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MAIN TRENDS IN THE DEVELOPMENT OF LEGAL REGULATION OF PROSECUTORIAL ACTIVITY IN INDEPENDENT UKRAINE

Abstract. Purpose. The purpose of the article is to characterize the main trends in the development of legal regulation of prosecutorial activity in Ukraine in order to ensure an appropriate professional level of training of future prosecutorial personnel, as well as to stimulate an increase in the significance of prosecutorial activity in the process of exercising the full range of prosecutorial powers. **Results.** Legal regulation of prosecutorial activity in the context of judicial and legal reform and reform of the prosecution service is subject to revision, since prosecutorial activity is currently transitioning from a strictly subordinative system to a partnership-based system of relations between society and the state. At the same time, the separation of provisions regulating prosecutorial activity into a distinct section of the Constitution of Ukraine indicates the recognition of this state authority as an independent "fourth" branch of government. Thus, the article aims to examine the main trends in the development of legal regulation of prosecutorial activity in Ukraine. It is established that trends in the development of legal regulation of prosecutorial activity in independent Ukraine should be inextricably linked with the processes of transformation of the rule-of-law state, democratic society, and the reorientation of the legal consciousness of each individual. The strategic goal of establishing the independence of the prosecution service from other state authorities should be its formation as an autonomous system of state bodies that exists outside the traditional division into three branches of power and is not subordinated to any of them, while occupying a key position within the system of checks and balances. **Conclusions.** In our view, the trends in the development of legal regulation of prosecutorial activity in Ukraine include the following: expansion of constitutional and legal regulation of the status of the prosecution service among other state authorities; implementation of European standards of prosecutorial activity; introduction of mechanisms for the exercise of prosecutorial functions during the transitional period; strengthening legal regulation of the anti-corruption activities of the prosecution service; deepening the independence of the prosecution service of Ukraine. It is noted that improving the organizational and legal forms of prosecutorial activity enhances its position among other state authorities; therefore, it is equally important to identify existing problems and shortcomings that should be eliminated in legal regulation in order to optimize prosecutorial activity as a whole.

Key words: development trends, legal regulation, prosecutorial activity, "fourth" branch of government, Ukraine.

1. Introduction

Legal regulation of prosecutorial activity in the context of judicial and legal reform, reform of the prosecution service in connection with the ratification of the Association Agreement between Ukraine and the European Union, the adoption of the new Law of Ukraine "On the Prosecutor's Office," and the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" is subject to reconsideration, as

prosecutorial activity is currently shifting from a strictly subordinative system to a partnership-based system of relations between society and the state. At the same time, the separation of provisions regulating prosecutorial activity into a separate section of the Constitution of Ukraine indicates the recognition of this state authority as an independent "fourth" branch of government.

The foregoing determines the relevance of this study in connection with the adoption

of new legislative acts regulating prosecutorial activity (including the Criminal Procedure Code of Ukraine), as well as the need to transform the role of the prosecution service in light of European integration processes, ensure the independence and authority of this state body, and expand the components of its constitutional and legal status.

To achieve the purpose of the study, it is necessary, in our opinion, to outline the main trends in the development of legal regulation of prosecutorial activity in Ukraine in order to ensure an appropriate professional level of training of future prosecutorial personnel and to stimulate an increase in the significance of prosecutorial activity in the process of exercising the full range of prosecutorial powers.

In addition, the relevance of the study is обусловлена by the reformatting of the content of the principles of subordination and coordination, independence, unity, depoliticization, single leadership and collegiality, publicity, as well as zonal and subject-matter principles of organization and implementation of prosecutorial activity in Ukraine and worldwide. Within the system of checks and balances, the prosecution service remains one of the key law enforcement bodies that plays an important role in ensuring this mechanism.

Issues of prosecutorial activity and the main trends in the development of legal regulation in this area have been examined in the works of Ukrainian legal scholars who combine academic research with practical activity, in particular V. B. Averianov, O. F. Andriiko, V. I. Baskov, V. H. Bessarabov, L. R. Hrytsaienko, Yu. M. Hroshevyyi, L. M. Davydenko, P. M. Karkach, V. V. Karpuntsov, V. V. Klochkov, H. K. Kozhevnykov, I. M. Koziakov, M. V. Kosiuta, A. V. Lapkin, I. Ye. Marochkin, O. V. Martseliak, M. V. Melnykov, M. I. Mychko, O. R. Mykhailenko, H. O. Murashyn, V. P. Nahrebelnyi, M. V. Rudenko, Ye. M. Popovych, V. M. Savitskyi, H. P. Sereda, V. V. Stashys, V. V. Sukhonos, V. Ya. Tatsii, Yu. M. Todyka, M. S. Shalumov, Yu. S. Shemshuchenko, P. V. Shumskyi, O. N. Yarmysh, and others. However, without diminishing the scholarly contribution of these researchers, we must note that due to recent innovations in the legal regulation of prosecutorial activity in Ukraine, these provisions require substantial reconsideration.

2. Peculiarities of the Constitutional and Legal Regulation of the Status of the Prosecutor's Office

The first trend that should, in our opinion, be identified is the trend toward expanding the constitutional and legal regulation of the status of the Prosecutor's Office among other state authorities. The fundamental legal

principles governing the activities of the Prosecutor's Office in Ukraine are enshrined in Chapter VII of the Constitution of Ukraine, entitled "The Prosecutor's Office" (Constitution of Ukraine, 1996). Of crucial importance for the reform of prosecutorial activity was the adoption of the Law of Ukraine "*On the Restoration of Certain Provisions of the Constitution of Ukraine*" (Law of Ukraine *On the Restoration of Certain Provisions of the Constitution of Ukraine*, 2014), as this law restored the parliamentary-presidential form of government and, accordingly, altered the redistribution of powers between the Prosecutor's Office and the legislative and executive branches of power, as well as the President of Ukraine.

As rightly noted by Ye. M. Popovych, in the course of developing the concept of reforming the bodies of the Prosecutor's Office of Ukraine it was repeatedly emphasized, including by representatives of the Council of Europe, that at present there are no adequate guarantees of the independence of the Prosecutor General of Ukraine. This is manifested, in particular, in the existing procedure for appointment to and dismissal from office. Another fundamentally important change was the restoration of a function inherent to the Prosecutor's Office from 2004 to 2010, namely the supervision over the observance of human and civil rights and freedoms, and compliance with laws in this area by executive authorities, local self-government bodies, and their officials and officers (Popovych, 2009).

Analyzing this standpoint, it may appear that vesting the Prosecutor's Office with the aforementioned competence constitutes a return to the function of general supervision; however, this is not the case. Thus, the supplementation of paragraph 5 of Article 121 of the Constitution of Ukraine strengthens the constitutional and legal mechanism for the protection of human and civil rights and enables prosecutorial bodies to respond promptly to complaints filed by specific individuals (not only citizens, but also stateless persons, persons with dual citizenship, foreigners, refugees, etc.) regarding violations of their rights and legitimate interests, and to apply coercive legal measures for their prompt restoration.

M. K. Yakymchuk points out that at present, within the framework of constitutional and legal regulation, the representative function of the Prosecutor's Office is limited to the forms of participation of a prosecutor in court proceedings, which directly follows from paragraph 2, part 1 of Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996). In this regard, at the current stage, further reform of the Prosecutor's Office is associ-

ated with resolving the task of determining its place within the state mechanism, taking into account the constitutional principle of separation of powers (Yakymchuk, 2011).

In addition, other trends in legal regulation in this area can also be identified. In particular, as Ye. M. Popovych rightly observes, not only the legal status of prosecutors has undergone changes, but also the scope of their powers and the organization of prosecutorial activity. Thus, in independent Ukraine, prosecutors were deprived of the right to demand case files from courts and to lodge supervisory protests against court decisions that had entered into legal force, as well as the right to authorize detention as a preventive measure (this competence currently belongs to the investigating judge) (Popovych, 2009).

Analyzing this position, we consider such changes to be positive under conditions where the place of the Prosecutor's Office as a state authority among other bodies has not been clearly determined, and where no clear distinction has been made between supervisory and control, auditing, human rights protection, representative, executive, rule-making, and prosecutorial activities in general. It should also be noted that this state of affairs complicates the full-fledged implementation of prosecutorial activity. Accordingly, in order to carry out comprehensive and complete reform of the Prosecutor's Office, it is necessary not only to adopt new legislative acts, but also to ensure the possibility of their effective practical implementation.

The provisions of the Constitution of Ukraine differ in their socio-political and economic essence, as some of them perform a declarative or programmatic function, while others have a normative and consolidating character. We consider the opinion of V. V. Sukhonos to be well-founded, who emphasizes that at the time of adopting the relevant constitutional provisions regulating prosecutorial activity, the legislator should clearly understand the ultimate goal and stages of reforming the system of prosecutorial bodies. Unfortunately, at the time of the adoption of the Constitution of Ukraine, there was no unified vision of the prospective model of the Ukrainian Prosecutor's Office, nor does such a vision exist today, since the place of the Prosecutor's Office within the system of state authorities remains undefined (Sukhonos, 2010).

It should be noted that in studying the trend toward expanding the constitutional and legal regulation of prosecutorial activity in Ukraine, relatively few constitutional provisions are devoted to this institution. We agree with the opinion of Yu. S. Shemshuchenko (Shemshuchenko, Skrypniuk, Kresina, 2001) that

the provisions of the Constitution of Ukraine are insufficient to fully clarify the trends and essence of prosecutorial activity within the state mechanism.

Therefore, taking into account contemporary European integration processes, the next trend in the legal regulation of prosecutorial activity in Ukraine should be identified as the implementation of European standards of prosecutorial activity.

K. Zweigert and H. Kötz note that legal research acquires a genuinely scientific character when the study extends beyond the norms of a single national legal system (Zweigert, Kötz, 2000). Analyzing the status of the Ukrainian Prosecutor's Office and the European requirements imposed on Ukraine in the context of reforming this institution, Yu. S. Shemshuchenko emphasizes that many of these requirements are subjective in nature and largely reflect the organic commitment of Europeans to their own legal systems. This gives rise to attempts to portray the modern Prosecutor's Office of Ukraine as a relic of the Soviet system, characterized by excessive centralization and independence from local authorities, while its non-affiliation with any branch of power is interpreted as a violation of the principle of separation of powers (Shemshuchenko, 1996).

In our view, such an approach may lead to an absolutization of European achievements in the reform of the Prosecutor's Office and an underestimation of the Ukrainian legal tradition in this context. This situation goes beyond the necessary scope of European integration measures and suppresses national peculiarities; therefore, national legislation should be adapted to European standards with due regard to such specificities.

Today, the legal framework for determining the system of international and European standards governing prosecutorial activity includes the UN *Guidelines on the Role of Prosecutors*, Recommendation No. R (2000) 19 of the Committee of Ministers of the Council of Europe to member states, Recommendation 104 (2003) of the Parliamentary Assembly of the Council of Europe on the role of the Prosecutor's Office in a democratic society governed by the rule of law, the *European Guidelines on Ethics and Conduct for Prosecutors* (the Budapest Guidelines), as well as the *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* adopted by the International Association of Prosecutors, among others.

It should be noted that Resolution No. 1466 of the Parliamentary Assembly of the Council of Europe dated October 5, 2005, "On the Fulfilment of Duties and Obligations by Ukraine",

characterized the aforementioned constitutional changes as a return to the past. The Resolution called for the prompt abolition of the function of general supervision and its transfer to the judiciary, primarily to administrative courts (Resolution of the Parliamentary Assembly of the Council of Europe *On the Fulfilment of Duties and Obligations by Ukraine*, 2005).

We believe that the function of general supervision cannot be inherently characteristic of the judicial system, since courts are unable to respond promptly to violations of human and civil rights due to procedural time limits, procedural rules, and other constraints. At the same time, within the sphere of prosecutorial activity, such supervision should indeed be abolished in general; however, in certain areas—particularly those related to the protection of socially vulnerable groups—it should retain its significance.

Critically assessing the provisions of the new Law of Ukraine "*On the Prosecutor's Office*", which abolished the function of general supervision (this provision entered into force upon the adoption of the law), it should be noted that attention must be paid to the position of the European Commission for Democracy through Law (the Venice Commission) regarding the need to strengthen the independence of the Prosecutor's Office of Ukraine from political pressure and to achieve its depolitization. At the same time, it was emphasized that the existing role of the Prosecutor's Office in protecting human and civil rights should in the future be transferred to other bodies or exercised by individuals themselves, with the assistance of lawyers of their own choosing (Karpuntsov, 2013).

Analyzing the above, it should be noted that the construction of a rule-of-law and social state in Ukraine necessitates the improvement of the legal framework governing prosecutorial activity, taking into account the provisions of the Law of Ukraine "*On the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union*" (Law of Ukraine *On the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union*, 2004), which defines legislative adaptation as the process of bringing the laws of Ukraine and other normative legal acts into conformity with the *acquis communautaire*. At the same time, given that the entry into force of the new Law of Ukraine "*On the Prosecutor's Office*" was postponed until July 15, 2015, the new provisions regulating prosecutorial activity have not yet found real practical implementation, except for the abolition of the function of general supervision. Consider-

ing that the existence of general supervision in Ukraine had transformed into a factor enabling manipulation by prosecutors or abuse of supervisory powers and became a means of unlawful interference in the activities of enterprises and organizations, this function had to be eliminated, also in view of the fact that no European state vested the prosecution service with the function of general supervision.

Taking into account the trend toward the implementation of European standards in the legal regulation of prosecutorial activity, it should be noted that pursuant to paragraph 5 of Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, the state should take measures to ensure that: (a) the recruitment, promotion, and transfer of prosecutors are carried out in accordance with fair and impartial procedures that exclude representation of the interests of specific groups and discrimination at any level, such as on the grounds of sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, or other status (at present, the new Law of Ukraine "*On the Prosecutor's Office*" has introduced a competitive selection procedure); (b) the careers of prosecutors, their promotion, and transfers are based on known and objective criteria, such as professional competence and work experience; (c) the transfer of prosecutors may also be dictated by service necessity; (d) the necessary conditions of service, such as remuneration, tenure, and pension provision, are regulated by law, taking into account the importance of prosecutorial work, as well as an appropriate retirement age; (e) disciplinary proceedings against prosecutors are regulated by law and guarantee a fair and objective assessment and decision subject to independent and impartial review; (f) prosecutors, together with their families, are protected by public authorities where their personal safety is threatened as a result of the proper performance of their functions; (g) prosecutors have the right to effective remedies, including, where appropriate, access to a court of special jurisdiction, if their legal status is violated (Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, 2000).

We are compelled to state that today cases of unjustified refusal to appoint individuals to prosecutorial positions are widespread, since the competitive procedure for selecting candidates for the position of prosecutor, as provided for in Article 27 of the Law of Ukraine "*On the Prosecutor's Office*" (Law of Ukraine *On the Prosecutor's Office*, 2014), has not yet fully entered into force. This procedure requires candidates to have higher legal education, at least

two years of professional experience in the field of law, and proficiency in the state language.

At present, the requirements for the rotation of prosecutorial staff remain undefined at the normative level, as referred to in subparagraph "c" of paragraph 5 of Recommendation No. 19 (2000) (Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe, 2000). In implementing the Association Agreement between Ukraine and the European Union, Ukraine must continue the process of adapting national legislation to the *acquis communautaire* in connection with the implementation of measures aimed at further reform of prosecutorial activity.

The next trend in the development of legal regulation of prosecutorial activity in independent Ukraine is the introduction of mechanisms for the implementation of prosecutorial functions during the transitional period. At present, the correlation between issues of general supervision and specific prosecutorial supervisory activity remains problematic. As rightly noted by M. V. Kosiuta, any attempts to legislatively define the scope of issues falling within the competence of the Prosecutor's Office in exercising supervisory powers are unproductive, since such definitions cannot encompass the entire diversity of this activity. The scholar proposed two possible solutions for further improvement of the Law of Ukraine "*On the Prosecutor's Office*":

1. to abandon altogether the definition of the components of the subject matter of supervisory powers;

2. to provide an approximate, non-exhaustive list of the most priority areas of activity, indicating the possibility of the existence of other areas as well (Kosiuta, 2010).

We agree with this position and believe that it is not appropriate to define the content of supervisory powers in detail in the Law of Ukraine "*On the Prosecutor's Office*." In our view, it would be sufficient to outline only the manifestations of certain forms of supervisory activity within the broader concept of prosecutorial activity. It should also be noted that the types of prosecutorial supervisory activity defined in Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996) have an expanded content. In particular, supervision over compliance with laws by bodies engaged in operative-search activity is not an exception to the general rule and falls within the scope of prosecutorial activity. At present, this type of supervision is not an independent function of the Prosecutor's Office, but a component of its main function provided for in paragraph 3, part 1 of Article 121 of the Constitution of Ukraine (Constitution of Ukraine, 1996). Due to its specificity and significance, it has

an exceptional character and belongs to the priority areas of prosecutorial activity. Its priority is reflected by the legislator even in the title of this supervisory function, as it is placed before pre-trial investigation.

At the same time, it should be noted that Ukraine has developed and operates a rather complex and extensive system for the protection of human and civil rights, which includes legislative, executive, and judicial authorities, the President of Ukraine, as well as supervisory and control bodies. Within this system, the Prosecutor's Office occupies an important place in ensuring human and civil rights, as its activity allows for the prevention of violations and effective response to violations of the law by state authorities, local self-government bodies, institutions, enterprises, organizations, and individual citizens (Pushkina, 2008).

Considering the implementation of the representative judicial function of the Prosecutor's Office during the transitional period and the corresponding legal regulation in this area, it should be noted that the representation of a prosecutor in court should be regarded as representation of a new type, which differs from the traditional semantic meaning of the concept of "representation." Of fundamental importance is the interpretation of prosecutorial judicial representation provided in the decision of the Constitutional Court of Ukraine in the case upon the constitutional submission of the Supreme Economic Court of Ukraine and the Prosecutor General's Office of Ukraine concerning the official interpretation of Article 2 of the Economic Procedure Code of Ukraine (Decision of the Constitutional Court of Ukraine, 1999) (the case on the representation of state interests in the economic court by the Prosecutor's Office of Ukraine). In particular, the Court stated that representation of the interests of the state by the Prosecutor's Office of Ukraine in an economic court constitutes legal relations in which a prosecutor, exercising powers defined by the Constitution and laws of Ukraine, performs procedural actions in court aimed at protecting the interests of the state. Such official interpretation of the law is binding.

However, V. I. Bednarska and S. V. Biesieda point out that this decision effectively bypasses the issue of implementing any actions outside court proceedings. Moreover, statements of claim, motions, and applications filed by a prosecutor in the interests of the state are not sufficiently regulated in procedural legislation. Consequently, the prosecutor is vested only with the authority to participate in court hearings, which, in itself, cannot ensure effective protection of the rights and legitimate interests of an individual or the state (Bednarska, Biesieda, 2012).

Analyzing the foregoing, it should be noted that the above reveals the essence of the trend of transitional prosecutorial activity during the implementation of European standards: representation of the interests of the state in court by prosecutors has a complex nature, since, on the one hand, it constitutes a function of the Prosecutor's Office, and, on the other hand, a set of legal relations. It should be emphasized that neither the Constitution of Ukraine nor the Law of Ukraine *"On the Prosecutor's Office"* clearly defines the types of judicial proceedings in which a prosecutor may represent the interests of the state. Such a conclusion may be drawn from the provisions of specific procedural codes, which determine the nature of this activity and its content. The function of a prosecutor to represent the interests of a citizen or the state in court is defined as one exercised in cases prescribed by law. As a rule, it is considered to be directly implemented by a prosecutor in the course of civil, commercial (economic), criminal, and administrative proceedings. A positive legislative innovation is the establishment in the new Law of Ukraine *"On the Prosecutor's Office"* of an exhaustive list of functions performed by the Prosecutor's Office with reference to the Constitution of Ukraine.

Considering the legal regulation of the function of public prosecution, which is implemented within the framework of prosecutorial activity, it should be noted that, according to the European tradition, a prosecutor (attorney) acts as the public prosecutor in criminal proceedings. V. V. Sukhonos emphasizes that, by maintaining public prosecution in the court of first instance, a prosecutor performs an important part of the function of criminal prosecution entrusted to the Prosecutor's Office, understood as activity aimed at identifying the person who committed a criminal offense, bringing such person to criminal liability, referring the case to court, and substantiating the accusation before the court (Sukhonos, 2010).

However, a shortcoming of the existing legal regulation lies in the narrow understanding of the maintenance of public prosecution. It should be noted that, as of today, legal regulation tends toward expanding the scope of the function of public prosecution exercised by a prosecutor. When submitting motions for detention, extension of detention periods, or authorization of operative-search or investigative actions, the prosecutor does not act as a public prosecutor, since public prosecution has not yet been initiated (a person is considered accused from the moment an indictment is submitted to the court). It should also be emphasized that at the supervisory stages of criminal proceedings, the prosecutor may continue to maintain

public prosecution, in particular by insisting on the reversal of an acquittal or, conversely, on the termination of criminal proceedings due to the failure to prove the person's guilt in committing a criminal offense.

3. Current Objectives of the Legal Regulation of Prosecutorial Activity

In our view, the objective of contemporary legal regulation of prosecutorial activity in this area should be the affirmation of the special role of the prosecutor as an accuser in facilitating compliance with the requirements of the law, as well as fulfilling the duty to take timely measures to eliminate violations of the law, regardless of the source from which such violations originate.

Thus, the foregoing provides grounds to conclude that the implementation of the core and most significant functions of the Prosecutor's Office is subject to expansion and reformatting from a model of "supervision" to one of "partnership relations" with the state and the citizen. Accordingly, the human rights-protective aspect of prosecutorial activity is strengthened, accompanied by appropriate legal regulation of this sphere through a centralized and unified approach.

Another trend in the legal regulation of prosecutorial activity is the strengthening of the legal framework governing the anti-corruption activity of the Prosecutor's Office. With regard to the specific manifestations of prosecutorial activity in the anti-corruption domain, there exists a set of issues that require urgent resolution. At present, the Law of Ukraine *"On the Principles of Preventing and Combating Discrimination in Ukraine"*, the Law of Ukraine *"On the National Anti-Corruption Bureau of Ukraine"*, as well as enhanced liability under the Criminal Code of Ukraine have been adopted; however, issues related to the anti-corruption activity of prosecutors have not yet been fully resolved. It should be noted that the new Law of Ukraine *"On the Prosecutor's Office"* introduces the necessary restrictions and rules in this regard.

In our opinion, within the framework of the existing legal regulation, taking into account the tendency toward its possible expansion, it would be appropriate to distinguish the following areas for the actualization of anti-corruption (coordination) prosecutorial activity:

1. prevention of corrupt practices and forecasting with regard to specific positions, locations, and individuals affected by this "social disease";
2. detection of criminal corruption-related offenses and bringing to justice those guilty of committing corrupt acts;
3. implementation of measures for the prevention and combating of corruption, coordina-

tion of such measures, and ensuring their systematic, consistent, and periodic nature.

Today, the National Anti-Corruption Bureau of Ukraine has become the strategic center for coordinating anti-corruption activity, while the Prosecutor's Office serves as the center for coordinating the fight against corruption. We support the proposal of L. R. Hrytsaienko regarding the need to establish in Ukraine a Service for the Prevention of Money Laundering of Proceeds from Crime (Hrytsaienko, 2013). Such a service would conduct inspections based on relevant state registers of natural and legal persons (business entities and subjects of financial activity), owners of real estate, and compare the data with transactions carried out by these entities.

It should be noted that anti-corruption prosecutorial activity is aimed at identifying, eliminating, and preventing violations provided for in the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001), in Chapter XVII "Criminal Offenses in the Sphere of Official Activity and Professional Activity Related to the Provision of Public Services." However, it should be emphasized that the exercise of the function of public prosecution by a prosecutor should not be equated with anti-corruption activity. The latter is exclusively related to the coordination of actions of state authorities, local self-government bodies, and their officials and officers in the detection and elimination of, as well as prevention of, corruption-related offenses. It should be noted that the legislation in this area does not detail either the nature of prosecutorial activity or the specific features of the exercise of powers to coordinate the prevention and combating of corruption by prosecutors at different levels.

Thus, based on the foregoing, it may be stated that the trend toward the implementation of anti-corruption activity within prosecutorial activity should also provide for the development of a specific mechanism of "checks and balances" that would ensure the independence of prosecutorial activity within the state mechanism for ensuring and protecting human and civil rights and freedoms.

Another trend in the development of the legal regulation of prosecutorial activity in independent Ukraine is the deepening of the independence of the Prosecutor's Office of Ukraine. It should be noted that, by maintaining public prosecution in court, representing the interests of a citizen or the state in court in cases provided for by law, and supervising compliance with the law in the execution of court decisions in criminal proceedings, as well as in the application of other coercive measures related to the restriction of personal liberty, prosecutors

ensure the implementation of the fundamental principles of judicial proceedings defined in Article 129 of the Constitution of Ukraine (Constitution of Ukraine, 1996).

In our view, the Prosecutor's Office should become an independent and autonomous branch of power, the activity of which does not fit within the framework of any of the traditional branches of government. The existence of functions assigned to the Prosecutor's Office by the Basic Law and a separate legislative act excludes its inclusion in the legislative, executive, or judicial branch of power.

If laws adopted by the legislative branch are not enforced, resolutions and orders issued by government institutions are not implemented, and court judgments and decisions are not rendered and enforced in a timely and proper manner, an atrophy of state power occurs, leading either to a state of powerlessness or to the dominance of a single branch of power (Tolochko, 2011).

However, it cannot be asserted that there exists a clear trend toward a delineation of prosecutorial, executive, and law-making activities. Therefore, even in the updated legislation on the Prosecutor's Office, it is impossible to institutionalize and distinguish prosecutorial power as a separate type or "branch" of state power. In our opinion, attempts to single out prosecutorial power as an independent branch of government are doomed to failure. At present, the organizational and legal system of the Prosecutor's Office of Ukraine is increasingly distancing itself from the structural design of the judicial system. As previously noted in this study, prosecutors, in the course of their activities, interact with virtually all subjects of legal relations. The exercise by prosecutorial bodies of the function of public prosecution in court and the representation of the interests of a citizen or the state in court in cases provided for by law are directly related to the activity of the judiciary and the structure of judicial proceedings. In fact, the structure of the Prosecutor's Office as a whole corresponds to the structural organization of judicial authorities only at the level of courts of first instance. We believe that the existing structural mismatch between prosecutorial offices and courts in their organizational frameworks does not allow for the proper assurance of prosecutorial independence or the proper performance of the functions entrusted to it during appellate review of commercial and administrative cases. The essence of the problem lies in the fact that the jurisdiction of appellate commercial and administrative courts, with certain exceptions, extends to several regions.

It is noteworthy that V. V. Sukhonos proposes to empower prosecutors within the system of checks and balances among the legislative,

executive, and judicial branches of government—granting them authority to investigate criminal offenses committed by Members of Parliament and members of the Cabinet of Ministers of Ukraine (Sukhonos, 2010). However, this position seems, in our view, to pose a threat to the principle of independence of prosecutorial activity as a whole. The problem with implementing this proposal lies in the impossibility of combining the functions of public prosecution and pre-trial investigation. In such a case, prosecutors would be collecting evidence during pre-trial investigations, which would have an exclusively accusatory character. Furthermore, it remains unclear which body would be entrusted with the function of supervising the pre-trial investigation, since currently the Prosecutor's Office performs this supervisory role over investigative bodies. In addition, investigative bodies are effectively subordinated to the Prosecutor's Office, and therefore, it is neither logical nor justified to separate and transfer the function of supervising pre-trial investigations of criminal offenses committed by specific subjects.

It should be noted that some principles and methods of legal organization and regulation of prosecutorial activity in Ukraine, as well as existing trends in legal regulation, were inherited from the Soviet system and do not correspond to the current state of societal relations. Moreover, these regulatory realities do not align with the place and purpose of prosecutorial activity overall among other types of activities carried out by state authorities in Ukraine. The state of observance of human and civil rights, the rule of law, and legality in the country largely depends on the Prosecutor's Office. Therefore, the level of proper organization and implementation of prosecutorial activity directly determines the legal protection of the population, especially under current conditions where effective public oversight over prosecutorial activity is lacking.

4. Conclusions

Thus, based on the above, it can be concluded that the trends in the development of legal regulation of prosecutorial activity in independent Ukraine should be inextricably linked to the processes of transformation of the rule of law, the democratic society, and the reorientation of the legal consciousness of each individual. The strategic goal of highlighting the trend of prosecutorial independence from other state authorities should be the establishment of the Prosecutor's Office as an autonomous system of state bodies, operating outside the traditional division into three branches of government and not subordinated to any of them, while occupying a prominent

position within the system of checks and balances.

In our view, the trends in the development of legal regulation of prosecutorial activity in Ukraine include the following: 1) expansion of constitutional and legal regulation of the status of the Prosecutor's Office among other state authorities; 2) implementation of European standards of prosecutorial activity; 3) introduction of mechanisms for the Prosecutor's Office to exercise its functions during the transitional period; 4) strengthening the legal regulation of the Prosecutor's Office's anti-corruption activities; 5) deepening the independence of the Prosecutor's Office in Ukraine.

The legal regulation of prosecutorial activity in Ukraine is one of the cornerstones of continuing the European integration course, since the Prosecutor's Office is a state authority upon which the level of protection of the population, the authority of state institutions, and the ability of individuals to exercise their rights and legitimate interests depend. At the same time, it should be noted that improving the organizational and legal forms of prosecutorial activity strengthens its position among other state authorities. Therefore, it is equally important to identify the problems and shortcomings that need to be addressed in the legal regulation in order to optimize prosecutorial activity as a whole.

References

Bednarska, V.I., & Biesieda, S.V. (2012). *Aktualni problemy realizatsii sudovo-predstavnytskoi funktsii prokuratury* [Current problems of implementing the judicial and representative function of the prosecutor's office]. *Prokuratura Ukrayny: istoriya, sohodennia ta perspektyvy*, 1, 101–104. (in Ukrainian)

Hrytsaienko, L.R. (2013). *Prokurorska diialnist v Ukrayni ta zarubiznykh kraiinakh* [Prosecutor's activity in Ukraine and foreign countries]. Kyiv: Yurydychna literatura. (in Ukrainian)

Karpuntsov, V.V. (2013). *FunktSIONALNE PYZNACHENNIA ORHANIV PROKURATURY: naukovo-praktychnyi analiz* [Functional purpose of prosecutor's offices: scientific and practical analysis]. Kyiv: Lohos. (in Ukrainian)

Konstytutsiia Ukrayny: vid 28.06.1996 № 254k/96-VR [Constitution of Ukraine: dated 28.06.1996 No. 254k/96-VR]. (1996). Retrieved from <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text> (in Ukrainian)

Kosiuta, M.V. (2010). *Prokuratura Ukrayny* [Prosecutor's Office of Ukraine]. Kyiv: Znannia. (in Ukrainian)

Kryminalnyi kodeks Ukrayny: vid 05.04.2001 № 2341-III [Criminal Code of Ukraine: dated 05.04.2001 No. 2341-III]. (2001). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (in Ukrainian)

Popovych, Ye.M. (2009). *Shliakhy rozvytku prokuratury Ukrayny: monohrafia* [Ways of development of the Prosecutor's Office of Ukraine: monograph]. Kharkiv: Tornado. (in Ukrainian)

Pushkina, O.V. (2008). *Konstytutsiiniy mekhaniزم zabezpechennia prav liudymy i hromadianyna v Ukrayni: problemy teorii i praktyky* [Constitutional mechanism of ensuring human and citizen rights in Ukraine: problems of theory and practice]. Extended abstract of Doctor's thesis, Natsionalna yurydychna akademiiia Ukrayny imeni Yaroslava Mudroho. (in Ukrainian)

Rekomendatsiia № 19 (2000) Komitetu Rady Ministriv derzhavam-chlenam Rady Yevropy shchodo roli derzhavnoi prokuratury v sistemi kryminalnoho sudechynstva: pryiniata Komitetom Ministriv Rady Yevropy 06.10.2000 na 724-1 zusztrichi zastupnykiv ministriv [Recommendation No. 19 (2000) of the Committee of Ministers of the Council of Europe to member states on the role of the public prosecutor's office in the criminal justice system: adopted on 06.10.2000 at the 724-1 meeting of the Ministers' Deputies]. (2000). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf (in Ukrainian)

Rezoliutsiia Parlamentskoi Asamblei Rady Yevropy Pro vykonannia oboviazkiv ta zovobiazan Ukrainoiu: vid 05.10.2005 № 1466 [Resolution of the Parliamentary Assembly of the Council of Europe on the fulfillment of duties and obligations by Ukraine: dated 05.10.2005 No. 1466]. (2005). Retrieved from [http://www.coe.kiev.ua/uk/dogovory/RN1466\(2005\).html](http://www.coe.kiev.ua/uk/dogovory/RN1466(2005).html) (in Ukrainian)

Rishennia Konstytutsiinoho sudu Ukrayny u spravi za konstytutsiinym podanniam Vyshchoho hospodarskoho sudu Ukrayny ta Heneralnoi prokuratury Ukrayny shchodo ofitsiinoho tlumachenia polozhennia st. 2 Hospodarskoho protsesualnoho kodeksu Ukrayny (sprava pro predstavnystvo prokuraturoi Ukrayny interesiv derzhavy u hospodarskomu sudi) vid 08.04.1999 № 3-rp/99 [Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Economic Court of Ukraine and the Prosecutor General's Office of Ukraine on the official interpretation of the provisions of Article 2 of the Economic Procedure Code of Ukraine: case on the representation of the interests of the state in the economic court by the Prosecutor's Office of Ukraine, dated 08.04.1999 No. 3-rp/99]. (1999). Retrieved from <https://zakon.rada.gov.ua/laws/show/v007p710-10#Text> (in Ukrainian)

Shemshuchenko, Yu.S. (1996). *Teoretychni zasady prokurorskoho nahliadu na suchasnomu etapi*

[Theoretical principles of prosecutorial supervision at the present stage]. *Problemy rozvytku prokuratury Ukrayny v umovakh demokratychnoi pravovoї derzhavy*, 1, 15–19. (in Ukrainian)

Shemshuchenko, Yu.S., Skrypniuk, O.V., & Kresina, I.O. (2001). *Derzhavotvorennia i pravo tvorennia v Ukrayni: dosvid, problemy, perspektyvy* [State formation and law formation in Ukraine: experience, problems, prospects]. Kyiv: Instytut derzhavy i prava im. V.M. Koretskoho. (in Ukrainian)

Sukhonos, V.V. (2010). *Pravovi ta orhanizatsiini aspeky rozvytku prokuratury krainy v suchasnykh umovakh* [Legal and organizational aspects of the development of the Prosecutor's Office of the country in modern conditions]. Sumy: University Book. (in Ukrainian)

Tolochko, O.M. (2011). *Reformuvannia prokuratury Ukrayny: instytutsionalnyi aspekt* [Reforming the Prosecutor's Office of Ukraine: institutional aspect]. *Prokuratura Ukrayny: istoriia, sohodennia ta perspektyvy: materialy mizhnarodnoi nauko-vo-praktychnoi*, 152, 45–48. (in Ukrainian)

Tsvaihert, K., & Kéts, Kh. (2000). *Vvedenye v srovnitelnoe pravovedenye v sfere chastnogo prava* [Introduction to comparative law in the field of private law]. Kyiv. (in Ukrainian)

Yakymchuk, M.K. (2011). *Aktualni pytannia transformatsii funksii prokuratury ta yii roli v systemi orhaniv derzhavnoi vlasti Ukrayny* [Current issues of transformation of the functions of the Prosecutor's Office and its role in the system of state authorities of Ukraine]. *Prokuratura Ukrayny: istoriia, sohodennia ta perspektyvy*, 1, 35–38. (in Ukrainian)

Zakon Ukrayny Pro prokuraturu: vid 14.10.2014 № 1697-III [Law of Ukraine on the Prosecutors Office: dated 14.10.2014 No. 1697-III]. (2014). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18> (in Ukrainian)

Zakon Ukrayny Pro vidnovlennia dii okremykh polozhen Konstytutsii Ukrayny: vid 21.02.2014 № 742-VII [Law of Ukraine on the restoration of certain provisions of the Constitution of Ukraine: dated 21.02.2014 No. 742-VII]. (2014). Retrieved from <https://zakon.rada.gov.ua/laws/show/742-18#Text> (in Ukrainian)

Zakon Ukrayny Pro Zahalnoderzhavnу prohramu adaptatsii zakonodavstva Ukrayny do zakonodavstva Yevropeiskoho Soiuzu: vid 18.03.2004 № 1629-IV [Law of Ukraine on the National Program for Adapting the Legislation of Ukraine to the Legislation of the European Union: dated 18.03.2004 No. 1629-IV]. (2004). Retrieved from <https://zakon.rada.gov.ua/laws/show/1629-15#Text> (in Ukrainian)

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ОСНОВНІ ТЕНДЕНЦІЇ РОЗВИТКУ ПРАВОВОГО РЕГУЛЮВАННЯ ПРОКУРОРСЬКОЇ ДІЯЛЬНОСТІ В НЕЗАЛЕЖНІЙ УКРАЇНІ

Анотація. *Метою статті* є характеристика основних тенденцій розвитку правового регулювання прокурорської діяльності в Україні, щоб забезпечити належний професійний кадровий рівень підготовки майбутніх прокурорських кадрів, а також простимулювати підвищення значимості прокурорської діяльності в ході реалізації спектру їх повноважень. **Результатами.** Правове регулювання прокурорської діяльності в контексті судово-правової реформи, реформування прокурорської діяльності підлягає перегляду, адже вона наразі переходить від суворо субординаційної системи до партнерської системи взаємовідносин суспільства і держави. При цьому виокремлення норм, що регулюють прокурорську діяльність, в окремий розділ Конституції України свідчить про виокремлення даного органу державної влади в самостійну – «четверту» гілку влади. Тож метою статті є дослідження основних тенденцій розвитку правового регулювання прокурорської діяльності в Україні. Констатовано, що тенденції розвитку правового регулювання прокурорської діяльності в незалежній Україні мають бути нерозривно пов'язані із процесами трансформації правої держави, демократичного суспільства та переорієнтації правої свідомості кожного індивіда. Стратегічною метою виокремлення тенденцій незалежності прокуратури від інших органів державної влади має стати становлення її як самостійної системи органів державної влади, що знаходиться поза межами поділу на три гілки влади і не підпорядковується жодній із них, проте займає чільне місце в механізмі стримувань та протиголів. **Висновки.** До тенденцій розвитку правового регулювання прокурорської діяльності в Україні, на наш погляд, можна віднести такі: 1) розширення конституційно-правового регулювання статусу прокуратури з-поміж інших органів державної влади; 2) впровадження європейських стандартів прокурорської діяльності; 3) запровадження механізмів реалізації прокуратурою своїх функцій на час переходного періоду; 4) посилення правового регулювання антикорупційної діяльності прокуратури; 5) поглиблення незалежності в діяльності прокуратури України. Зауважено, що вдосконалення організаційно-правових форм діяльності прокуратури посилює її місце серед інших органів державної влади, а тому не менш важливим є виокремлення проблем і недоліків, які слід усунути в правовому регулюванні з метою оптимізації прокурорської діяльності в цілому.

Ключові слова: тенденції розвитку, правове регулювання, прокурорська діяльність, «четверта» гілка влади, Україна.