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[RETRACTED] ADMINISTRATIVE-LEGAL AND CRIMINAL ASPECTS OF THE PROSECUTOR'S OFFICE: FOREIGN EXPERIENCE AND DIRECTIONS FOR IMPROVEMENT

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ABSTRACT

The purpose of the article is to clarify foreign experience concerning legal regulation of the prosecutor's office functioning. Main content. In Germany, public prosecutor's offices function at all levels of general courts. The Federal Prosecutor General exercises his powers under the overall direction of the German Minister of Justice. It is noted that the modern French prosecutor's office belongs to the executive branch of government and is subordinate to the Ministry of Justice. Officials of the prosecutor's office are very close to the judicial corps, as they receive the same training and in the course of their careers often move from prosecutors to judges and vice versa. In Great Britain, there is no public prosecutor's office or its direct counterpart at all. In the system of state authorities, the Royal Prosecutor's Office functions as a self-consistent and independent authority, whose activities are coordinated by the Attorney General. Methodology. Based on the comparative legal method of foreign prosecutors' offices, data are provided on their place in the state system, the type of model and main functions, which gives an idea of the role and directions of development of the prosecutor's office in the leading countries of the modern world. Conclusions. It has been concluded that there is no single standard in Europe regarding the model of the prosecutor's office. The analyzed models of prosecutor's offices have advantages and disadvantages, but none of them is excluded and neither of the models is preferred.

Keywords: prosecutor's office; organization of the prosecutor's office; foreign countries; location of the prosecutor's office; powers of the prosecutor of foreign countries.

[RETRATAÇÃO] ASPECTOS ADMINISTRATIVO-JURÍDICOS E PENAIS DO MINISTÉRIO PÚBLICO: EXPERIÊNCIA ESTRANGEIRA E ORIENTAÇÕES PARA MELHORAR

RESUMO

O objetivo do artigo é esclarecer a experiência estrangeira sobre a regulamentação legal do funcionamento do Ministério Público. Conteúdo principal. Na Alemanha, os Ministérios Públicos funcionam em todos os níveis dos tribunais gerais. O Procurador-Geral Federal exerce seus poderes sob a direção geral do Ministro da Justiça alemão. Note-se que o moderno Ministério Público francês pertence ao poder executivo do governo e é subordinado ao Ministério da Justiça. Os funcionários do Ministério Público são muito próximos do corpo judiciário, pois recebem o mesmo treinamento e, no curso de suas carreiras, muitas vezes, passam de promotores para juízes e vice-versa. Na Grã-Bretanha, não há Ministério Público ou sua contraparte direta. No sistema de autoridades estatais, o Ministério Público Real funciona como uma autoridade autoconsistente e independente, cujas atividades são coordenadas pelo Procurador-Geral. Metodologia. Com base no método jurídico comparativo de promotorias estrangeiras, são fornecidos dados sobre seu lugar no sistema estatal, o tipo de modelo e as principais funções, o que dá uma ideia do papel e das direções de desenvolvimento da promotoria nos principais países do mundo moderno. Conclusões. Concluiu-se que não há um padrão único na Europa em relação ao modelo da promotoria. Os modelos analisados de promotorias têm vantagens e desvantagens, mas nenhuma delas é excluída e nenhum dos modelos é preferido.

Palavras-chave: promotoria; organização da promotoria; países estrangeiros; localização da promotoria; poderes do promotor de países estrangeiros.

1 INTRODUCTION

The current stage of development of foreign countries in some aspects, and especially in the field of protection of rights and freedoms, is ahead of Ukraine's experience. In the light of permanent reforms in Ukraine and given the desire of Ukraine to join the European community, from our point of view it is useful to study the experience of functioning of state legal institutions, in particular, that of the prosecutor's office in the USA and some countries of the European community. In our opinion, research of the experience in the sphere of building a system of prosecutor's offices is of particular importance, for the purpose of clarifying Ukraine's further steps in this area. From our point of view already existing studies are not sufficient today, because they are mostly based on previously conducted studies and they do not take into account many aspects of modern legal regulation and changes that are made to the current legislation, including in foreign countries.

Lapkin A. notes that in the context of studying international standards of prosecutorial

activity the factors of foreign influence are the reverse aspect of their influence on the national model of the prosecutor's office, which is the displacement of its unique internal features in favor of general external ones, which is generally inherent in the processes of globalization (Lapkin, 2020). Voytovych R points out that globalization does not always have a positive effect on national development, since only highly developed countries benefit from it, thanks to the fact that they manage to expand the boundaries of their influence on other countries, while transitional societies are not ready to face their challenges. If a separate state has an effective national strategy for social development, it will be quite cautious about external influences (Voytovych, 2012). With regard to the influence of international standards on the prosecutor's office of Ukraine, this was manifested in the fact that they did not so much complement but faster replaced its national characteristics. To a large extent, this was due to the fact that due to ideological and political reasons when forming the standards of prosecutorial activity, their developers (at least at the initial stage) actually did not take into account experience of functioning of the prosecutor's offices of the post-Soviet states, including Ukraine, moreover, they considered it as negative in the light the Soviet past.

2 METHODOLOGY

The study is based on the works of foreign and Ukrainian researchers on the activities of prosecutor's offices, etc.

With the help of the epistemological method, the specifics of the activity of the prosecutor's office, etc., were clarified, thanks to the logical-semantic method, the conceptual apparatus, the historical and legal characteristics of the activity of the prosecutor's office, etc., were deepened. Thanks to the existing methods of law, we managed to analyze the essence of the activities of the prosecutor's office, etc (Zhukova, 2023).

The dialectical method makes it possible to substantiate the processes of objective reality, cause-and-effect relationships, as well as the contradiction between content and form, essence and phenomenon.

The specified method contributes to the understanding of objective reality, taking into account the experience gained in the process of cognitive activity. This fundamental philosophical method is fundamental and determines the correct application of other general scientific methods (historical (historical-legal), terminological (linguistic, terminological analysis, operationalization of concepts), comparative-legal, systemic-structural, statistical and modeling methods) and specifically scientific methods (sociological (survey,

questionnaire, expert evaluations), logical-legal, comparison, methods of analysis and synthesis, induction and deduction) in their unity and interconnection. It can be used by learning general categories of management activity, administrative and legal principles organization and activities of law enforcement agencies, in particular the prosecutor's office, in their unity (Zadyraka *et al.*, 2023).

The principles of objectivity and historicism should also be included in the general philosophical research methods. The first requires using only verified facts and data in the research process, for example, representative results of sociological studies, data from official statistics, etc. The second requires the researcher to take into account the historical conditions in which certain normative acts were adopted, factors that at that time influenced the will of the subject of normative activity.

General scientific methods of research include: systemic and structural-functional methods, techniques of the logical method (analysis, synthesis, deduction and induction), techniques of the sociological method (questionnaires, surveys, social experiments, observations, expert evaluations), the method of comparison, axiomatic and terminological methods .

The system-structural method involves a consistent comprehensive study of the essence of a specific phenomenon as a whole, hierarchical, structured system (a plurality of interconnected elements), the study of its individual parts (elements) and the determination of their role (functions) in the system. This method can be used during the study of the system of constitutional and legislative foundations of the administrative and legal foundations of the organization and activities of prosecutor's offices. In particular, the system method makes it possible to systematize international legal acts and acts of national legislation, the norms of which regulate issues of organization and activity of prosecutor's offices. The structural-functional method makes it possible to investigate in detail the structure of the prosecutor's office and the functions of each of its divisions.

Techniques of the logical method - analysis and synthesis are interrelated, they are used in view of the topic, goal and task of scientific research for both superficial and in-depth studying the essence of a specific phenomenon (subject). The analysis consists in dividing a certain phenomenon into parts (elements, signs), and synthesis - in the union of separate parts (elements, signs) into a single whole. These methods can be used in conjunction with each other during the study of all problematic issues related to the administrative and legal foundations of the organization and activities of prosecutor's offices.

3 LITERATURE REVIEW

Today, in Ukraine, there is a small amount of research on foreign experience of administrative and legal regulation of the organization and activities of the prosecutor's office, which does not allow to clearly define construction models of this body of state power, and to find out the possibilities of introducing foreign experience into the legal system of Ukraine. At the same time, in this direction we should point out the thesis of O.V. Khorusunenko "The Prosecutor's Office of Ukraine and the member countries of the European Union: a comparative study" (Khorsunenکو, 2019); in this thesis the author conducted a comprehensive study, found out the main shortcomings of the prosecutor's office models in the countries of the European Community and came to the conclusion that "the legal status of the prosecutors of the EU member states largely depends on the place that the prosecutor's office occupies in the system of the state authorities, which affects the procedure, term and definition of the subject of the appointment of prosecutors at different levels, and at the same time it was concluded that each EU member state establishes and guarantees independence of prosecutors in exercising their powers."

One may also point out the thesis by S. L. Nazaruk "Administrative and legal support of the activities of the prosecutor's office of Ukraine and the leading countries of the European Union: comparative study", where the author correctly determined that "a comparative study of the administrative and legal support of activities performed by the prosecutor's office of Ukraine and those of the leading EU states makes it possible to identify and single out relevant measures aimed at improving the administrative and legal support of the activities inherent to the prosecutor's office of our country" (Nazaruk, 2021).

The purpose of the article is to reveal peculiarities of the modern legal regulation of the organization and activities of the prosecutor's office of the United States and some countries of the European Union as well as clarify possible prospects of applying positive foreign experience in prosecutor's activities in Ukraine.

4 RESULTS AND DISCUSSION

At the current stage, development of the prosecutor's office is connected with the approval of the general principles of its activity at the international level, with the preservation of various organizational and functional models based on the peculiarities of

national legislation.

At the same time, there is no single model of the prosecutor's office in the world, and each separate model has its own shortcomings and advantages; and in connection with this we believe that the prosecutor's office should be determined from the point of view of the social and political conditions of its organization and functioning, taking into account peculiarities of national states, and based on the mentality of this or that society.

Therefore, from the point of view of understanding the role and place of the prosecutor's office, it is quite important to study experience of foreign countries regarding the basic principles of the prosecutor's office on the example of the United States of America (hereinafter - the USA) and some European countries.

Thus, in the USA, the prosecutor's office is called the "attorney's office" headed by the US Federal Prosecutor or a federal attorney, whose position was introduced in 1789 in the Judiciary Act of 1789 (Judiciary Act, 1789). The federal attorney is appointed to the position, including based on the provisions of Section 2 of Art. 2 of the US Constitution (Constitution of the United States, 1787). According to the US Code (28 U.S. Code § 541) The federal attorney is appointed to the position by the President of the United States with the consent of the Senate of the United States for a four-year term, at the same time, at the end of the term, he/she continues his/her activity until his/her successor is appointed to the position (Organizational structure of the US Department of Justice, 2024).

Among other things, unlike in Ukraine, the Federal Attorney in the USA is the head of the United States Department of Justice (Justice Department), but this Department should be distinguished from the Ministry of Justice of Ukraine, because in the USA it is essentially the headquarters of the Federal Attorney, namely thanks to the Department of Justice, the Federal Attorney General regulates activities of federal attorneys, in federal judicial districts (General structure of EOUSA, 2019).

In the USA, there is an attorney service (Executive Office for United States Attorneys "EOUSA"), that is, an institution of state power that has no analogue in any other part of the world. The EOUSA was created in 1953 on the basis of the Attorney General Order No. 8-53 in order to ensure constant interaction between the Department of Justice and 93 US Attorneys located respectively in the 50 states, the District of Columbia, Guam, the Mariana Islands, Puerto Rico and the US Virgin Islands. Thus, the U.S. Attorney's Office is a totality of U.S. executive authorities, including at the state level and local levels, that advises the government at the appropriate level, represents interests of the Government in court, and ensures general implementation of the existing legislation. Among other things, the US Attorney's Office acts as a prosecution service, it has the

right to initiate a criminal case, investigate cases of violations of existing law, prosecute and support prosecutions in court.

The Federal Prosecutor's Office in the United States has its own investigative bodies, including the FBI, and it is only one of the law enforcement agencies that is subordinate to the Ministry of Justice. Among other things, the Ministry of Justice is subordinated to the service of marshals, or as we say bailiffs, the administration dealing with narcotics, the bureau controlling implementation of laws on alcoholic products, tobacco products and criminal distribution of narcotic substances.

At the same time, it should be noted that in the USA the prosecutor's office is a completely independent body, which, according to T. Peebles, is achieved through a properly organized crime prevention system, and the prosecutor's office acts based on the following priorities: high professional competence with knowledge of crime and its high-tech means; an exclusive emphasis on professional aspects and a rather significant sensitivity to the violation of human rights; emphasis on effective cooperation with counteraction bodies, including in the spheres of global threats of crime and terrorism (Worrall, 2008).

Thus, the prosecutor's office in the USA is a body that conducts criminal prosecution, supports public prosecution and participates in court hearings as a representative body of public authority. The prosecutor's office is characterized by decentralization and lack of supervisory powers. From an organizational point of view, the prosecutor's office in the USA is more drawn not to a state authority, but to a kind of professional corporation of lawyers, who at the same time are in the civil service of representatives of public authorities.

In European countries, the system of prosecution differs significantly from that of the United States. Thus, in Germany, according to the Law on the Constitutional Court (Article 149 GVG), the Federal Prosecutor General (Generalbundesanwalt) and federal prosecutors are appointed by the President of the country on the proposal of the Minister of Justice and with the approval of the Bundesrat. (Gerichtsverfassungsgesetz (GVG) Bundesrecht, 1975) According to the German Federal Civil Service Act (5BBG), the Federal Prosecutor General, federal prosecutors, senior prosecutors are appointed for life and are civil servants (Für Beamte, 2009). At the same time, with regard to the Federal Prosecutor General, he/she acts, including as a political figure and can be dismissed by the Minister of Justice at any time. At the same time, the Law provides that no justification is required for this (Leheza et al., 2024).

It is known that in Germany the organizational structure of the prosecutor's office is divided into federal one and state one, which follows from the provisions of the Order on the Organization and Procedure of the Prosecutor's Office in Germany dated 12 March, 1975.

(Anordnung über Organisation und Dienstbetrieb der Staatsanwaltschaft (OrgStA), 1995).

From our point of view this experience of Germany can be useful for Ukraine regarding the issue of significant independence of prosecutors and a fairly high level of their material and technical support (Villasmil Espinoza *et al.*, 2022).

The French prosecutor's office also has its peculiarities. The legal regulation of the activities of the prosecutor's office in France takes place at the level of the French Constitution of 1958, (Constitution, 1958) the Criminal Procedure Code of France (Articles 31-48 of the Section "On the Prosecutor's Office"), (Code de procédure pénale, 1957) the Judicial Code of 1978, and the French Code of Civil Procedure).

As in Germany, the French prosecutor's office is subordinate to the Ministry of Justice, and is a centralized system of bodies. The Prosecutor General performs his/her activities at the Court of Cassation. The structure includes assistants of the Prosecutor General, who are the First Advocate General and 19 advocates general. The General Prosecutors and their assistants also act at the courts of appeal, to which the prosecutors of the Republic (les procureurs de la République) being in the sphere of influence of these courts are subordinated accordingly. The prosecutors of the Republic are the district prosecutors at the tribunals, who mostly handle civil cases. All prosecutors are appointed by the President of France on the proposal of the Minister of Justice, who directly supervises their activities. In terms of their status, prosecutors are quite close to judges, with some exceptions, but they conduct their activities based on the same principles. The main organizational principles of the prosecutor's office include integrity, independence, subordination and responsibility. The court and the prosecutor's office thus form a single corps and have the right to change the position of a prosecutor to position of a judge and vice versa during the career (Leheza *et al.*, 2021).

In the event that the prosecutor violates the law during a criminal prosecution, he/she is not responsible, the prosecutor is not held liable for reimbursement of court costs, he/she shall not compensate for damages to the convicted person, which mostly represents a certain guarantee of independence and relieves the prosecutor of the need to participate in cases related to his/her persecution by citizens. Thus, taking into account the above, the French prosecutor's office is a body independent from the court or from the parties to criminal proceedings.

According to the French Code of Criminal Procedure, officials and agents of the judicial police are under the supervision of the Prosecutor General, who has the right to instruct them to collect the necessary information if it is important for the administration of

justice. The Prosecutor of the Republic accordingly manages the judicial police, receives information about crimes from the police, gives instructions on the investigation, monitors the police's compliance with the law. The prosecutor has the right to come directly to the scene of the crime instead of the police and can himself/herself carry out all the actions that are actually assigned to the judicial police, also the Prosecutor of the Republic personally or through deputies supports the prosecution in jury court, police or correctional tribunals, and has the right to issue orders to search for criminals (Horbalskiy *et al.*, 2021).

Thus, in contrast to Ukraine, the prosecutor's office in France is not just independent, but, among other things, it can actually replace the body of inquiry and, in general, carry out all the necessary investigative actions in the case, and the difficulty of distinguishing powers of the prosecutor in the civil process in the legislation makes the French prosecutor's office similar to the German prosecutor's office, where this issue is also not sufficiently regulated.

In the countries of the former Soviet socialist camp the prosecutor's office also has its peculiar features. Thus, according to the Constitution of Estonia, in Article 151, it is quite succinctly defined that the procedure for maintaining the prosecution and representation in court is established by law (Eesti Vabariigi põhiseadus, 1992). According to the Statute on the Prosecutor's Office, the Estonian Prosecutor's Office is a state institution subordinate to the Minister of Justice. The Ministry of Justice is defined as the highest state body of the prosecutor's office. Thus, prosecutors are accountable to the Minister of Justice, who oversees activities of the prosecutor's office in criminal proceedings.

The prosecutor's office system is directly managed by the Prosecutor General, who is appointed to the position by the government on the proposal of the Minister of Justice for a term of five years. The prosecutor's office manages the pre-trial criminal investigation, supports the state prosecution, and may participate in investigative activities. Two general bodies are included in the prosecutor's office system, namely the State Prosecutor's Office and 4 district prosecutor's offices.

According to the law the tasks of the prosecutor's office include: ensuring legality and effectiveness of pre-trial criminal proceedings; supervising legality of operational investigative activities of investigative bodies, which are bodies of pre-trial investigation, during the detection of crimes or pre-trial proceedings of criminal cases; representation of the state prosecution in court; performance of tasks arising from international cooperation, participation in the work of Eurojust; other tasks assigned by law to the prosecutor's office.

The Prosecutor's Office of Estonia, like the Prosecutor's Office of France, manages the pre-trial investigation, but does not replace it. Thus, the prosecutor's office mostly supports

the criminal prosecution in court, participates in the planning of investigative actions, conducts proceedings in cooperation with the police, state border guards, fiscal and other services (Tylchyk *et al.*, 2022).

In practically the same way activities of the prosecutor's office are regulated in the Republic of Latvia, at the same time, it is interesting that the prosecutor's office here is completely excluded from the Constitution of the Republic of Latvia, because we do not find any regulation regarding the prosecutor's office. The main principles of activities performed by the prosecutor's office are enshrined in the Law "On Prosecutorial Supervision in the Republic of Latvia", namely: the prosecutor's office is a single centralized system of three-level structural units headed by the Prosecutor General; prosecutors of the same position are interchangeable (Prokuratūras likums, 1994).

Unlike the previously considered European countries, in Latvia the prosecutor's office is directly defined as a body of judicial power that independently oversees legality. The task of the prosecutor's office is to respond to violations of the law and ensure the resolution of related cases in accordance with the procedure established by law (Leheza *et al.*, 2020).

The entire prosecutor's office system in Latvia is managed by the Prosecutor General. The the Prosecutor General appoints and dismisses prosecutors, as well as employees with whom establishment of labor relations is within the competence of the Prosecutor General. District judicial prosecutor's offices are formed by the Prosecutor General in accordance with the distribution of territories of judicial activity. According to the Law "On the Judiciary", district prosecutors' offices perform the functions of prosecutors in the territories of judicial districts (Par tiesu varu datēts, 1992).

According to the Latvian legislator the main functions of the prosecutor's office include : implementation of control over pre-trial investigation and operational investigative activities, intelligence and counter-intelligence activities of state security agencies and compliance with the legislation on the system of protection of state secrets; carrying out a pre-trial investigation; initiation and implementation of criminal prosecution; support of the state prosecution; supervision over execution of sentences; protection of the rights and legitimate interests of the individual and the state in accordance with the procedure established by law; submission of a statements of claim or filing a court compliant in accordance with the procedure established by law; participation in court proceedings in cases specified by law.

In Article 6 of the Law on the Prosecutor's Office it is clearly defined that the prosecutor in his/her activities is independent from the influence of other institutions or

officials who exercise state power and management and he/she obeys only the law. Neither the Saeima, nor the Cabinet of Ministers, nor other state and local government institutions, state and local government officials, nor any types of companies and organizations, nor individuals have the right to interfere with the work of the prosecutor's office during investigation of cases or during performance of other functions inherent to the prosecutor's office. At the same time, any actions of the prosecutor can be appealed exclusively in accordance with the procedure established by law (Kobrusieva *et al.*, 2021).

In addition, a prosecutor has immunity, and initiation of a case against him/her and his/her detention, arrest, forced return or search may take place in the manner provided by law and with immediate notification of the Prosecutor General. Prosecutors bear no material responsibility for damages caused to a person by illegal or unjustified actions or decisions, such damages can be compensated only in exceptional cases, and exclusively by the state.

Thus, in Latvia, the prosecutor's office is the only centralized system headed by the Prosecutor General, and prosecutors are independent in their activities and they obey exclusively the law. It can be said that in Latvia, as in other countries of the European Community, prosecutors are endowed with quite significant powers, and their responsibility is limited at the legislative level, which allows them to perform their duties, relying exclusively on the provisions of the current legislation, regardless of subordination, and therefore prosecutors have considerable independence.

5 CONCLUSIONS

Thus, the higher degree of development and orientation of European states to democratic principles within functioning of all state institutions of the legislative, executive, and judicial branches of power, as well as a clear definition of the role and place, tasks and functions of the prosecutor's office in this system, leads to the absence or narrowing of the need to establish the prosecutor's office of supervisory powers. When reforming and optimizing activities performed by the Prosecutor's Office of Ukraine, one should take into account the fact that even in conditions of political and economic stability in the state, with the presence of civil society, it is difficult to create a benchmark for the system of prosecutor's offices. At the international level, there is no unified standard for the organization and functioning of such a system. That is why all innovations in the aspect of improving organization of the modern prosecutor's office must be related to the historical, cultural and legal processes regarding formation and development of the state; and such

innovations must be also acceptable to the society of this country.

From the analysis of the above positions, it is possible to conclude that there is no single standard regarding the model of the prosecutor's office in Europe. The mentioned models of prosecutor's offices have advantages and disadvantages, but none of them is excluded and neither of the models is preferred. Regardless of the organizational structure of the prosecutor's office, "... states must take appropriate measures so that the legal status, competence and procedural role of prosecutors are established by law in such a way that there can be no legitimate doubts about independence and impartiality of judges" (para. 17 Recommendations (2000) 19).

It is emphasized that in the practice of borrowing experience of legislative regulation of the administrative and legal bases of activities inherent to the prosecutor's office and its officials in foreign countries, it is necessary to take into account the realities of today in activities of the prosecutor's office in Ukraine, and namely: significant workload, personnel starvation, insufficient funding. At the same time, we can state that what should really be implemented in Ukraine, even immediately, is the experience of European countries regarding guarantees of independence of the prosecutor on the example of Germany, France or Latvia.

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