

# TRANSFORMATION OF THE CONSTITUTIONAL STATUS OF THE PROSECUTOR'S OFFICE: FROM A SUPERVISORY BODY TO AN ELEMENT OF THE SYSTEM OF CHECKS AND BALANCES

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**Annotation.** The article examines the process of constitutionalization of the legal status of the prosecutor's office in the context of the mechanism of checks and balances. The transformation of the role of the prosecutor's office after the constitutional reform of justice in 2016 and its impact on the system of separation of state powers is analyzed. Various scientific approaches to determining the place of the prosecutor's office in the system of state bodies and the mechanism of checks and balances are considered. The need to rethink the traditional concept of separation of powers is substantiated, taking into account modern trends in state-building and European integration processes. It is determined that the effectiveness of the prosecutor's office depends not so much on its formal positioning in the system of power as on ensuring its independence and ability to perform constitutional functions.

**Key words:** prosecutor's office, constitutionalization, separation of powers, system of checks and balances, constitutional reform.

## 1. Introduction.

The study of the constitutionalization of the legal status of the prosecutor's office in the context of the mechanism of checks and balances acquires particular relevance in the context of modern state-building processes in Ukraine and the European integration aspirations of the state.

Firstly, the constitutional reform of justice in 2016 significantly changed the legal status of the prosecutor's office, positioning it as an independent body in the justice system. This necessitated the need to rethink the role and place of the prosecutor's office in the mechanism of state power, especially in the context of ensuring the principle of separation of powers and the system of checks and balances.

In addition, the European vector of Ukraine's development requires bringing the organization and activities of the prosecutor's office into line with international standards and recommendations of the Venice Commission. This actualizes the need for a scientific analysis of the process of constitutionalization of the status of the prosecutor's office through the prism of European values and principles of the rule of law.

Thus, a comprehensive study of the process of constitutionalization of the legal status of the prosecutor's office and its place in the mechanism of checks and balances is relevant both from a theoretical and practical point of view, which is due to the need to improve the constitutional and legal regulation of the status of the prosecutor's office in the context of Ukraine's European integration and ensuring the effective functioning of the justice system.

## 2. The state of scientific development of the topic.

The theoretical basis for the study of the constitutional and legal status of the prosecutor's office is the works of leading domestic scientists, among which the works of M. Baymuratov, O. Batanov, Yu. Barabash, D. Byelov, M. Bielova, O. Martselyk, V. Pogorilko, Yu. Todyka, V. Fedorenko, which are devoted to general issues of constitutional law and the organization of state power, are of particular importance. A significant contribution to the development of the issues of the constitutional and legal status of the prosecutor's office was made by such scientists as V. Dolezhan, P. Karkach, M. Kosyuta, I. Marochkin, M. Mychko, who studied the issues of organization and activity of prosecutor's offices in the system of state power.

Certain aspects of the mechanism of checks and balances in the context of the prosecutor's office's activity were considered in the works of A. Kolodiy, O. Kostenko, N. Onishchenko, N. Parkhomenko, O. Petrishyn, S. Prylutsky, P. Rabinovych. Of great importance for understanding the place of the prosecutor's office in the system of separation of powers are the studies of V. Bryntsev, V. Gorodovenko, I. Zalyubovska, V. Kravchenko, who analyzed the issues of interaction of state authorities and the role of the prosecutor's office in ensuring the rule of law.

**3. The purpose of the study** is a comprehensive scientific and theoretical analysis of the constitutionalization of the legal status of the prosecutor's office in the context of the mechanism of checks and balances, identification of problematic aspects of the constitutional and legal regulation of the status of the prosecutor's office, and development of scientifically based proposals for its improvement, taking into account European standards and national characteristics.

## 4. Presentation of the research material.

In the conditions of the development of a modern democratic state, the issue of the effective functioning of the system of checks and balances as an important mechanism for ensuring the balance of state power becomes particularly relevant. At the same time, in our opinion, it is the prosecutor's office, undergoing a significant transformation in the process of constitutional reform, that plays a significant role in this system, acting as an institutional guarantee of compliance with constitutional law and the protection of human rights and freedoms.

The process of constitutionalization of the prosecutor's office in Ukraine is characterized by a gradual rethinking of its place and role in the mechanism of state power, which is especially noticeable in the amendments to the Constitution of Ukraine of 2016. These changes not only determined the new institutional model of the prosecutor's office, but also significantly influenced its functional purpose in the system of checks and balances, bringing it closer to European standards of organization and activity of prosecutorial bodies.

The study of the constitutionalization of the prosecutor's office as an element of the system of checks and balances has important theoretical and practical significance for understanding modern trends in the development of constitutional law and improving the mechanisms for ensuring constitutional democracy in Ukraine. This issue is becoming particularly acute in the context of Ukraine's European integration and the need for further harmonization of national legislation with the law of the European Union.

The issue of the state, its conceptual understanding, fundamental characteristics and social purpose remains one of the key and most debatable in modern legal science. Scientists explain this by a complex of factors: firstly, these issues directly concern the interests of various social groups, political organizations and public movements; secondly, no other institution can compare with the state in terms of the scale of tasks, functional load and impact on social development; thirdly, the state is a complex and dialectically contradictory socio-political phenomenon. Thus, acting as an organizational form of social life, which is designed to guarantee its unity and orderliness, the state

implements functions determined by social needs, and thereby acts in the interests of society [2, p. 68; 3, p. 89].

In the context of the topic of our study, the position of V. Volynets deserves attention that the transformation of the state-power mechanism in Ukraine is not limited only to structural and organizational changes of individual state bodies, but is primarily aimed at creating and implementing such an institutional model that will ensure the most effective implementation of the entire spectrum of functions of the modern state [4, p. 5]. Therefore, according to Academician V. Skrypnyuk, when analyzing the law enforcement function and the activities of law enforcement agencies, the main purpose of which is to combat crime, protect the rule of law and ensure law and order, it is necessary to focus not on individual institutional changes (at the level of specific state bodies or institutions), but on a comprehensive and systematic approach to the implementation of the law enforcement function of the state as a whole [5, pp. 402-403]. At the same time, according to O. Skrypnyuk, all state functions are closely interconnected, and their systematicity is determined by the diversity of areas of state activity aimed at implementing the social purpose of the state. [6, p. 143].

According to the Constitution of Ukraine (Article 6), state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial branches. Having established the principle of separation of state powers, the Constitution established that the bodies that represent each of the branches of government must exercise their powers exclusively within the limits established by the Constitution and in accordance with the laws of Ukraine (Part 2 of Article 6, Article 19).

Consistent adherence to the constitutional principle of separation of powers while maintaining the socio-political unity of its branches, centralization of executive power and a clear demarcation of powers between state bodies and local self-government prevents both the emergence of overpowering bodies with excessive powers and the dispersion of power functions between numerous power structures [7, p. 101]. In view of this, our study requires a critical rethinking and further development of established theoretical approaches to the institutional status of the prosecutor's office in the system of state bodies, taking into account modern developments in both domestic and foreign legal science.

Representatives of Western political and legal thought have proposed a mechanism for implementing the principle of separation of powers aimed at preventing crisis phenomena. In particular, A. Schlesinger argued that the effective functioning of the state mechanism is ensured through balancing the various branches of power using a system of checks and balances, supplemented by constitutional control and interpretation of the Constitution by the body of constitutional justice. With this approach, the single state power is distributed to ensure the efficiency of the state mechanism, but at the same time preserves its integrity [8, p. 9].

The idea of the rule of law and legal law, strengthening legality, protection of human and citizen rights and freedoms is directly based on the principle of separation of powers. The origins of this doctrine go back to ancient philosophical thought, where thinkers, analyzing the social realities of that time, emphasized the importance of dividing responsibilities between different layers of slave-owning society and the need for the functioning of separate state bodies with their specific tasks, functions and corresponding powers [9, p. 39].

The principle of separation of powers is a constitutional model of the organization of the state mechanism, according to which the powers of power are distributed between the legislative, executive and judicial bodies. At the same time, each branch of power functions autonomously and independently of the others, which prevents the concentration of all state power in the hands of one person or body. Thus, the main purpose of this principle is to prevent the creation of such a state institution that could accumulate excessive powers of different branches of power and exercise them uncontrollably or abuse them [11, p. 8].

Meanwhile, according to the observation of O. Kozynets and V. Prorochenko, who studied the evolution of the theory of the separation of powers in the context of world political and legal thought, different historical periods of society's development were characterized by the formation of different approaches and concepts regarding the optimal model of the distribution of state power [12, p. 168].

The classical theory of the separation of powers into three branches does not cover all constitutional bodies in their modern understanding. The real practice of state formation indicates the existence of various forms of exercising public power [13, p. 8].

According to the correct statement of Kh. Kaidrovych, in Ukraine there are bodies of state power that are not part of any of the three powers - legislative, executive or judicial. At the same time, these bodies are created and operate in accordance with the Constitution of Ukraine and laws. By status they are bodies in the structure of state power. The practice of the listed state authorities does not exclude the exercise of certain powers that are not inherent in the classical concepts of the separation of powers and are within the competence of other subsystems of power. Thus, the President of Ukraine, being the head of state, is not part of any branch of state power. A special place in the system of separation of powers is occupied by constitutional bodies: the Accounting Chamber of Ukraine, the National Bank of Ukraine, the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, the National Security and Defense Council of Ukraine, the Office of the President of Ukraine, which organizationally do not belong to any of the traditional branches of power [14, p. 25]. N. Pelykh, in turn, proposes to establish, along with the existing branches of power, a presidential branch in Article 6 of the Constitution of Ukraine, which should belong to the President of Ukraine and his representative in the Autonomous Republic of Crimea; control and supervision - the prosecutor's office, the control and audit service, the Accounting Chamber, the VRU Commissioner for Human Rights, and law enforcement - bodies whose main professional task is law enforcement [15, p. 69].

So, the modern understanding of the concept of the separation of powers completely implies the mandatory assignment of state bodies to the executive, legislative or judicial branches, as was envisaged at the time of its formulation by the authors of this theory. Their effective and balanced interaction with each other in order to implement the functions of the state comes to the fore. Any state, if it strives to be sovereign and independent in implementing its foreign policy and stable in resolving internal issues, has a special function - ensuring, using its mechanisms, the full, uniform and unconditional implementation of the laws adopted by it.

When determining the place of the prosecutor's office in the system of state bodies, it is worth paying attention to the positioning of law enforcement agencies in the state mechanism as a whole. The study of scientific sources shows that the issue of the legal nature of law enforcement agencies in the modern Ukrainian state remains debatable [see, for example, 7, p. 105]. At the same time, the main differences are that some researchers consider law enforcement agencies as a separate element of ensuring the functioning of state power, separated from the executive branch of power, while other scientists, guided by clear legal constructions, attribute them either to the executive branch, or partially to the executive and judicial branches of power [see, for example, 16, p. 20].

Here it is also worth supporting the position of I. Bondarenko that, in accordance with the constitutional principle of separation of powers, the above-mentioned state bodies belong to different branches of power. The scientist notes that in regulatory legal acts, courts as bodies of justice are often singled out, which is reflected in the formulation "judicial and law enforcement bodies". Moreover, law enforcement activities are characterized by significant heterogeneity in their content and nature [17, p. 20].

It is interesting that, for example, V. Kostytskyi speaks of a new theory of the separation of powers, which provides for a division into three levels: the power of the people, representative power and functional power, and also defines the branches of power as representative (legislative, presidential and local self-government) and functional (executive, judicial, control-supervisory and attestation) [18].

Almost all researchers note the exceptional importance of the optimal solution of this issue, taking into account the specific situation in the post-Soviet states, although another point of view was expressed, which is given by M. Kosiuta, that "all disputes about the place of the prosecutor's office in the system of power are scholastic in nature and are fruitless. It is only important to clearly define the functions of the prosecutor's office" [19, p. 29].

## 5. Conclusions.

Based on the conducted study of the constitutionalization of the legal status of the prosecutor's office in the context of the mechanism of checks and balances, the following conclusions can be drawn.

The constitutional reform of justice in 2016 and the process of Ukraine's European integration necessitated a rethinking of the role and place of the prosecutor's office in the mechanism of state power. It has been established that the modern understanding of the concept of the separation of powers does not imply the mandatory attribution of state bodies to the executive, legislative or judicial branches, but instead focuses on their effective and balanced interaction in order to implement the functions of the state.

The analysis of scientific approaches to determining the place of the prosecutor's office in the system of state bodies indicates the absence of a single position on its institutional affiliation. Some scientists consider the prosecutor's office as a separate element of ensuring the functioning of state power, others attribute it to the executive or judicial branches of power, and some researchers propose to allocate a control and supervisory branch of power, which the prosecutor's office should be part of.

The study showed that the effective functioning of the prosecutor's office in the system of checks and balances requires a clear definition of its constitutional and legal status and functional purpose, taking into account both national characteristics and European standards of organization and activity of prosecutorial bodies. In this case, the key is not so much the formal positioning of the prosecutor's office in the system of separation of powers, but ensuring its independence and efficiency in performing the constitutional functions assigned to it.

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