



Sergii Liulko ¹⁾
Oleksandr Shamara ²⁾

¹⁾ MA, Chief Research Officer of Providing Scientific and Methodological Framework for Military Prosecutor's Offices Activity of the Scientific Research of the National Prosecution Academy of Ukraine

* Corresponding author: e-mail acams.greco@gmail.com
ORCID: <https://orcid.org/0000-0001-5970-4991>



²⁾ PhD, Professor of Dnepropetrovsk State University of Internal Affairs, Member of the International Association of Criminal Law, PhD in Law, Senior

* Corresponding author: e-mail alexandr79shamara@gmail.com
ORCID: <https://orcid.org/0000-0002-0571-0437>

PROSECUTOR'S OFFICES REFORMATION: FUNDAMENTAL PRINCIPLES

REFORMA PROKURATURY: PODSTAWOWE ZASADY

РЕФОРМИРОВАНИЕ ОРГАНОВ ПРОКУРАТУРЫ: ОБЩИЕ ПРИНЦИПЫ

Abstract

The article is dedicated to the issues of prosecutor's offices reformation at the level of conceptual approaches development to this question and harmonizing this process coordinated approvals with the whole system of law enforcement bodies of Ukraine. In the article much attention is paid to the issues of development and approval of general approaches to the reformation process itself based on description of current reality in a security sector.

Keywords: reformation, prosecutor's offices, conceptual approaches

Streszczenie

Artykuł poświęcony jest zagadnieniu reformy prokuratury na poziomie opracowania koncepcyjnych podejść do tego zagadnienia i zgodność tego procesu z całym systemem organów ścigania Ukrainy. Wiele uwagi w artykule poświęcono zagadnieniu rozwoju i ogólnemu podejściu do samego procesu reformacji w oparciu o odzwierciedleniu nowoczesnej rzeczywistości w sektorze bezpieczeństwa.

Słowa kluczowe: reformacja, prokuratura, koncepcyjne podejście

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Аннотация

Статья посвящена вопросам реформирования прокуратуры на уровне разработки концептуальных подходов к этому вопросу и согласованию этого процесса со всей системой правоохранительных органов Украины. Большое внимание в статье уделено вопросам разработки и утверждения общих подходов к самому процессу реформирования, основанных на описании современной реальности в сфере безопасности.

Ключевые слова: *реформирование, прокуратура, концептуальные подходы*

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Statement of the problem in general outlook and its connection with important scientific and practical tasks.

Nowadays one of the main criteria determining the place of prosecutor's office in Ukraine is its functional load [1]. It should be noted that its place in the system of state bodies is linked directly to the prosecutor's office functions that it must perform. So, the question of national prosecutor's office competence [2] is one of the most disputable in modern legal science and practice. However, no doubt these functions need to be changed in the context of the implemen-


tion of legal reform in Ukraine. The question centers around increasing the number of functions (returning supervision functions) or their further decreasing compared with current revised edition of Article 131-1 of the Constitution of Ukraine [3]. In this article the author set a goal to describe his view point about the main principles of prosecutor's office reformation in Ukraine based on studying the previous achievements of the scientists.

Analysis of latest research where the solution of the problem was initiated.

The extent of problem development. The issues of studying and improvement of prosecutor's office functions in Ukraine were touched upon by national modern scientists: O. Bandurka, M. Bidenko, I. Vernydubov, M. Mychko, S. Prylutskiyi, G. Sereda, P. Shumskiyi, V. Finko, M. Iakymchuk and other. The question on constitutional and legal status of prosecutor's office was leant by L. Hritsaenko, I. Hroshevyi, V. Dolezhan. M. Kosiuta, Iu. Kriuchko, V. Kuts, O. Lytvak, M. Mychko, G. Myrashyn, S. Podkopaiev, Iu. Polianskyi. O. Tolochko, I. Shesheuchenko, V. Iurchyshyn. Nevertheless, despite deep and sufficient scientific and theoretical contribution of the above mentioned authors the

question on conditions of the prosecutor's office reformation process was not described to the end, as the main emphasis laid on deep analysis of legislative changes. According to the author's opinion the development of the main principles of reforming the prosecutor's office of Ukraine goes beyond the legislators' everyday professional activity. Such activity is not connected with making suggestions on any amendments to the current law, it requires creative, considered and slow approach, using criminological forecast of the results of corresponding legislative changes in operation of all law enforcement bodies, judicial bodies and state agencies.

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Aims of paper. Methods.

The purpose of the article (task) is to separate the main aspects which serve as the key to implementation of planned, phased and efficient reformation of prosecutor's office in Ukraine in the context of reforming the whole system of law enforcement bodies on the basis of processing practical and scien-

tific development of any questions of prosecutor's activity through prosecutor's office reformation. Relying on studying of scientific achievements, history and practice of national state bodies' functioning the author strives to give his own position on the main basis for prosecutor's office reformation in Ukraine.

Exposition of main material of research with complete substantiation of obtained scientific results. Discussion.

Ensuring state sovereignty of Ukraine, person and citizen's constitutional rights and freedoms, adequate standard of living, development of social, constitutional state, realization of Euro-Atlantic choice require the implementation of targeted state policy as to reformation of prosecutor's office bodies and mechanisms of its functioning.

The necessity of improvement (reforming and development) of prosecutor's office bodies is conditioned by cardinal changes in security that took place in Europe and in Ukraine during the last years – increasing of level and changing of specific value of actual and potential threats to national security [4], as well as realization of strategy of European and Euro-Atlantic integration [5], including the perspective of cooperation with the NATO.

At the same time the reformation of law enforcement system in general and prosecutor's office in particular is the condition of any reforms in Ukraine, as without proper protection and respect for rights and freedoms of all the subjects of public process it is impossible to develop any legal state and public society

(democratization of all its elements, increasing the transparency of its operation, changing of criteria of work, clear split of functions, civil democratic supervision, changes of principles of staff management etc.). Reformation of prosecutor's office

bodies must be coordinated and integrated with state plans and programs.

Reformation of prosecutor's office bodies in Ukraine, in particular, shall contribute to both improvement of international image of Ukraine and to increasing investment attraction of Ukrainian economics for foreign investors.

At present moment the process of formation of general image on national security and need in it as the attribute of mature political nation and modern European state has not been completed in Ukraine. This is precisely why one of the modern requirement is constant monitoring and accompaniment in security through political and management approaches. The key direction of reforms is the transformations in the national security system. The future of Ukraine and, in particular, its independence will depend on capability to protect national interests and to respond successfully to any new challenges and threats.

Globalization and regional integration processes bring to dilution of sovereignty and international threats [6]. The recently undisputable division of threats to foreign and domestic ones is losing its value. Transnational corporations, structures of global public society, international criminal group corporations etc. and the states themselves are playing more and more important role in the international arena. As a result, the

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threats of international terrorism, organized criminal activity, in particular, drug and human trafficking, attempts to obtain political and economic dividends for social political destabilization processes are increasing rapidly. The protection of any individual, society and state interests from such threats is the first task for law enforcement agencies and security services of Ukraine.

The development of democratic legal state (in compliance with the constitutional provisions) requires the creation of effective system of law enforcement agencies which will ensure state functions realization and public society development. The current situation in the country is characterized by a range of problems: some conflicts in legislation, not effective activity, decrease of law enforcement bodies' reputation and increase of people's disbelief, incompliance of social and legal environment of officers etc. However, the processes of law enforcement agencies reformation conditioned by needs in their active involvement in settling any perspective and current problems of Ukrainian society are irreversible now.

Ukrainian staying in the European Council and perspective to join the European Union confirms once again the current necessity to adapt its legal institutes to the norms of the European Union according to which the legal enforcement agencies are to change somehow their role and functions through transformations into the bodies meeting the democratic and European standards [7]. And in its turn, the realization of such important priorities of the national interests like Ukrainian integration into European political, economical and legal space demands some enhancing of legislative support of democratic development of the country, and first of all, in the field of law enforcement activity.

So, improving of the prosecution authorities system of Ukraine shall contribute to formation and development of Ukraine as a

democratic and legal country, to security of its national interests, enhancement of social and economic relations and settling the stage of civil society, and to speeding up the integration process of Ukraine to the European Union.

The conceptual framework of the prosecution authorities' reformation in Ukraine gains ground under the above mentioned conditions. Their goal is to secure the system of views on improvement strategy (or enhancing the efficiency [8] of prosecution authorities' activity of Ukraine according to the provisions of working Constitution of Ukraine and standards of the European Council (principles and standards). The main goal of reformation is considered to become on-stage formation of balanced prosecution authorities system, society and state, to function successfully in democratic society and to comply with current requirements, international standards, and the most important – to state's economic capabilities.

The consequences of reformation are to be subordinated to the general goal which is clear and understandable for country citizens. The general goal may be stated as transformation of prosecution authorities of Ukraine from the system of pursuit and repressions [9] into the mechanism for security and recovery of infringed rights of citizens; and increasing the level of trust to prosecution authorities [10], [11].

The functional goal of reformation can be stated as formation of prosecution authorities system considering any positive aspects of European standards of organization and efficiency. The task of reformation is to define the main principles, directions and states of prosecution authorities system, including organizational, scientific methodological and regulatory provision. The subject-matter of reformation task is to settle correspondence between the tasks and functions, structure, people and resources

provision. Under the present conditions the first task is to settle the question of necessary resources provision of reformation process, as lack of resources and needs in reformation are parallel. So, the state should determine the priority: which actions are urgent, which are necessary, and which are desired, and according to the priority their terms of realization shall be stated. The key precondition of prosecution office reformation is adjusting the staff's working culture to such reformation. It should be considered that changing in policy, structure, personnel schedule or regulatory documents shall not result in any changes in working culture of any law enforcement body and the prosecution office in particular. So, there is basic need in formation of critical mass from personnel members who are the supporters of the reformation and who know for what such reformation is necessary. The basis for a new system shall consist of current and new principles [12], [13], [14], [15]:

supremacy of law;

priority of person's rights security;

consistency;

integration;

based on trust to society, approval of legal procedures for security of citizens' rights and legal interest, ensuring the realization of principle of inevitability of punishment; compliance with time needs and orientation at final result;

scientific grounds;

active cooperation with foreign institutions; considering the features of national legislation system;

The predictable transformation of prosecution authorities of Ukraine should be realized as follows:

enhancing of legislative and regulatory provision;

formation of people's position attitude to the law enforcement bodies in general and to the reformation process in particular;

structure balancing, optimization of its constituent components not only according to the entrusted tasks but considering the actual threats to the national security as well; improvement of personnel management, educational system and highly qualified specialists' training [16];

infrastructure development, procurement system improvement [17], preparation and accumulation of material and personnel resources [18];

deepening of international cooperation and partnership in the field of law enforcement activities;

enhancing of efficiency of democratic civil supervision for prosecution authorities activity, provision of maximum allowed and necessary transparency and publicity in their work;

improvement of social policy;

prevention from arising any conditions for intrusion of political forces in prosecutor's office activity through separation of spheres of political and professional (office) management [19];

creation of effective system of cooperation between law enforcement bodies [20];

enhancing the qualification level of specialists and the level of their technical support.

While solving the tasks put in the course of Ukrainian prosecution authorities transformation subject to the level of European standards it is necessary to consider the peculiarities of national legislation system and to avoid adoption of snap legislative changes [21]. This question needs open discussion involving a wide range of legal and scientific community, experts of the European Council [22]. Current state of prosecution authorities should be assessed in a proper way at the time of reformation, moreover, it is required to provide for approval of conceptual principles with the view of complex reformation of modern security sector under the terms of globaliza-

tion. The relevant provision of these processes shall contribute to formation of effective system of democratic civil control of prosecution authorities' activity in Ukraine for increasing the level of protection of rights of citizens, society and state.

According to the directions of development of prosecution authorities system it is possible to predict the accomplishment of the following measures:

- considering the necessity of reforming the prosecutor's office on the sidelines with court reformation [22];
- strengthening of coordinating role of prosecutor's office in the field of fighting against crime [23], [24], [25];
- development of criteria for prosecutor's office activity assessment[19];
- constant monitoring of prosecutor's office operational efficiency at the state and regional level;
- ensuring improvement of information resources law enforcement agencies functioning that enables:
 - to combine the informational resources of interested executive bodies;
 - to form the comprehensive system of informational cooperation of interested executive bodies and to establish single in-sphere for complex review of information on criminal activity;
 - to arrange cooperation and information exchange with competent bodies of foreign countries and international organizations which activity is aimed at fighting against crime;
 - improvement of international and institutional cooperation with law enforcement agencies of Ukraine from the one hand and with the EU, NATO, some foreign states and their law enforcement bodies from the other hand as follows: a) joining efforts and implementation of joint programs on fighting against terrorism, trans-border and transnational crimes, corruption, illegal migration, drug trafficking, human trafficking

etc.; б) proper technical support for law enforcement agencies of Ukraine and pre-border infrastructure, and involvement of purpose-oriented help of country-members from the EU and NATO;

- arrangement of working meetings of the representatives of the entire executive bodies of Ukraine and the EU country-members for discussing any outstanding problems on operation, real-life experience exchange, approval of cooperation mechanism;

- continuing any work on studying European experience, making comparative analysis and conclusions on experience in the field of prevention and fighting against crimes as well as bringing it into practical usage to improve the legislation of Ukraine;

- setting up any efficient mechanisms of cooperation between prosecutor's office and publicity (in particular, working out of programs on cooperation with public society, which provides for: learning the public opinion, polling and interviewing of separate representatives and groups of population; arranging and conducting any regular meetings (briefings, press-conferences, interviews etc.) of management and responsible officers from the prosecutor's office with mass media representatives [26], representatives of any unions and public organizations [27] for informing on current state, results and problems of law enforcement officers' activity; meetings with practical employees with labour collectives and population according to the place of residence);

- ensuring objective and unprejudiced disclosure of any actions in mass media which are realized by the prosecutor's office in the field of prevention and fighting against crimes and their results [28];

- ensuring to stream any informational policy in the above field to disclose actual results and positive developments, keeping

up the population certainty about invariability of the determined direction in the field of prosecution authorities system reformation, contribution to forming negative attitude to illegal activity in the society; - organization of scientific and methodo-

logical provision [29] for training and upgrading of prosecutor's office employees' qualification; arrangement of annual interdepartmental council-seminars for law enforcement representatives concerning any actual questions on practical activity and reformation aspects).

Conclusions.

As to the current state of Ukrainian development the actual question is the reformation of all law enforcement agencies of Ukraine as the subjects of national security provision. Vital importance of these reforms for all spheres of public life and necessity of proper provision of national security shall demand maximum careful, scientific and reasonable approach to working out any general basis for reformation, and, first of all, to realization of some specific steps in this direction.

Nowadays any challenges and threats require the transformation of prosecutor's office of Ukraine as a subject of national security under the terms of thoughtful and reasonable approach to reforming process which should provide the following:

- continuous and planned formation of balanced system of prosecution authorities of Ukraine which is able to perform any tasks to secure the interests of person and citizen, society and state in qualitative and professional [30] way, and to function successfully in democratic society, to respond to the requirements of the present moment, to the international standards and country economic abilities [31].

- improvement and further development of the system of personnel provision of the prosecutor's office of Ukraine [32] according to the current European standards;

- enhancing international and departmental cooperation in the field of provision of the national sovereignty of Ukraine, constitutional rights and freedoms of any person and citizen, and fighting against transnational criminal activity between Ukraine and the EU, NATO and separate foreign countries;

- efficient allocation of authorities in the system of law enforcement bodies of Ukraine, setting up any necessary mutual control, clear legislative determination of their legal status [33].

The next step in researching in this field can be preparation of project named "Concepts of prosecutor's office reformation in Ukraine" or "Concepts of reforming the law enforcement agencies of Ukraine" which should consider any similar transformation in other force departments as well for complex settling of the question, if there is any political will for this. But in general, it is considered not prudent to conduct any reformation for each department separately, that can be proved in some way by the results of police reformation which was the first under legislative changes, but furthermore, there was some decision on reasonability to establish the relevant conceptual basis [34]. But it should be stated the first task is still formation of critical mass from staff members who support this reformation and realize its final target.

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