

Chaplynska Yu. A.,
Doctor of Law,
Professor of the department of criminal law disciplines of the
Dnipropetrovs'k State University of Internal Affairs

ACTUAL QUESTIONS OF ADMINISTRATIVE AND LEGAL PROVISION OF REFORMING THE PROSECUTOR'S OFFICE IN UKRAINE

АКТУАЛЬНІ ПРОБЛЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ РЕФОРМУВАННЯ ОРГАНІВ ПРОКУРАТУРИ

The scientific article is focused on the analysis of administrative and legal provision for reforming the prosecutor's office of Ukraine. The author of the paper reveals the genesis of reforming the prosecutor's office in Ukraine. It has been stated that the research of administrative and legal provision for reforming the prosecutor's office is nowadays the subject matter of scientific research of many scholars, but in contemporary scientific works, this problem is considered only in the context of other issues such as: a) the place of the prosecutor's office in the structure of the state apparatus and its correlation with other authorities; b) the functional orientation of the work of the stated system of state agencies; c) peculiarities of managerial relations within the prosecutor's office; d) certain aspects of the internal organization of the prosecutor's office that need improvement. The preconditions for reforming the prosecutor's office have been clarified. The author has singled out and characterized the following groups of preconditions for reforming the prosecutor's office in Ukraine: a) historical preconditions; b) economic; c) legal. The essence, tasks and stages of the reform of the prosecutor's office have been studied. The place of the reformed prosecutor's office in the system of law enforcement agencies has been determined.

Administrative and legal principles for the optimization of the prosecutor's office have been revealed. The author has concluded that further optimization of the system of the prosecutor's office should be carried out by: a) a critical review of the structure and staff of the prosecutor's office; b) adherence to the position that the reform process should reflect the requirements of the principles formed in accordance with the world practice for functioning of the prosecutor's office and agencies of justice; c) a clear definition of the functional responsibilities and powers of all structural units of the prosecutor's office; d) eliminating duplication and parallelism in the work of certain structural units of the prosecutor's office; e) scientific provision of the activities of the prosecutor's office; f) determining the optimal and reasonable staffing of the personnel of the prosecutor's office and the level of their material and financial provision; g) gradual implementation of differentiated norms of staffing and burden depending on the nature of the assigned tasks for the employees of the prosecutor's office; h) implementation of the mechanism for ensuring the realization of the norms of social protection for employees of the prosecutor's office; i) the elaboration and consolidation of the guarantees of professional activity of the prosecutor's office; j) raising the level of trust to the prosecutor's office, reducing the level of corruption within its structural divisions.

Key words: *prosecutor's office, prosecutor's office of Ukraine, administrative and legal provision, prosecutor.*

Наукову статтю присвячено дослідженню аналізу адміністративно-правового забезпечення реформування органів прокуратури України. В науковій розробці розкривається генеза реформування органів прокуратури України. Констатовано, що дослідження адміністративно-правового забезпечення реформування прокуратури сьогодні є предметом наукових пошуків багатьох учених, однак у сучасних наукових працях означена проблематика розглядається лише в контексті інших питань, таких як: а) місце прокуратури в структурі державного апарату та її співвідношення з іншими органами влади; б) функціональна спрямованість роботи зазначеної системи державних органів; в) особливості управлінських відносин в органах прокуратури України; г) окремі аспекти внутрішньої організації прокуратури, що потребують удосконалення.

У науковій статті з'ясовуються передумови реформування органів прокуратури України. Виокремлено та охарактеризовано такі групи передумов реформування органів прокуратури в Україні: а) історичні передумови; б) економічні; в) правові. Вивчається сутність, завдання та етапи реформування органів прокуратури України. Визначається місце реформованих органів прокуратури в системі органів правопорядку.

Розкриваються адміністративно-правові засади оптимізації системи органів прокуратури. Дістав подальшого обґрунтування висновок, що оптимізацію системи органів прокуратури необхідно здійснювати шляхом: а) критичного перегляду структури та штатів органів прокуратури; б) дотримання тієї позиції, що процес реформування має відображати вимоги сформованих світовою практикою засад функціонування органів прокуратури та правосуддя; в) чіткого визначення функціональних обов'язків і повноважень усіх структурних підрозділів органів прокуратури; г) усунення дублювання та паралелізму в роботі окремих структурних підрозділів органів прокуратури; г) наукового забезпечення діяльності органів прокуратури; д) визначення оптимальної та обґрунтованої штатної чисельності співробітників органів прокуратури та рівня їх матеріально-фінансового забезпечення; е) поступового запровадження диференційованих нормативів штатної чисельності та навантаження залежно від характеру покладених завдань на співробітників органів прокуратури; ж) запровадження механізму забезпечення реалізації норм соціального захисту співробітників органів прокуратури; з) вироблення та закріплення гарантій професійної діяльності органів прокуратури; е) підвищення рівня довіри до органів прокуратури, зниження рівня корупції в її структурних підрозділах.

Ключові слова: *прокуратура, органи прокуратури України, адміністративно-правове забезпечення, прокурор.*

Formulation of the problem. Reforming the system of public prosecution bodies of Ukraine is a topical issue of both theoretical, legal and practical sphere of life of society. The high level of interest of lawyers in it is explained by the intensification of all processes aimed at the development of our state, as a relatively young independent country. However, the formation of scientific

knowledge and theoretical models of prosecutorial reform requires the analysis of the general state of research into the problem of administrative and legal support of this process. The development of the subject of a scientific article shows that in this field there is a dynamic growth of new scientific works. However, these issues find doctrinal justification not directly, but only in the context

of other areas of research on prosecutorial reform.

Analysis of the publications that started solving this problem. It is impossible to carry out qualitative, effective and efficient reform of the prosecutor's office without creating the appropriate scientific and theoretical basis for the organization and implementation of this process. Recently, researchers have been paying a lot of attention to the problems of the activity of the prosecution bodies in our country, in particular, the general issues of the activity of the prosecution bodies have devoted their work to V.B. Averyanov, O.V. Ageev, V.D. Basilevich, O.M. Bandurka, O.I. Bezpalova, A.I. Berlach, Y.P. Bytyak, E.A. Getman, A.T. Komzyuk, O.M. Muzychuk, Y.Y. Yakimchuk et al. However, no complete comprehensive scientific elaboration and justification of the administrative and legal support for the reform of the Prosecutor's Office of Ukraine after the adoption of the new Law of Ukraine "On the Prosecutor's Office" was conducted.

The purpose of this article is to investigate the nature of the administrative and legal support for reforming prosecutorial bodies.

Presenting main material. The general issues of administrative and legal support for the reform of the prosecution bodies are clearly reflected in numerous monographs by various scholars. For example, K.K. Arushnian actively researched the issue of prosecutor's participation in criminal proceedings for the execution of court decisions and restructuring of this sphere of prosecutorial activity [1, p. 168]. Instead, the scientist focuses his attention not on reforming the prosecuting authorities as a whole, in order to improve the efficiency of their activity in the field, but on improving the legislation of Ukraine on criminal proceedings for enforcement of court decisions. Thus, the scientist does not properly disclose the question of what changes should be made in the system of activity or organizational structure of the prosecution bodies, that is, does not answer the question of how they should be reformed in order to further increase the participation of representatives of these bodies in criminal proceedings for the execution of judicial proceedings solutions.

A number of specific aspects of prosecutorial reform are presented in monographs of V.V. Kolodchyna and A.R. Tumanyantz. Thus, scientists propose to rethink and change the definition of the term "prosecutor" in the provisions of current law; to separate the prosecution bodies from the investigation bodies; limit the activities of the prosecutor's office solely to the field of criminal justice; introduce the institute of partial refusal of the prosecutor from the prosecution, etc. [2, p. 205–207]. At the same time, a large number of issues of prosecutorial reform are left out of the attention of scientists, since the research of the latter is aimed at identifying, defining and developing theoretical and practical aspects of the regulatory regulation of the prosecutor's powers solely in court proceedings at first instance.

More substantive, but also incomplete from the point of view of the volume of issues that need to be considered in the key to the study of the problem

of administrative and legal support of the reform of the Prosecutor's Office of Ukraine, is the monograph of V.M. Kravchuk, the subject of which is the question of the institute of the prosecutor's office, as a state authority. The scientists considered in detail the key, in his opinion, directions of reforming the prosecutor's office and made corresponding proposals for them. At the same time, the scientist does not touch on a large number of important points, focusing his attention solely on the question of specifying the purpose and tasks of the prosecutor's office, improving the evaluation of the effectiveness of their activity, and so on [3, p. 198]. Various issues of prosecutorial reform have been covered in the context of many dissertation research. In particular, some points of improvement of prosecutor's office activity were the subject of V.V. Serdyuk scientific search, who pays attention to certain administrative and legal aspects of prosecutorial reform, namely the issue of determining her place and specifics of interaction with judicial authorities. Thus, in his work, the scientist states that there is a problem regarding the general ambiguity in the question of the prosecutor's office being classified at a constitutional level by any of the components of state power. The researcher concludes that the prosecutor's office is unlikely to form an independent part of the state apparatus, citing Yu.E.'s remarks. Polyansky, who exemplifies the principle of division of state power only into legislative, executive and judicial, where the system of prosecuting authorities is something like a "free electron". Instead, V.V. Serdyuk also notes the presence of a large number of theoretical approaches to these problems, giving the views of MV. Krymov, Kosyuta, MI Gray, G.O. Ant and others. [5, p. 290; 4, p. 137].

However, in this context the key disadvantage is that in the scientific work of V.V. Serdyuk focuses only on the issues of prosecutorial reform, in terms of its interaction with the judiciary.

Certain areas of improvement of the prosecutor's office were part of the subject of scientific work of V.V. Sukhonos, who researched the place of the prosecutor's office in the mechanism of the modern Ukrainian state, substantiated a rational functional model of the prosecutor's office, as well as developed recommendations for improving the legal status of the prosecutor's office in the conditions of reforming state institutions [6, p. 2]. However, consideration of the problem of improvement of the Prosecutor's Office of Ukraine in its work is limited to only three issues, namely: independence of the legal status of the prosecutor, determining the place of the prosecutor's office in the system of authorities and improving the structure and organization of the activity of the prosecutor's office. In other words, the scientist does not fully elaborate on reform issues, but only in the context of defining the role of these bodies in the state mechanism. In turn, A.M. Boyko views the process of reforming the prosecutor's office as a necessary factor in improving the activities of law enforcement and judicial authorities to prevent and combat economic crime. The scientist notes that in Ukraine the general principles of the prosecutor's office have not changed significantly,

and they contain the remnants of the previous, Soviet system, where the prosecutor's office ensured compliance solely with the legal ideology defined by the political authorities. Hence, one of the important functions of the prosecutor's office is the oversight of lawfulness. In most democratic countries, the prosecutor's office carries out permanent representation of the public authorities in court. Moreover, the prosecutor's office is of public interest, consistent with the content of the law, which fits into a single legal ideology and the rule of law. Therefore, in a democratic society, the activities of the prosecutor's office are based not on administrative and organizational grounds (centralization) but on unity under the law. Therefore, both prosecutorial subordination and the hierarchy of prosecutorial positions have peculiarities: they must ensure the independence and independence of prosecutors of all levels, and the prosecutor's order must be motivated in writing by the provisions of the law. The issue of career advancement and transfer of prosecutors should depend on professionalism and experience, not on the will of a higher-ranking prosecutor [7, p. 356].

However, focusing all his attention only on improving the internal organization of the prosecuting authorities, the scientist does not disclose other important aspects, such as regulatory support for their activities or determining a place in the system of public authorities. In other words, the scientific view of A.M. Boyko on the issues of administrative and legal support for prosecutorial reform can be described as extremely narrow.

Some peculiarities of prosecutorial reform were touched upon by M.Y. Ivchuk, who worked on the development of issues, to determine the nature and features of the administrative and legal status of the Prosecutor's Office of Ukraine, as well as to provide scientifically substantiated proposals and recommendations for regulations on these issues on the basis of analysis of the current legislation of Ukraine and relevant by-laws and regulations of the practice of their implementation. Defining these problems as the purpose of his dissertation, the scientist, in order to realize the latter, sees the need to perform a number of tasks, which, in particular; 2) characterization of legal bases of organization of activity of bodies of prosecutor's office of Ukraine and directions of its reformation [8, p. 4].

The main priority areas for reforming this system of state bodies include: 1) empowering the prosecutor's office with additional powers necessary for the successful performance of the functions assigned to it; 2) improvement of organizational and legal forms of departmental and judicial control over the legality and validity of decisions and actions of public prosecutors, etc. Thus, although the scientist is considering the directions of reforming the prosecutor's office, in our opinion, he unjustifiably determines their priorities, leaving out a large number of really problematic moments in the activity of these bodies, which need more elaboration and improvement.

A similar scientific approach is outlined in the works of A.M. Yeshchuk, who points out that

a key aspect of administrative and legal support for reforming the system of prosecuting authorities is to change the direction of work of these departments, in the context of depriving the prosecutor's office of the function of supervising the observance and application of laws. According to the author, this step should reduce the workload and influence on the business by law enforcement agencies. Thus, prosecutors will focus on supporting criminal charges, overseeing the lawfulness of investigative activities, and on the enforcement of sentencing. Instead, the scientist also states that, on the one hand, deprivation of the prosecutor's office of general oversight can be regarded as a liberalization of the state's supervisory policy, and a legislative will to grant business greater freedom. On the other hand, such an approach can create a law enforcement vacuum [9, p. 8]. Undoubtedly, the work of O.V. Ageev and A.M. Yeshuk is worthy of note, but the imperfection of the latter is worth noting, since the reform of the prosecutor's office cannot be considered only in retrospect of obsolescence of its functions and the need to exclude general powers of authority.

Some peculiarities of administrative procedures in the activity of the bodies of the Prosecutor's Office of Ukraine and directions of their reformation are the subject of scientific research. The purpose of the scientific work of Kulinich is to determine, on the basis of the analysis of the current legislation of Ukraine and relevant by-laws, the general practice of their implementation, the nature and features of administrative procedures in the activity of the Prosecutor's Office of Ukraine, to provide scientifically substantiated proposals and recommendations to the regulatory acts. The scientist sees the realization of this goal by solving the following tasks: 1) forming concepts, clarifying the meanings and definitions of the types of administrative procedures in the activity of the prosecution bodies; 2) analysis of the procedure of administrative decision-making in the bodies of the prosecutor's office, administrative procedures during the civil service, control and supervisory management procedures and procedures for reviewing citizens' appeals; 3) on the basis of the tasks, to make specific proposals and recommendations on improving the legal regulation of administrative procedures in the bodies of the Prosecutor's Office of Ukraine [10, p. 4]. The main drawback of this scientific analysis is that the issue of administrative and legal support for the reform of the Prosecutor's Office of Ukraine is considered only in the part of improvement of administrative relations within this system.

Some peculiarities of administrative and legal support of prosecutorial reform have been the subject of research by D.M. Dobrovolskyi. In his dissertation, the scientist paid attention to the development and analysis of theoretical provisions that determine the role and importance of the independence of the prosecutor's office in its organization and activities and the development of practical recommendations for improving the legislation of Ukraine in this area. At the same time, the imperfection of such a theoretical

approach to the problem of prosecutorial reform is explained by the fact that the latter carried out its scientific development solely in the context of the analysis of ensuring the independence of this system of state bodies [11, p. 6].

A large number of other issues that are part of the problems of administrative and legal support for prosecutorial reform have been raised in the research of M.K. Yakimchuk, V.I. Malyugy, E.M. Popovich et al. For example, the novelty of the latter's scientific work was to determine the directions of reforming the prosecutor's office, in connection with which the scientist concluded that the main guideline in the reform of the prosecutor's office should not be quantitative but qualitative changes, the essence of which will be to increase transparency and democratization of the prosecutor's office. [12, p. 8-9]. Instead, if we consolidate all of the above information obtained from the analysis of monographs and dissertations, we conclude that the problems of reforming the prosecutor's office as a whole and the administrative and legal support of this process have not been thoroughly elaborated.

It should be emphasized that a considerable number of smaller scientific works, namely scientific articles, are devoted to the investigation of particular issues of administrative and legal support for reform of the Prosecutor's Office of Ukraine.

Thus, various aspects of improving the system of prosecuting authorities, their activities, internal organization, etc., have become the subject of scientific research of I.P. Golosnichenko, O.V. Filova, P.V. Shumsky et al. In particular, forming his own scientific view on the issue of the legal status of the prosecutor's office, A.T. Komsyuk emphasizes that the prosecuting authorities have a special independent and independent place in the system of law enforcement agencies, which allows them to be defined as a single system of state bodies with a special constitutional and administrative-legal status that gives them procedural independence for the effective and impartial fulfillment of their duties. the main functional purpose of which is the protection and protection of the rights, freedoms and interests of the individual and the citizen, the establishment of the regime of law and order in the society illness and state [13, p. 233]. In his scientific works, the scientist pays attention to the scientific theories and views of different jurists regarding the reformation of the legal status of the bodies of the prosecutor's office or the ways of reorganization of their structure. In particular, for example, he represents the theoretical approach of M.M. Mikheyenko, who proposes to decentralize, to disperse the prosecutorial system. The latter states that it is necessary to create two subsystems: a public prosecutor's office in the parliament that will perform one of the functions (controlling) of the legislative power, and a prosecutor's office in the courts (judicial prosecutor's office), entrusting it with the function of supporting the prosecution and overseeing compliance with the law investigations and enforcement bodies [13, p. 233; 14, p. 195]. In our view, the latter scientific approach is inappropriate and to some extent utopian,

since its implementation leads to the fragmentation of the prosecutor's office into a number of agencies, which can complicate their work due to the increase of the bureaucratic component and adversely affect the efficiency of the activity as a whole.

It is also advisable to note the scientific developments of A.F. Tolpigo, V.P. Sokolov, O.V. Todoshchak, who considered the peculiarities of reforming the prosecution bodies in the context of European integration processes in Ukraine. At the same time, scientists note: "The essence of the reform of the Ukrainian prosecutor's office is to bring this institute to the constitutional model and standards of the Council of Europe. However, in Europe, there is no single scheme that defines the contours of the prosecutor's tasks and powers. Each prosecution system in EU countries is in line with the country's culture and history and is accepted by the society in which it operates. One of the conditions for reforming any state institute is to use both one's own and one's own experience" [15, p. 66]. However, scientists note that the existence of general supervision, as the main function of the activity of the prosecuting authorities does not meet European standards, and therefore should be excluded [16, p. 4-6]. V.A. Seleznev and O.V. Kurganskiy has thoroughly thoroughly discussed the issues of administrative and legal regulation of the prosecutor's internal activity. Scientists have noted the general intensification of organizational work in prosecutor's office during the last years, which is manifested in the increase in the total number of orders of the Prosecutor General from different directions of organizational activity. This, in their opinion, is a key aspect in reforming prosecutorial bodies and improving their activities. In addition, scientists have noted that special attention deserves the order of the Prosecutor General of 19.07.2017, №15, which stipulates the need to ensure the proper organization of activities of subordinate bodies of the prosecutor's office and employees, directing it to the effective performance of the functions assigned to the prosecutor's office. Priority is given to improving the organization of work, management and control of implementation, the introduction of the latest forms and methods, including using modern information technologies.

Attention is drawn to the use of organizational forms such as providing guidance to a lower-level prosecutor, agreeing to certain decisions. The work of the prosecution bodies should be organized according to territorial and functional (substantive) principles. The division of powers between prosecuting authorities to perform their functions should be carried out in accordance with the orders of the Prosecutor General, as well as orders of heads of regional prosecutor's offices, which also ensure the organization of activities of lower level prosecutors, etc. [17, p. 159]. Thus, an analysis of the state of the study of the problem of administrative and legal support for the reform of the prosecutor's office revealed that this issue is quite relevant today. Its individual aspects have repeatedly become part of the subject of scientific research by various scientists. The analysis of numerous scientific works, in particular,

monographs, dissertation researches, scientific articles showed that scientific development of administrative and legal support for reform of the prosecutor's office bodies is mostly carried out in the following directions: 1) determining the place of the prosecutor's office within the state apparatus; 2) reorientation of the work of the prosecution bodies in terms of changing the powers and functions of the latter; 3) a clear delineation of the peculiarities of the administrative relations within the system of prosecuting authorities.

Conclusions. Summing up, it should be noted that at the doctrinal level there is no agreed scientific approach to the nature and general orientation of reforming the Prosecutor's Office of Ukraine, which is due to the lack of sound, systematic and complete analysis of these issues. For example, when it comes to changing the direction of work of the prosecution bodies, in this sense, most scientists agree only that this system of organs should be deprived of the overseeing

function. However, the question remains as to what functions the prosecutor's office should be given after reform. In addition, the analysis of the state of scientific development of administrative and legal support showed that the issues of the internal organization of the prosecuting authorities were not covered. In other words, scientists do not answer the question of what the prosecutor's office should be after improving in structural terms. Thus, it can be stated that in most cases those changes that scientists propose to introduce into the work of the prosecuting authorities or the organizational structure of the latter do not guarantee an increase in the efficiency of their activity, and in some cases do not correspond to the legal realities. This fact determines the relevance and correctness of our dissertation research, because in it prosecutorial reform is developed directly and fully, as a holistic process, that is, it focuses on all issues and not individual aspects in the context of other similar issues.

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