Additionally, they had to report on certain cases where a person was unable to defend their rights for various reasons. Thus, the fundamental innovation of the fiscal institution lay in its combination of three key characteristics:

1. A general supervisory scope of competence;

2. The existence of territorially organized, hierarchically structured subdivisions, independent of local administrations;

3. The cross-estate principle of personnel selection (Banchuk, 2016).

A further major stage in the evolution of the prosecution service occurred during the reign of Catherine II. The division of the Senate into departments significantly increased the importance of the office of the Prosecutor General. As a trusted confidant of the Empress, the Prosecutor General coordinated the work of the Senate's departments and effectively assumed the role of a minister of internal affairs. By the last third of the 18th century, the Prosecutor General, while remaining the highest oversight authority, had essentially become the supreme body of general administrative governance.

A pivotal milestone in the reform of the prosecutorial system was the Judicial Reform of 1864, which is considered the most innovative, liberal, and technically successful among all the "Great Reforms" of Emperor Alexander II (Obsurna, 2012).

The essence of the prosecutorial reorganization according to the key principles of the 1864 reform lay in removing the function of general oversight from the prosecution service, although oversight of detention facilities was retained. Fundamentally, the main objective of the reform was to reorient the prosecutorial system along the lines of the French model (Paliuk, 2012).

In his study of the organization and functioning of the judiciary in the Taurida Governorate after the 1864 reform, I. I. Poliakov presents evidence illustrating the distinctive restructuring of the prosecution system. He emphasizes that although the prosecutorial bodies were incorporated into the judicial branch, they maintained their own distinct organizational structure. The uniqueness of the system lay in the fact that a separate prosecutorial body operated at each level of the general court system. These prosecutorial units were integrated into a centralized, hierarchical structure, headed by the Minister of Justice. As a result, the reformed prosecution service became one of the key components of the executive branch of government (Poliakov, 2001).

In addition, according to the Judicial Statutes of 1864, the prosecution service was entrusted with the following responsibilities:

– supervision of investigations and legality at all levels of the judicial system;

– prosecution in criminal cases;

– oversight of the enforcement of punishments;

– supervision of detainees and prisons, among other duties (Yarmysh, 2001).

In 1896, with the aim of organizing the prosecutorial system and supervisory activities in particular, M. V. Muravyov, then serving as Prosecutor General, issued a special directive outlining the core principles to be observed in the performance of prosecutorial duties. He emphasized that prosecutorial supervision varied in content and form. Substantively, it comprised three main areas:

1. Criminal prosecution in cases initiated in an official capacity, with the participation of prosecutorial oversight;

2. Supervision of legal compliance in matters within the judicial system's jurisdiction;

3. Participation in select administrative cases (Mavdryk, 2012).

Thus, during the Imperial period, the prosecution service acquired a distinct form that laid the foundation for the further development of this state institution. In particular, the functions, structure, scope of authority, and operational methods of the prosecutorial system were clearly delineated. At the same time, the direct predecessor of the prosecution service in independent Ukraine is the Prosecutor's Office of the Soviet Union.

It is important to note that although the USSR was formally a unitary state, some of its constituent republics retained significant elements of autonomy. This directly influenced the formation and development of various state institutions, including the prosecutorial system, which–while subordinated to a central authority in Moscow–nonetheless experienced the influence of national characteristics at the local level.

In the 1920s, the Prosecutor's Office of the Ukrainian Soviet Socialist Republic (Ukrainian SSR) was established. It later evolved into the prosecution service of independent Ukraine, a fact that logically marks the beginning of the third, "Soviet" period in

the institutional development of the prosecution system.

We agree with the scholarly view expressed by M. Ya. Mavdryk and M. M. Stefanchuk, who emphasize that the starting point in the development of the Prosecutor's Office of the Ukrainian SSR should be considered the Resolution of the All-Ukrainian Central Executive Committee dated June 28, 1922. According to this normative legal act, the prosecution service of the Ukrainian SSR was formally established as a separate department subordinate to the People's Commissar of Justice, who, by decision of the All-Ukrainian Central Executive Committee, was also appointed as the Prosecutor of the Ukrainian SSR (Mavdryk, 2012).

3. The Prosecutor's Office in the Ukrainian Soviet Socialist Republic

Subsequently, the activities of the Prosecutor's Office of the Ukrainian SSR were reformed in parallel with the overall development of the Soviet Union and the establishment of the USSR as a stable and active participant in the international arena. For instance, the 1936 Constitution of the USSR and the Law on the Judicial System of 1938 redefined the tasks and mandate of the prosecutorial system.

Article 12 of the Constitution stipulated that the Prosecutor of the USSR was entrusted with supreme oversight of the strict implementation of laws by all People's Commissariats, subordinate institutions, individual officials, and citizens of the USSR. According to Article 114, the Prosecutor General of the Soviet Union was appointed by the Supreme Soviet of the USSR for a term of seven years. The Prosecutor General, in turn, appointed prosecutors of republics, territories, and regions, as well as prosecutors of autonomous republics and autonomous regions for a five-year term (Article 115). District, regional, and city prosecutors were also appointed for five years by the republican prosecutors, subject to confirmation by the Prosecutor General of the USSR. Furthermore, the Constitution emphasized that the prosecutorial bodies functioned independently of any local authorities and were subordinate exclusively to the Prosecutor General of the USSR (*Constitution (Basic Law) of the Union of Soviet Socialist Republics, 1936*).

Based on the foregoing, it can be concluded that throughout the 1920s–1930s, the status of the Prosecutor's Office in the Soviet Union–and of the corresponding local bodies–was substantially strengthened, driven by the creation of a new legal framework in this field.

Further reforms of the Soviet legal system, including the prosecution service, aimed to expand the legal status of its officials. For example, the Civil Procedure Code of Ukraine of 1963 granted prosecutors a broad range of powers in civil proceedings. They were authorized to:

– file lawsuits;

– intervene in any civil case regardless of the procedural stage and issue legal conclusions;

– request cases from the courts and challenge judgments, rulings, and decisions in cassation or supervisory procedures;

– submit motions for review of decisions, rulings, and judgments based on newly discovered circumstances;

– supervise the legality of enforcement of court decisions, and more (Dunas, 2006).

The Soviet-Ukrainian prosecution service reached its most refined organizational and legal form in the 1970s–1980s. Supporting this conclusion is the adoption of the Law "On the Prosecutor's Office of the USSR" in 1979, which codified the main functions of the institution. According to this law, the Prosecutor's Office was responsible for:

– supervision of legality in the activities of state administrative bodies, enterprises, institutions, organizations, officials, and citizens (general supervision);

– supervision of compliance with laws in the activities of investigative and inquiry bodies;

– supervision of lawfulness during judicial proceedings;

– supervision of lawfulness in places of detention, pre-trial detention facilities, and during the enforcement of criminal punishments and other coercive measures imposed by the courts;

– combating violations of laws related to the protection of socialist property;

– combating crime and other legal violations, conducting criminal investigations, initiating criminal proceedings, and ensuring the inevitability of criminal liability (*On the Prosecutor's Office of the USSR, 1979*).

4. The Prosecutor's Office in the Period of Ukraine's Independence

Ukraine's attainment of independence necessitated the creation of its own material and normative legal framework for the functioning of the prosecutorial system. Against the backdrop of the dissolution of the Soviet Union, such a framework was crucial for ensuring legality and the rule of law within the territory of the new state. Accordingly, the 1990s may be regarded as the starting point of a new, modern stage in the reform of the prosecutorial bodies.

Notably, in 1991, Ukraine adopted its first national law titled "On the Prosecutor's Office". According to Article 1 of this legal act, the primary task of the Prosecutor's Office of Ukraine was to exercise prosecutorial supervision over the observance and proper application of laws

by the Cabinet of Ministers of Ukraine, ministries, other central executive authorities, state and economic administration bodies, military units, political parties, and others (*Law of Ukraine On the Prosecutor's Office, 1991*).

That same year, the Verkhovna Rada of Ukraine approved the Disciplinary Statute of the Prosecutor's Office of Ukraine, which established the rules of professional discipline as well as the procedures for encouraging or disciplining prosecutorial personnel (*On approval of the Disciplinary Statute of the Prosecutor's Office of Ukraine: Resolution of the Verkhovna Rada of Ukraine, 1991*).

In 1996, the legal status of the Prosecutor's Office as a distinct system of state authorities was enshrined at the constitutional level. In particular, Section VII of the Constitution of Ukraine, titled *"The Prosecutor's Office"*, explicitly defined its key functions, namely:

– representing the state prosecution in court;

– representing the interests of individuals or the state in court, in cases determined by law;

– supervising the observance of laws by bodies conducting operational and investigative activities, inquiry, and pre-trial investigation;

– supervising the enforcement of court decisions in criminal cases and the application of other coercive measures related to the restriction of personal liberty (*Constitution of Ukraine, 1996*).

It must be emphasized that the current stage in the development of the Prosecutor's Office of Ukraine is primarily characterized by active reform efforts aimed at building a prosecutorial system modeled after European standards. These reforms are driven by Ukraine's strategic aspiration to become a member of the European Union and to strengthen its role in the international arena.

5. Conclusions

Based on the analysis of the historical development of the Prosecutor's Office on the territory of Ukraine, this process can be logically divided into four distinct periods, namely:

– The first period, which spans from the emergence of state formations on Ukrainian territory up until the 18th century. A key feature of this stage is the absence of a prosecutor's office in its complete, modern form, particularly due to the territorial division of Ukraine among different states. Certain elements of supervisory activity over legality, as well as procedural and representative functions, were mostly performed by various state authorities. The legal traditions of the Tsardom of Russia, the Polish–Lithuanian Commonwealth, the Zaporizhian Sich, and other states that once included Ukrainian lands were analyzed as representative examples;

– The second "Imperial" period, lasting from the 18th century until the 1920s. During this phase, prosecutorial bodies began to develop as a distinct and independent institutional structure. A legal and functional framework was established, along with concrete methods, forms, and tools of operation. For instance, in the early 18th century, the fiscal authorities were introduced in the Russian Empire, which later evolved into a system of prosecutorial institutions. The Judicial Reform of 1864 under Emperor Alexander II significantly changed the legal status of the Prosecutor's Office, turning it into a body of the executive branch, headed by the Minister of Justice;

– The third "Soviet" period, which covers the years from the 1920s to the 1990s. Under Soviet rule, the Prosecutor's Office acquired the institutional form that would later influence the construction of similar institutions in independent Ukraine. The main characteristics of this period include: (1) the adoption of a legal act that comprehensively regulated all aspects of prosecutorial activity; (2) a clear definition of the office's functions; (3) the formation of a hierarchical system with distinctly defined powers for each level of prosecutorial bodies;

– The modern period, which began in the 1990s with Ukraine's independence and continues to the present day. This period is marked by significant improvement of the legal framework regulating the activities of the Prosecutor's Office. New normative documents have been adopted, whose provisions are closely aligned with European legal standards. Additionally, the legal status of the Prosecutor's Office was enshrined at the constitutional level, which reaffirmed its role as a key component of the state law enforcement system in a democratic society.

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ЗАСАДИ ЗАРОДЖЕННЯ, СТАНОВЛЕННЯ ТА РОЗВИТКУ СИСТЕМИ ПРОКУРАТУРИ НА ТЕРИТОРІЇ УКРАЇНИ

Анотація. Метою статті є характеристика періодів становлення інституту прокуратури на території України. ***Результати.*** На території сучасної України до XVIII століття здійснювались неодноразові спроби створення державних відомства, функції котрих були схожі з функціями класичних органів прокуратури. Однак, Україна, більша частина території якої у кінці XVII – початку XVIII століття вже перебувала у складі Царства Російського, фактично не мала в цей час централізованої та ефективної системи органів прокуратури. З'ясовано, що набуття Україною незалежності викликало необхідність формування власної матеріальної та нормативно-правової бази діяльності

системи органів прокуратури, яка на фоні розпаду Радянського Союзу була потрібна задля підтримки та забезпечення законності на території нашої держави. У зв'язку з цим 90-ті роки минулого століття, стали відправною точкою нового, сучасного періоду реформування органів. Наголошено, що у 1996 році, правовий статус прокуратури, як специфічної системи органів державної влади, набуває закріплення на конституційному рівні. Зокрема, у Розділі VII Основного закону, під назвою «Прокуратура», було чітко визначено функції останньої, а саме: підтримання державного обвинувачення в суді; представництво інтересів громадян або держави в суді у випадках визначених законом; нагляд за додержанням законів органами, які провадять оперативно-розшукову діяльність, дізнання, досудове слідство; нагляд за додержанням законів при виконанні судових рішень у кримінальних справах, а також при застосуванні інших заходів примусового характеру, пов'язаних з обмеженням особистої свободи громадян. ***Висновки.*** Зроблено висновок, що сучасний період, який розпочався з моменту набуття Україною незалежності, тобто, з 90-х років XX століття, та триває по теперішній час, розпочався за фактом набуття Україною незалежності. В його межах було суттєво вдосконалено правову базу, що регламентує діяльність досліджуваної системи державних органів, шляхом розроблення та прийняття нових нормативних документів, положення яких максимально відповідають європейським стандартам, а також закріплення правового статусу прокуратури на конституційному рівні.

Ключові слова: нагляд, закон, народний комісаріат, посадові особи, прокуратура, реформування, судове рішення.