

# FUNCTIONS OF THE PROSECUTOR'S OFFICE IN THE MECHANISM OF ENSURING THE RIGHTS AND FREEDOMS OF CITIZENS, THE INTERESTS OF SOCIETY AND THE STATE

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**Annotation.** After Ukraine gained independence, political, economic, social, organizational, legal and other changes began to take place in the Ukrainian state, which affected all spheres of socially useful life. The activity of the prosecutor's office, which inherited the basic principles of its activity from the prosecutor's office of the former Soviet Union, could not avoid such changes. Adoption in 1990 of the Declaration on the State Sovereignty of Ukraine and introduction of the Law of October 24, 1990 No. 404-XII of amendments and additions to Chapter 19 «Prosecutorship» of the Constitution (Basic Law) of the Ukrainian SSR, the formation of a new independent prosecutor's office of the Ukrainian state was initiated, in Art. 162 of which it was declared that higher supervision over the observance and correct application of laws by the Cabinet of Ministers of Ukraine, ministries, state committees, departments, other bodies of state and economic management and control, the Government of the Autonomous Republic of Crimea, local Councils of People's Deputies, their executive and administrative bodies, military units, political parties, public organizations, mass movements, enterprises, institutions and organizations, regardless of the forms of ownership, subordination and affiliation, officials and citizens is carried out by the Prosecutor General of Ukraine and prosecutors subordinate to him. At the same time, the activities of the prosecutor's office and their officials did not always receive a favorable assessment of their activity from the citizens, which prompted the state leadership through the reorganization of the prosecutor's office to make permanent changes that would bring the activity of the prosecutor's office closer to the best international standards in consistently ensuring the rights and freedoms of man and citizen. interests of society and the state. Attention is drawn to the fact that after 2014, as well as the full-scale invasion of Russian military aggression against Ukraine, the functions of the prosecutor's office underwent significant changes, which requires theoretical research, due to the fact that the reform of the activities of the prosecutor's office continues even in today's conditions.

**Key words:** functions of the prosecutor's office, legal status, supervision, powers, martial law.

## 1. Introduction.

According to the Constitution of Ukraine, the prosecutor's office does not belong to the legislative, executive, or judicial branches of government and functions as an independent state body, the functions of the prosecutor's office are performed exclusively by prosecutors. Currently, the functions of the prosecutor's office are being reformed to meet the requirements of the time when the prosecutor's office must be reformed in accordance with the principles of the Constitution of Ukraine and the new realities of today, actively contribute to positive transformations in ensuring the protection of human rights and freedoms, the general interests of society and the state.

## 2. Analysis of scientific publications.

The question of the activities of the prosecutor's office, the legal status and functions of the prosecutor's office were the subject of research, in particular, by such scientists as L. Golovii, S. Marchenkova, V. Kurylo, S. Kulynych, V. Popovych, V. Sukhonos, M. Yakymchuk and many others, however constant political, economic, legal, organizational and social changes in the state determine the process of influence on the activities of the prosecutor's office, which determines the interest in this study.

## 3. The aim of the work.

The purpose of the work is to study the implementation of the functions of the prosecutor's office in ensuring the protection of human and citizen rights and freedoms, the general interests of society and the state.

## 4. Review and discussion.

The legal mechanism for ensuring the protection of the rights, freedoms, and legitimate interests of citizens involves the legislative, executive, and judicial branches of government, formed on the principle of the division of authorities, with the powers inherent only to them, as well as political parties and public associations and organizations. This means that any citizen can choose different legal mechanisms for the protection and protection of violated or contested subjective rights [1, p. 34]. At the same time, the expressed thesis does not fully reflect the legal mechanism for ensuring the protection of the rights and freedoms of citizens, does not cover the basic principles of the organization and activities of the prosecutor's office. This is indicated by the specified articles. 2 of the Law of Ukraine «On the Prosecutor's Office» dated October 14, 2014 No. 1697-VII, functions of the prosecutor's office. According to this law, the prosecutor's office is entrusted with the following functions: maintaining the state prosecution in court; representation of the interests of a citizen or the state in court in the cases specified by this Law and Chapter 12 of Section III of the Civil Procedure Code of Ukraine; supervision of the observance of laws by bodies conducting investigative and investigative activities, inquiries, pre-trial investigations; supervision of compliance with laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens [2].

Summarizing the above, it is possible to single out the following essential features of prosecutorial activity as a type of state activity: a) it is an independent type of state activity that is carried out on behalf of the state throughout the territory of Ukraine; b) the purpose of the prosecutor's activity is to protect human rights and freedoms, the general interests of society and the state; c) it is carried out on the basis of the Constitution and laws of Ukraine; d) thanks to the implementation of prosecutorial activity, both state interests and the rights and freedoms of a person and a citizen are protected; e) the content of the prosecutor's activity is to identify violations of the law, take measures to eliminate violations of the law and bring its violators to justice [3, p. 38].

Violation of the legitimate interests of a citizen in many cases can be considered as an encroachment on the interests of the state, since the protection of human rights is the main state interest. On the other hand, neglect of state interests by a person directly or indirectly entails a violation of the legitimate interests of both this and other persons, which is especially noticeable in the tax sphere, when tax evasion leads to non-fulfillment of social programs, non-payment of wages, pensions and other negative consequences. So, as practice shows, the differences between the representation of the interests of a citizen or the state by the prosecutor's office are quite conditional [4, p. 520].

In order to implement the above-mentioned functions, the prosecutor's office system operates in Ukraine. According to Art. 7 of the Law of Ukraine «On the Prosecutor's Office», the system of the Prosecutor's Office of Ukraine consists of: the Office of the General Prosecutor, regional prosecutor's offices, district prosecutor's offices and the Specialized Anti-Corruption Prosecutor's Office. If necessary, by the decision of the Prosecutor General, specialized prosecutor's offices may be established under the authority of a structural subdivision of the Office of the Prosecutor General, under the authority of regional prosecutor's

offices, under the authority of a subdivision of the regional prosecutor's office, under the authority of district prosecutor's offices, under the authority of a subdivision of the district prosecutor's office [2].

At the same time, it should be noted that this rule does not apply to the creation of a Specialized Anti-Corruption Prosecutor's Office. At the same time, the list, formation, reorganization and liquidation of specialized prosecutor's offices, determination of their status, competence, structure and staff list are carried out by the Prosecutor General.

Therefore, we can state that the state has entrusted the system of prosecutor's offices with the duty to ensure the protection of the rights, freedoms and legitimate interests of citizens, public and state interests, by implementing the functional powers assigned to prosecutor's offices determined by the Constitution and laws of Ukraine.

At the same time, the function as a defined type of managerial activity is characterized by known independence, homogeneity and repeatability. It ensures the performance of management tasks with the help of the appropriate organizational structure. Each function has its own scope and is carried out by specific methods and in appropriate forms [5, p. 27]. Areas of activity of the prosecutor's office are implemented with the help of its functions. It is the directions that make up the main content of the activities of the prosecutor's office. The functions of the prosecutor's office are the types of its activities that arise from the social purpose of the prosecutor's office, which finds expression in its tasks and requires the use of the powers, legal means and procedures granted to it. The list of functions of the prosecutor's office, although not determined arbitrarily, but determined by the social role and tasks of the prosecutor's office, is not permanent. In particular, depending on the peculiarities of the form and essence of the state, the social needs of society, the content of the functions themselves changes. In contrast to functions as independent types of activity, the main areas of activity of the prosecutor's office are determined by various factors of a political, socio-economic and other nature. According to their significance, permanent priority areas of activity and dynamic areas are distinguished - taking into account the state of the legal situation in the district, city, region, and the country in general [3, p. 63].

At the same time, despite the introduced martial law regime, the prosecutor's office under martial law conditions continues to exercise the functional powers defined by the Constitution and laws of Ukraine.

According to Art. 1 of the Law of Ukraine «On the Legal Regime of Martial Law» dated 12.05. 2015 No. 389-VIII, martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision of appropriate state authorities, military to the command, military administrations and local self-government bodies, the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as temporary, due to the threat, restriction of the constitutional rights and freedoms of a person and a citizen and rights and legal interests of legal entities with an indication of the period of validity of these restrictions [6].

Since the beginning of the large-scale Russian invasion of Ukraine, the Prosecutor General's Office has documented 122,318 Russian war crimes. Also, 15,661 crimes against the national security of Ukraine were registered. In addition, according to juvenile prosecutors, as a result of Russian aggression, 1,682 children were injured, 513 of them died, and 1,169 received injuries of varying degrees of severity. The department emphasizes that these numbers are not final, as work is ongoing to establish them in places of active hostilities, in temporarily occupied and liberated territories [7].

Also, the European Union Agency for Law Enforcement Cooperation (Europol) joined the joint investigative team (JIT) on serious international crimes committed in Ukraine. The corresponding agreement was signed by the prosecutors general of the seven participating countries and the Executive Director of Europol, Catherine De Bolle, during the 17th meeting of the Consultative Forum of Prosecutors General of Eurojust. The agency will provide analytical and forensic support to JIT members, as well as participate in the collection and analysis of data legally obtained from open sources (social networks, television and radio broadcasts). In addition, Europol will share its knowledge and experience in the field of war crimes and crimes against humanity. We will remind, last year in March, a joint investigative group was created by Lithuania, Poland and Ukraine with the support of Eurojust. Later, Estonia, Latvia and Slovakia joined it, and in autumn 2022 – Romania [8].

Based on the analysis of legal acts issued during martial law, the powers of the prosecutor have undergone certain changes and features, which we propose to divide into the following types:

1. Related to the pre-trial investigation are procedural and those that reveal the essence of the prosecutor's qualification of certain types of offenses.
2. Cases related to judicial proceedings are those that reveal the essence of the prosecutor's participation in his support of a public accusation under martial law. In the study, we propose to consider each of these types in more detail. First of all, this is what changes the pretrial investigation procedure has undergone, taking into account the organization of the work of the prosecutor's office. The above-mentioned Laws, which amended the CPC, with the adoption of which Art. 615 and added a new one – Art. 616 (this is to say about a separate section devoted to martial law), as well as some separate articles. The main changes concern the digitization of the pre-trial investigation process, as well as, conversely, cases when there are problems in the functioning of the necessary servers or violations of the Internet. The next subspecies is the one related to the power of the prosecutor to apply preventive measures to the suspect or the accused. A key point regarding this in the context of mobilization processes is the need for military personnel, which led to the government's adoption of a difficult but important decision – to provide suspects or accused persons (except those who committed specific types of crimes, for example, murder) held in custody (or to which a different type of preventive measure is applied), apply to the prosecutor with a request to cancel this preventive measure in order to undergo military service under conscription.

Equally important are the changes in the work of the prosecutor, which relate to issues of qualification of certain criminal offenses, which definitely affects his performance of his powers. In this case, it is also possible to make a separate qualification of the specified changes:

1. Associated with the existence of a separate series of offenses, the components of which operate, according to the Criminal Code, precisely during a special legal situation in the state.
2. Introduced as a result of the adoption of the Laws of Ukraine on amendments directly to the CCU.
3. Implementation with the adoption of other Laws of Ukraine.
4. Related to the adoption of bylaws [9, p. 363].

In addition, having analyzed the legal norms enshrined in Articles 176, 183, 615 of the Criminal Code of Ukraine, the Transitional Provisions of the Code and the Law of Ukraine «On Pretrial Detention», O. Chorna comes to the conclusion that there is an urgent need to revise these norms in order to eliminate opportunities for arbitrary interference with human rights to freedom and personal integrity. These norms need to be amended both in order to eliminate legal conflicts and to strengthen the function of judicial control, in particular, in terms of returning the powers of the investigating judge from the prosecutor in full, as well as the need to provide for the possibility of appealing by law the automatic extension of the preventive measure in the form of detention in custody

[10, p. 265]. The analyzed provisions of the criminal procedural law do not provide for further judicial control of the decisions made in the order established by them, or for the mechanism of appeal of the corresponding decisions of the prosecutor. Under such conditions, the only guarantee of legality and reasonableness of the decisions made within the special regime of pre-trial investigation remains a judicial assessment of the legality of the application of the provisions of Art. 615 of the Criminal Procedure Code of Ukraine based on the results of the trial of criminal proceedings during the assessment of evidence in the conference room during the adoption of a court decision. In the literature, this problem was stated, but not investigated in detail [11, p. 138].

## **5. Conclusions.**

Thus, in the context of the above, it can be concluded that the functional powers of the prosecutor's office are not permanent and may undergo certain changes under the influence of certain circumstances. The Constitution and laws of Ukraine created a system of prosecutor's offices in the state, which is entrusted with the function of maintaining the state prosecution in court, representing the interests

of the citizen or the state in court, supervising the observance of laws by bodies conducting operative and investigative activities, inquiries, pre-trial investigations, as well as supervision in compliance with the laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of the personal freedom of citizens. Within the limits of the specified functional powers, the prosecutor's office under martial law conducts a pre-trial investigation into the facts of crimes committed by the military of the Russian Federation on the territory of Ukraine.

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