

Prosecution Service of Ukraine as Institute of Human Rights and Freedoms, Public and State Interests Protection: History of Development



Naulik Nataliia

*PhD in Law, Docent,
Head of the Department of Initial and Continuous Training
of Civil Servants of Public Prosecution Service of Ukraine,
Institute for Continuing Professional Development,
National Prosecution Academy of Ukraine*

Abstract. *The article analyses the establishment and development of the prosecution service of Ukraine in the system of human rights and freedoms, public and state interests protection.*

Keywords: *prosecutor's office; system of human rights and freedoms protection; public and state interests; development.*

Problem statement

The democracy of any state is determined by its relation to human rights and freedoms, public and state interests. Therefore, to develop and strengthen a democratic state is impossible without strengthening the public consciousness and social practice of inalienable rights and freedoms, enshrining their guarantees in legislation, working out the mechanism of human rights protection and their violation prevention.

One of the elements of such a mechanism is the Prosecutor's Office of Ukraine, the establishment of which took place under the influence of socio-economic and political factors. Scientists have suggested that the history of the prosecutor's office has more than seven centuries. This state institute arose from the needs and interests of the royal authorities (as is known, the homeland of the prosecutor's office is France) and was originally formed as an independent institution. On the territory of Ukraine, which was part of the Russian Empire, and then the USSR, the prosecutor's office has been existing for 270 years [1, p. 10].

Analysis of recent research and publications. The research of the establishment and development of the prosecutor's office in Ukraine was carried out by leading Ukrainian scholars, in particular: L. Hrytsaienko, S. Kazantsev, V. Kravchuk, V. Lakuziuk, O. Lytvak, M. Mandryk, A. Matviets, S. Podkopaiev, V. Rudenko, R. Savuliak, P. Shumskyi, V. Sukhonos, O. Tolochko and others.

The purpose of the article. It is impossible to determine the current priorities of prosecutor's office development as of the institute of the

system of human rights and freedoms, public and state interests protection without studying analyzing the activities of the prosecutor's office of Ukraine in previous periods.

Presentation of the main research material. Ukrainian scholars have different approaches to the study of the genesis of the prosecutor's office in Ukraine. O. Lytvak, P. Shumsky, A. Matviets, O. Mykhailenko and others present historical and legal analysis as one whole, from ancient times to the present [1, p. 10; 2, p. 35–45; 3; 4, p. 9–11].

M. Siryi has quite an interesting approach to highlighting the stages of the historical development of the prosecutor's office. He distinguishes between three historical and legal traditions: the tradition of the Russian imperial prosecutor's office as an administrative and supervisory body (the prosecutor's office – the eye of the sovereign); the Ukrainian historical and legal tradition of the formation of the prosecutor's office from the X to the XVIII century and at the time of the Ukrainian National Republic (based on close ties with the advocacy and the court); the historical and legal tradition of the prosecutor's office of the Soviet era with the inherited ideas of the Russian Empire [5].

M. Mychko determines and measures the time constraints of the establishment and development of the prosecutor's office of Ukraine, and distinguishes between the four historical and legal periods of the establishment and development of the prosecutor's office: Ukraine within the Russian Empire (1722–1917); the Ukrainian National Republic (1917–1922); Soviet period (1922–1991) and post-Soviet period (modern) [6, p. 14].

It is worth agreeing with V. Kravchuk, who points the impoverishment of scientific research by authors who leave out the attention of the period of development of the prosecutor's office during the period of the revival of the Ukrainian state (1917–1921) [7, p. 90]. The author proposes his periodization of the stages of development of the prosecutor's office in Ukraine and allocates five periods: the emergence and development of the functions of the prosecutor's office in the times of the Cossack state – the period of the Ukrainian Cossack state; Prosecutor's Office on Ukrainian lands during the Russian Empire – the period of Ukraine's stay in the Russian Empire; Prosecutor's Office in the time of the Ukrainian National Republic – the period of the rebirth of the Ukrainian state at the beginning of the XX century; the Soviet prosecutor's office – the Soviet period; the prosecutor's office of the modern Ukrainian state is the period of the establishment and development of sovereign and independent Ukraine [7, p. 92]. However, this approach, in our opinion, is incomplete, since, according to V. Maliuha, the prosecutor's office has its origin from antiquity [8, p. 182].

Thus, it is worth highlighting the eight main periods of the formation and development of the prosecutor's office in Ukraine:

- 1) prosecutor's office in antiquity;
- 2) prosecutor's office in the Cossack state;
- 3) prosecutor's office on Ukrainian lands during the Russian Empire;
- 4) prosecutor's office in Galicia;
- 5) prosecutor's office during the period of the revival of the Ukrainian state;
- 6) prosecutor's office of the USSR;
- 7) post-Soviet prosecutor's office;
- 8) prosecutor's office of modern Ukraine.

Each period is characterized by a special complex of powers of the prosecutor, the procedure of formation of the prosecutor's offices, the presence of a system of bodies or individual prosecutors, indicating the place and role of the prosecutor's office in the system of protection of human rights and freedoms, the interests of the state and society.

For example, in antiquity, the prosecutor was a sole proprietor, endowed with rights not only in criminal proceedings, but also in various civil and commercial relations, and there was no public prosecutor's office as an authority.

In the city-state of Olbia in the VI century BC (the territory of modern Ukraine), the prosecutor participated in the proceedings. There was a time when so-called prosecutors managed estates, libraries, the economy of the king. This position was sold, passed on to inheritance [8, p. 182].

The prosecutor's office in the days of the Cossack state is characterized by the emergence of an institute of instigatorism. The priority task of instigators (prosecutors) was to ensure the rule of law, and the main function – to monitor compliance with laws in various spheres, mainly in judicial institutions [9, p. 103].

In the Ukrainian lands of the Russian Empire the Institute of public prosecutor's office dates back to 1722. By decree of Peter I, it was set: "There shall be the Prosecutor General and the Procurator at the Senate, as well as the Prosecutor in any board, who shall report to the Prosecutor General". The created prosecutor's office was a model of a special control state body, the so-called sovereign's eye – the prosecutor's office, which was supposed to oversee the central and local government bodies [10, p. 31].

By further decrees of Peter I, the prosecutor's office was established in the provinces, at the courts, and at the Holy Synod. The prosecutor's office, which was operating on the territory of then-Ukraine, was the component of the prosecutor's system of the Russian Empire. The Prosecutor General in the guberniya, who was the eye of the sovereign in the guberniya, was obliged "to watch and care about the preservation of any order defined by law" [11, p. 184].

On May 16, 1722, in accordance with the Decree "On the Establishment of the Little Russia Collegium in Hlukhiv and the Appointment of a Brigadier Veliaminov", a position of a prosecutor was introduced on the territory of Ukraine. The main task assigned of the prosecutor was to oversee the legality of the activities of state bodies and structures. Also, the prosecutor's office provided for the supervision of law and order, the fight against corruption, control and supervision of places of detention of inmates. N. Muraviov noted that the activities of the prosecutor's office during Peter I and to the judicial reform of Alexander II aimed at general (administrative) supervision, all other activities were only an addition to its supervisory functions [12, p. 325].

An important role in the formation of the Prosecutor's Office of Ukraine was played by the formation and operation of the prosecutor's office in Halychyna in the Austrian and Austro-Hungarian regions from 1849 to 1918. The significance of the prosecutor's office in Galicia is due to the fact that it was formed according to the models of the European legal system.

For the first time, the posts of public prosecutors were instituted in 1840, and in 1855 a single system of public prosecutors was created, which consisted of the highest state prosecutors and the public prosecutors subordinated to them. An important aspect is the creation in 1851 of the Galician Finance Prosecutor's Office in Lviv with its subordinate exhibits (departments).

The prosecutor's office during the rebirth of the Ukrainian state begins its existence with the adoption of a legislative act on the procuracy of an independent Ukrainian state – the Law "On the formation of the General Court", according to which the civil, criminal and administrative

departments and the prosecutor's office were in the court.

On January 4, 1918, the Central Rada adopted the Law "On the Office of Prosecutor's Supervision in Ukraine", on the basis of which prosecutors were established at appellate and district courts. The prosecutors were appointed by the Secretary General of the court proceedings.

The decree of the Council of People's Commissars of February 19, 1919, abolished all judicial institutions, including prosecutorial supervision, which acted on the territory of Ukraine prior to the establishment of Soviet power.

However, on June 28, 1922, the All-Ukrainian Central Executive Committee resolution established the State Prosecutor's Office of the Ukrainian Soviet Socialistic Republic and approved the Provision on Prosecutor's Supervision in the Ukrainian SSR. It is determined that the prosecutor's office is founded in the interests of correct statement of the issue of combating crime and monitoring the observance of laws. The Prosecutor's Office was a member of the People's Commissariat of Justice as a separate department subordinated directly to the People's Commissar of Justice, and oversaw the legality of the actions of all People's Commissariats, as well as administrative and judicial supervision, which provided for the supervision of the activities of all investigative bodies and inquiry, participation in administrative sessions courts, prosecution of criminal proceedings and participation in civil proceedings.

In addition, the prosecutor's office supervised the lawfulness of the execution of sentences and the detention of detainees, as well as the correctness of detention in places of detention.

By the decree of the All-Ukrainian Central Executive Committee of March 21, 1934, in all regions of the Ukrainian SSR it was envisaged the creation of district prosecutors to improve the supervision of the implementation of revolutionary legality.

The Prosecutor's Office of the Ukrainian SSR was founded as part of the People's Commissariat of Justice and was directly subordinated to the People's Commissar of Justice.

The main functions of the Prosecutor's Office of the Ukrainian SSR included: exercising on behalf of the state supervision of the lawfulness of the actions of all authorities, economic institutions, public and private organizations and individuals through the prosecution of criminal charges against the perpetrators and the protest of decisions that violate the law, supervision of the activities of the inquiry agencies and investigation in the disclosure of crimes, support for public prosecution in court, participation in civil proceedings, supervision of the proper detention of prisoners in custody [13, p. 158–159].

The next stage of the prosecutor's office in Ukraine is the establishment in June 1933 of the United Soviet Socialistic Republics Public Prosecutor's Office, which was entrusted with the functions of management for the activities of the prosecutor's offices.

The Constitution of the Ukrainian SSR in 1937 gave authority to appoint the prosecutor of the UkrSSR directly to the competence of the prosecutor of the USSR. Thus, according to Art. 112, 113 of the Constitution of the Ukrainian SSR in 1937, the highest supervision over the exact implementation of the laws by all people's commissars and their subordinate institutions, as well as separate civil servants, as well as citizens on the territory of the Ukrainian SSR was carried out as a prosecutor of the USSR, directly and through the procurator of the USSR. The Prosecutor of the Ukrainian SSR was appointed by the prosecutor of the USSR for a term of 5 years [14].

After 1937, the Prosecutor's Office of the USSR finds its legal regulation in the Provision on the Prosecutor's Office of the USSR, approved by the Decree of the Central Executive Committee and the Council of People's Commissars of the USSR of December 17, 1933, and the Provisions on Prosecutor's Supervision in the USSR, approved by the Presidium of the Supreme Soviet of the USSR of May 24, 1955.

The Constitution of the USSR in 1977 and 1978 contained provisions on the organization and activities of the prosecutor's office. In particular, it was established that "the highest supervision over the exact and uniform implementation of laws by all ministries, state committees and departments, enterprises,

institutions and organizations, executive and regulatory bodies of local Soviets of People's Deputies, collective farms, cooperative and other public organizations, officials, as well as citizens on the territory of Ukraine is carried out by the Prosecutor General of the USSR and his subordinates to the Prosecutor of the Ukrainian SSR and the lower prosecutors". The Prosecutor of the Ukrainian SSR and prosecutors of the regions were appointed by the Prosecutor General of the USSR. The district and city prosecutors were appointed by the Prosecutor of the USSR and approved by the Prosecutor General of the USSR [14].

The Law "On the Prosecutor's Office of the USSR" of November 30, 1979, defined the main tasks and main directions of activity of the prosecutor's offices, as well as the system of these bodies. According to art. 3 of the Law the prosecutor's office acted in the following areas: supervision of the implementation of laws by public authorities, enterprises, institutions and organizations, officials and citizens (general supervision); supervision of the implementation of laws by the authorities of inquiry and preliminary investigation, courts, places of detention of detained persons and pre-trial detention; the fight against crime, the investigation of crimes and the prosecution of persons who committed a crime, etc.

The Ukrainian Prosecutor's Office of the USSR undertook general supervision and prosecution of perpetrators. Analyzing this period of activity of the prosecutor's office of Ukraine, one can conclude that the totalitarian regime directly influenced the activity of the said institute. The institute of representation of citizens and the state suffered the most in a court, which in fact was absent during this period.

The decisive stage in the formation of the post-Soviet Ukrainian prosecutor's office was the adoption on August 24, 1991 by the Verkhovna Rada of Ukraine of the Declaration on State Sovereignty. On November 5, 1991, the Verkhovna Rada of Ukraine adopted the Law "On Prosecutor's Office", in art. 5 which defines the main functions performed by the prosecutor's office, including the supervision of the observance of laws by all bodies, enterprises, institutions, organizations, officials and citizens [15].

Articles 121–123 of the Constitution of Ukraine in 1996 define the prosecutor's office as a single system, its functions, the procedure for the appointment and dismissal of the Prosecutor General of Ukraine, the term of his powers. Taking into account the requirements of the Constitution of Ukraine, the Verkhovna Rada of Ukraine introduced the relevant amendments to the Law of Ukraine "On Prosecutor's Office". The Transitional Provisions of the Fundamental Law of Ukraine stipulate that the prosecutor's office shall continue to perform the function of supervising the observance and application of laws and the function of preliminary investigation, in accordance with the laws in force, before the enactment of the laws regulating the activities of state bodies for monitoring compliance with laws and the formation of a pre-trial system investigation and enforcement of laws governing its functioning [16].

Prosecutor's Office of Ukraine. The Law of Ukraine of September 18, 2012 "On Amendments to Certain Legislative Acts of Ukraine on Improvement of the Prosecutor's

Office" introduced the relevant amendments to the Law of Ukraine "On the Prosecutor's Office" regarding the procedure for prosecutors to supervise the observance and application of laws. It is in this edition that modern conditions are regulated and the order of their implementation is regulated.

With the accession of Ukraine to the Council of Europe and the definition of the pro-European course of development, the task of reforming the prosecutor's office of Ukraine arose.

The commitment made by Ukraine to the Council of Europe on reforming the prosecutor's office led to the need for further improvement of the legislation and the adoption by the Verkhovna Rada of Ukraine on October 14, 2014 of the new Law of Ukraine "On Prosecutor's Office", which defined the role and place of supervision over observance and application of laws in the prosecutor's activities. Such supervision is carried out under the new Law exclusively in the form of representing the rights and freedoms of a citizen, the interests of society and the state [17].

Conclusions

Therefore, when investigating the historical process of development of the prosecutor's office of Ukraine, it should be noted that in all determined periods of the formation of the prosecutor's office of Ukraine, its place and role in the system of protection of human rights and freedoms, the interests of society and the state was determined by the stage of development of the state, the existence of the state as such, the state regime of Ukraine.

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