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Legal regulation of the activities of the prosecutor's office of Ukraine, the USA, Brazil and European countries: comparative legal analysis

Oleksii Kalchuk

Kiev university of intellectual property and law of national university
“Odessa law academy”

<http://orcid.org/0009-0002-0582-8168>

Abstract: The purpose of the article is to clarify the foreign experience of European countries and Ukraine, the USA, and Brazil regarding the legal regulation of the functioning of the prosecutor's office. Based on a comparative study of foreign prosecutor's offices, data are provided on their place in the management system, the type of model and the main functions, which gives an idea of the role and directions of development of the prosecutor's office in leading European countries. In Germany, prosecutor's offices operate at all levels of general courts. The Federal Prosecutor General exercises his powers under the general leadership of the German Minister of Justice. It is noted that the modern French prosecutor's office belongs to the executive branch of government and is subordinate to the Ministry of Justice. Prosecutor's office officials are very close to the judicial corps, since they undergo the same training and often move from prosecutors to judges and vice versa during their careers. According to a special law determining the legal status of the prosecutor's office in Latvia, the prosecutor's office is a judicial body that independently supervises compliance with the law within the established competence. In the United Kingdom, there is no public prosecutor's office or its direct analogue at all. In the system of state authorities, the Crown Prosecution Service functions as an independent and autonomous body, the activities of which are coordinated by the Prosecutor General. In the Republic of Lithuania, prosecutors organize and manage the pre-trial investigation process, as well as support the state prosecution in criminal cases. It is concluded that there is no single standard for the model of the prosecutor's office in Europe. The analyzed models of prosecutor's offices have advantages and disadvantages, but none of them is excluded and none of the models is given preference.

Keywords: prosecutor's office, organization of the prosecutor's office, model of the prosecutor's office of European states, location of the prosecutor's office, powers of the prosecutor.

Regulamentação jurídica das atividades do Ministério Público da Ucrânia, EUA, Brasil e países europeus: análise jurídica comparada

Resumo: O objetivo do artigo é esclarecer a experiência estrangeira de países europeus e da Ucrânia, EUA e Brasil no que diz respeito à regulamentação legal do funcionamento do Ministério Público. Com base em um estudo comparativo de promotorias estrangeiras, são fornecidos dados sobre seu lugar no sistema de gestão, tipo de modelo e principais funções, o que dá uma ideia do papel e das direções de desenvolvimento das promotorias nos principais países europeus. Na Alemanha, os Ministérios Públicos operam em todos os níveis dos tribunais gerais. O Procurador-Geral Federal exerce seus poderes sob a direção geral do Ministro da Justiça alemão. Note-se que o Ministério Público francês moderno pertence ao poder executivo do governo e está subordinado ao Ministério da Justiça. Os agentes do Ministério Público são muito próximos do Judiciário, pois passam pelo mesmo treinamento e frequentemente passam de promotores para juízes e vice-versa durante suas carreiras. De acordo com uma lei especial que determina o status legal do Ministério Público na Letônia, o Ministério Público é um órgão judicial que supervisiona de forma independente o cumprimento da lei dentro da competência estabelecida. No Reino Unido, não há Ministério Público nem nada parecido. Dentro do sistema de autoridades estatais, o Ministério Público Real funciona como um órgão autônomo e independente, cujas atividades são coordenadas pelo Procurador-Geral. Na República da Lituânia, os promotores organizam e gerenciam o processo de investigação pré-julgamento, bem como dão suporte ao Ministério Público em casos criminais. Conclui-se que não existe um padrão único para o modelo de Ministério Público na Europa. Os modelos de Ministério Público analisados apresentam vantagens e desvantagens, mas nenhum deles é excluído e nenhum modelo é preferido.

Palavras-chave: Ministério Público, organização do Ministério Público, modelo de Ministério Público dos países europeus, localização do Ministério Público, atribuições do Ministério Público.

Introdução

The current stage of development of foreign countries in some aspects, and especially in the field of protection of rights and freedoms, is ahead of Ukraine's experience. In the light of permanent reforms in Ukraine and given the desire of Ukraine to join the European community, from our point of view it is useful to study the experience of functioning of state legal institutions, in particular, that of the prosecutor's office in the USA and some countries of the European community. In our opinion, research of the experience in the sphere of building a system of prosecutor's offices is of particular importance, for the purpose of clarifying Ukraine's further steps in this area. From our point of view already existing studies are not sufficient today, because they are mostly based on previously conducted studies and they do not take into account many aspects of modern legal regulation and changes that are made to the current legislation, including in foreign countries.

Lapkin A. notes that in the context of studying international standards of prosecutorial activity the factors of foreign influence are the reverse aspect of their influence on the national model of the prosecutor's office, which is the displacement of its unique internal features in favor of general external ones, which is

generally inherent in the processes of globalization¹. Voytovych R points out that globalization does not always have a positive effect on national development, since only highly developed countries benefit from it, thanks to the fact that they manage to expand the boundaries of their influence on other countries, while transitional societies are not ready to face their challenges. If a separate state has an effective national strategy for social development, it will be quite cautious about external influences.² With regard to the influence of international standards on the prosecutor's office of Ukraine, this was manifested in the fact that they did not so much complement but faster replaced its national characteristics. To a large extent, this was due to the fact that due to ideological and political reasons when forming the standards of prosecutorial activity, their developers (at least at the initial stage) actually did not take into account experience of functioning of the prosecutor's offices of the post-Soviet states, including Ukraine, moreover, they considered it as negative in the light the Soviet past.

Today, in Ukraine, there is a small amount of research on foreign experience of administrative and legal regulation of the organization and activities of the prosecutor's office, which does not allow to clearly define construction models of this body of state power, and to find out the possibilities of introducing foreign experience into the legal system of Ukraine. At the same time, in this direction we should point out the thesis of O. V. Khorusunenko "The Prosecutor's Office of Ukraine and the member countries of the European Union: a comparative study"³; in this thesis the author conducted a comprehensive study, found out the main shortcomings of the prosecutor's office models in the countries of the European Community and came to the conclusion that "the legal status of the prosecutors of the EU member states largely depends on the place that the prosecutor's office occupies in the system of the state authorities, which affects the procedure, term and definition of the subject of the appointment of prosecutors at different levels, and at the same time it was concluded that each EU member state establishes and guarantees independence of prosecutors in exercising their powers"⁴.

One may also point out the thesis by S. L. Nazaruk "Administrative and legal support of the activities of the prosecutor's office of Ukraine and the leading countries of the European Union: comparative study", where the author correctly determined that "a comparative study of the administrative and legal support of activities performed by the prosecutor's office of Ukraine and those of the leading EU states makes it possible to identify and single out relevant measures aimed at improving the administrative and legal support of the activities inherent to the prosecutor's office of our country"⁵.

The purpose of the article is to clarify the foreign experience of European countries and Ukraine, the

¹ LAPKIN A.V. **Prosecutor in criminal proceedings**: theoretical, legal and organizational and methodological problems: monograph. Kharkiv: Pravo, 2020. 1304

² VOYTOVYCH, R. Globalization as a universal form of historical dynamics of transitional societies. **Bulletin of the National Academy of Public Administration under the President of Ukraine**. n.1, p. 21–32, 2012.

³ KHORSUNENKO O. V. **Prosecutor's office of Ukraine and the member countries of the European Union: a comparative study**: dissertation. ... candidate law of Sciences: 12.00.10 / Odesa Jurid. Acad. Odesa, 2019. 221 p. Repository of the National University of Odesa Law academy": <https://dspace.onua.edu.ua/items/98b34aad-7a94-4cd4-9f92-clade3f875df>.

⁴ VOLOSHANIVSKA, Tetiana. POZIHUN, Inna. LOSYCH, Serhii. MERDOVA, Olha. LEHEZA, Yevhen. Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors. **Journal of Drug and Alcohol Research**, v. 12, n. 10, 2023. <https://doi.org/10.4303/JDAR/236269>.

⁵ NAZARUK, S. L. **Administrative-legal support of the activities of the prosecutor's office of Ukraine and the leading countries of the European Union: a comparative study**: diss. ... doctor of philosophy: 081 "law" / Govt. teacher. Univ. named after V. Vinnichenko. Kropyvnytskyi, 2021. 235 p. Central Ukrainian State Repository V. Vinnichenko University. https://cusu.edu.ua/images/autoreferats/2021/Nazaruk/D_Nazaruk.pdf.

USA, and Brazil regarding the legal regulation of the functioning of the prosecutor's office.

Methodology

The method of dialectics involves the study of phenomena and processes in their dynamic development, interaction with other phenomena and processes. One of the postulates of dialectics is the expression: "Everything flows, everything moves, everything changes, you cannot enter one and the other same river twice". The method of dialectics includes the law of unity and struggle of opposites, the law of transition of quantitative changes into qualitative ones and the technique of "negation of negation". Yes, in the process of researching the administrative and legal foundations of the organization and activities of the prosecutor's office at the regional level, it is necessary to take into account the unity of the system of all criminal justice bodies, because each subject of power is a representative of the state, public administration.

Public interest, which is realized in the activities of the prosecutor's office, private interests of individuals and legal entities are often opposed persons, but the task of the prosecutor's office is to protect the public interests of society and the state. The art of the professional activity of the prosecutor is to achieve an optimal balance between the specified opposing interests, to ensure social compromise, which consists in observing the principles of the rule of law and legality by all participants in legal relations, which law and order and the appropriate level of rights protection are ensured and human freedoms.

The law of the transition of quantitative to qualitative changes is most clearly manifested in the activities of the prosecutor's office, in the process of implementing the functions of the prosecutor's office provided for by the Constitution of Ukraine.

The number of indictments sent to the court, civil lawsuits regarding the protection of the state's interests in court, number of considered and satisfied appeals and complaints of citizens is transformed into qualitative indicators of the state of law and order (decrease in the level of crime and corruption), compliance with the rule of law and the level of trust of citizens in law enforcement agencies in general and prosecutor's offices in particular.

It is also necessary to actively apply the technique of "denial of denial" in the process of researching the administrative and legal foundations of the organization and activities of the prosecutor's office at the regional level. For example, at first the researcher denies the expediency of reforming certain divisions of the regional prosecutor's office, but then refutes the rationale of the initial objection and proves the necessity of the corresponding reformation processes.

The dialectical method makes it possible to substantiate the processes of objective reality, cause-and-effect relationships, as well as the contradiction between content and form, essence and phenomenon. The specified method contributes to the understanding of objective reality, taking into account the experience gained in the process of cognitive activity.

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of quantitative changes into qualitative ones, and the technique of “negation of negation.” Thus, in the process of studying the administrative and legal principles of the organization and activities of prosecutorial bodies at the regional level, it is necessary to take into account the unity of the system of all criminal justice bodies, because each subject of power is a representative of the state, public administration. The public interest, which is realized in the activities of prosecutorial bodies, is often opposed by the private interests of individuals and legal entities, but the task of the prosecutor’s office is to protect the public interests of society and the state. The art of the prosecutor's professional activity is to achieve the optimal balance between the indicated opposing interests, to ensure a social compromise, which consists in observing the principles of the rule of law and legality by all participants in legal relations, which ensures law and order and an adequate level of protection of human rights and freedoms. The law of the transition of quantitative changes to qualitative changes is most clearly manifested in the activities of the prosecutor's office, in the process of implementing the functions of the prosecutor's office provided for by the Constitution of Ukraine.

The number of indictments sent to the court, civil lawsuits regarding the protection of the interests of the state in court, the number of considered and satisfied appeals and complaints of citizens are transformed into qualitative indicators of the state of law and order (reduction in the level of crime and corruption), compliance with the rule of law and the level of trust of citizens in law enforcement agencies in general and the prosecutor's office in particular.

The technique of "denial of denial" must also be actively applied in the process of studying the administrative and legal principles of the organization and activities of the prosecutor's office at the regional level. For example, at first the researcher denies the feasibility of reforming certain divisions of the regional prosecutor's office, but then he argues and refutes the justification of the initial denial and proves the need for corresponding reform processes.

The dialectical method makes it possible to substantiate the processes of objective reality, cause-and-effect relationships, as well as the contradiction between content and form, essence and phenomenon. This method contributes to the understanding of objective reality, taking into account the experience gained in the process of cognitive activity. This fundamental philosophical method is fundamental and determines the correct application of other general scientific methods (historical (historical and legal), terminological (linguistic, terminological analysis, operationalization of concepts), comparative legal, system-structural, statistical and modeling methods) and specific scientific methods (sociological (survey, questionnaire, expert assessments), logical and legal, comparison, methods of analysis and synthesis, induction and deduction) in their unity and interconnection. It can be used by learning the general categories of managerial activity, administrative and legal principles of the organization and activities of law enforcement agencies, in particular the prosecutor's office, in their unity.

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The general philosophical research methods are also worth it include the principles of objectivity and historicism. First requires the use of only verified facts and data in the research process, for example, representative results of sociological studies, data from official statistics, etc. The second requires the researcher to take into account those historical conditions in which certain normative acts were adopted, factors that at that time influenced the will of the subject of rule-making activity.

General scientific research methods include: systemic and structural-functional methods, techniques of the logical method (analysis, synthesis, deduction and induction), techniques of the sociological method (questionnaire, survey, social experiment, observation, expert evaluations), method comparison, axiomatic and terminological methods.

The system-structural method involves a consistent comprehensive study of the essence of a specific phenomenon as a whole, hierarchical, structured system (multiplicity of interconnected elements), studying its individual parts (elements) and determining their role (functions) in the system. This method can be used during the study of the system of constitutional and legislative foundations of the administrative and legal foundations of the organization and activities of the regional prosecutor's offices of Ukraine. In particular, the system method makes it possible to systematize international legal acts and acts of national legislation, the norms of which regulate issues of organization and activity of regional prosecutor's offices. The structural-functional method makes it possible to examine in detail the structure of the prosecutor's office and the functions of each of its divisions.

Results and discussion

Experience in the prosecution of the USA, Brazil, Colombia

At the current stage, development of the prosecutor's office is connected with the approval of the general principles of its activity at the international level, with the preservation of various organizational and functional models based on the peculiarities of national legislation.

At the same time, there is no single model of the prosecutor's office in the world, and each separate model has its own shortcomings and advantages; and in connection with this we believe that the prosecutor's office should be determined from the point of view of the social and political conditions of its organization and functioning, taking into account peculiarities of national states, and based on the mentality of this or that society.

Therefore, from the point of view of understanding the role and place of the prosecutor's office, it is quite important to study experience of foreign countries regarding the basic principles of the prosecutor's office on the example of the United States of America (hereinafter - the USA) and some European countries.

Thus, in the USA, the prosecutor's office is called the "attorney's office" headed by the US Federal Prosecutor or a federal attorney, whose position was introduced in 1789 in the Judiciary Act of 1789 (Law on the Judiciary).⁶ The federal attorney is appointed to the position, including based on the provisions of Section 2 of Art. 2 of the US Constitution.⁷ According to the US Code (28 U.S. Code § 541) The federal

⁶ JUDICIARY ACT OF 1789. **The library of congress.**
<https://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=001/llsl001.db&recNum=196>.

⁷ CONSTITUTION OF THE UNITED STATES **written in 1787, ratified in 1788, and in operation since 1789.** United

attorney is appointed to the position by the President of the United States with the consent of the Senate of the United States for a four-year term, at the same time, at the end of the term, he/she continues his/her activity until his/her successor is appointed to the position⁸.

Among other things, unlike in Ukraine, the Federal Attorney in the USA is the head of the United States Department of Justice (Justice Department), but this Department should be distinguished from the Ministry of Justice of Ukraine, because in the USA it is essentially the headquarters of the Federal Attorney, namely thanks to the Department of Justice, the Federal Attorney General regulates activities of federal attorneys, in federal judicial districts⁹.

In the USA, there is an attorney service (Executive Office for United States Attorneys "EOUSA"), that is, an institution of state power that has no analogue in any other part of the world. The EOUSA was created in 1953 on the basis of the Attorney General Order No. 8-53 in order to ensure constant interaction between the Department of Justice and 93 US Attorneys located respectively in the 50 states, the District of Columbia, Guam, the Mariana Islands, Puerto Rico and the US Virgin Islands. Thus, the U.S. Attorney's Office is a totality of U.S. executive authorities, including at the state level and local levels, that advises the government at the appropriate level, represents interests of the Government in court, and ensures general implementation of the existing legislation. Among other things, the US Attorney's Office acts as a prosecution service, it has the right to initiate a criminal case, investigate cases of violations of existing law, prosecute and support prosecutions in court¹⁰.

The Federal Prosecutor's Office in the United States has its own investigative bodies, including the FBI, and it is only one of the law enforcement agencies that is subordinate to the Ministry of Justice. Among other things, the Ministry of Justice is subordinated to the service of marshals, or as we say bailiffs, the administration dealing with narcotics, the bureau controlling implementation of laws on alcoholic products, tobacco products and criminal distribution of narcotic substances.

At the same time, it should be noted that in the USA the prosecutor's office is a completely independent body, which, according to T. Peebles, is achieved through a properly organized crime prevention system, and the prosecutor's office acts based on the following priorities: high professional competence with knowledge of crime and its high-tech means; an exclusive emphasis on professional aspects and a rather significant sensitivity to the violation of human rights; emphasis on effective cooperation with counteraction bodies, including in the spheres of global threats of crime and terrorism.¹¹

Thus, the prosecutor's office in the USA is a body that conducts criminal prosecution, supports public prosecution and participates in court hearings as a representative body of public authority. The prosecutor's office is characterized by decentralization and lack of supervisory powers. From an organizational point of

States Senate. <https://www.senate.gov/about/originsfoundations/senate-and-constitution/constitution.htm>.

⁸ ORGANIZATIONAL STRUCTURE OF THE US DEPARTMENT OF JUSTICE. US Department of Justice. <https://www.justice.gov/our-work>.

⁹ GENERAL STRUCTURE OF EOUSA. **Offices of the United States Attorneys.** <https://www.justice.gov/usao/eousa/organizational-chart>.

¹⁰ LEHEZA, Yevhen. YEROFIEIENKO, Larysa. KOMASHKO, Volodymyr. Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects. *Revista Justiça Do Direito*, v. 37, n. 3, p. 157–72, 2023. <https://doi.org/10.5335/rjd.v37i3.15233>.

¹¹ THE CHANGING ROLE OF THE AMERICAN PROSECUTOR / John L. Worrall, M. Elaine Nugent-Borakove. Albany: State University of New York Press. 2008. 284. **ResearchGate.** https://www.researchgate.net/profile/Hung-En-Sung/publication/258839592_Prosecutor_and_Treatment_Diversion_The_Brooklyn_NY_Drug_Treatment_Alternative_to_Prison_Program/links/0deec5292b9d4477dd000000/Prosecutor-and-Treatment-Diversion-The-Brooklyn-NY-Drug-Treatment-Alternative-to-Prison-Program.pdf

view, the prosecutor's office in the USA is more drawn not to a state authority, but to a kind of professional corporation of lawyers, who at the same time are in the civil service of representatives of public authorities.

Examples of representation by a prosecutor in administrative proceedings also occur in Latin American countries. Thus, Article 129 of the Constitution of Brazil obliges the prosecutor's office, among other things, to ensure that public authorities and public services respect the rights of citizens guaranteed by this Constitution, to take the necessary measures to ensure them; to conduct civil investigations and file civil lawsuits in order to protect public and state property, the environment and other collective and significant interests; to protect the rights and interests of the indigenous population in court.

For example, Brazilian Attorney General Paulo Gonet Branco has supported the blocking of the social network X (formerly Twitter) in the country, local media report. In his opinion, the decision of Judge Alexandre de Moraes is absolutely legal and cannot be appealed.

Representatives of the Brazilian Attorney General's Office (PGR) have called on the Supreme Court (STF) to reject the lawsuits related to attempts to unblock the platforms. The department believes that the ban on X's activities and the introduction of fines for using the social network do not violate the right to freedom of speech. In addition, the PGR stated that the legal mechanism used in appeals cannot be used to challenge the Supreme Court's decisions. According to the Attorney General's Office, it is impossible to claim non-compliance with fundamental provisions regarding the STF's decision.

It should be noted that at the end of August 2024, the court ordered the suspension of the work of the social network X, owned by tech mogul Elon Musk. The ruling is related to the platform's refusal to block some accounts and the closure of the company's representative office in the country.

The Brazilian Bar Association and the Partido Novo political party have appealed the decision to close the social network. According to available information, Judge Marques Nunes, who is considering the appeals, will transfer the case to a plenary session only after the country's municipal elections, scheduled for October.

In addition to the court proceedings, the case of the suspension of X's activities has led to active discussions of the situation in the Brazilian Congress. Some lawmakers consider Moraes' decision an attack on freedom of speech. Other representatives of Congress have pointed to the lack of transparency in the issues of blocking accounts on the platform and stated the selective approach of the social network's management.

Elon Musk called the blocking of the X social network in Brazil an "attack" on the freedoms of Brazilians and an attempt by the authorities to ban "the main source of truthful information."

In Colombia, a special institution of people's defenders has been created under the Attorney General's Office to represent human rights and freedoms in courts, in particular in the event of their violations by government authorities. A. Hurtado notes that the court of first instance in cases of restoration of citizens' rights and freedoms in public-government relations is any court at the place of their violation or threat of violation.

Experience of prosecutor's offices in European countries

In European countries, the system of prosecution differs significantly from that of the United States. Thus, in Germany, according to the Law on the Constitutional Court (Article 149 GVG), the Federal Prosecutor General (Generalbundesanwalt) and federal prosecutors are appointed by the President of the country on the proposal of the Minister of Justice and with the approval of the Bundesrat¹². According to the German Federal Civil Service Act (5BBG), the Federal Prosecutor General, federal prosecutors, senior prosecutors are appointed for life and are civil servants¹³. At the same time, with regard to the Federal Prosecutor General, he/she acts, including as a political figure and can be dismissed by the Minister of Justice at any time. At the same time, the Law provides that no justification is required for this¹⁴.

It is known that in Germany the organizational structure of the prosecutor's office is divided into federal one and state one, which follows from the provisions of the Order on the Organization and Procedure of the Prosecutor's Office in Germany dated 12 March, 1975¹⁵.

From our point of view this experience of Germany can be useful for Ukraine regarding the issue of significant independence of prosecutors and a fairly high level of their material and technical support.¹⁶

The French prosecutor's office also has its peculiarities. The legal regulation of the activities of the prosecutor's office in France takes place at the level of the French Constitution of 1958,¹⁷ the Criminal Procedure Code of France (Articles 31-48 of the Section "On the Prosecutor's Office"),¹⁸ the Judicial Code of 1978, and the French Code of Civil Procedure¹⁹.

As in Germany, the French prosecutor's office is subordinate to the Ministry of Justice, and is a centralized system of bodies. The Prosecutor General performs his/her activities at the Court of Cassation. The structure includes assistants of the Prosecutor General, who are the First Advocate General and 19 advocates general. The General Prosecutors and their assistants also act at the courts of appeal, to which the prosecutors of the Republic (les procureurs de la République) being in the sphere of influence of these courts are subordinated accordingly. The prosecutors of the Republic are the district prosecutors at the tribunals, who mostly handle civil cases. All prosecutors are appointed by the President of France on the

¹² GERICHTSVERFASSUNGSGESETZ (GVG) BUNDESRECHT: in der Fassung vom 09.05.1975, zuletzt geändert am 08.10.2023. **Justiz-online**. https://www.lexsoft.de/cgibin/lexsoft/justizportal_nrw.cgi?xid=137459,1.

¹³ FÜR BEAMTE: BUNDESGESETZ BUNDESBEAMTENGESETZ VOM 05.02.2009, zuletzt geändert am 17.07.2023. **BBG-Bundesbeamtengesetz**. https://www.gesetze-iminternet.de/bbg_2009/BJNR016010009.html.

¹⁴ LEHEZA, Yevhen. YUROVSKA, Viktoriia. ZAMRYHA, Artur. ULOZHENKO, Vadym. BOHDAN. Bohdana 2024. Administrative and legal regulation of the status of internally displaced persons in Ukraine during the war. **University of western Australia law review**. 51 (2). 297-313. <https://www.uwa.edu.au/schools/-/media/documents/uwa-law-review/volume-51-issue-2/leheza-et-al-formatted.pdf>.

¹⁵ ANORDNUNG ÜBER ORGANISATION UND DIENSTBETRIEB DER STAATSANWALTSCHAFT (ORGSTA): vom 04.07.1995, letzte Änderungen vom 01.04.2014. **Niedersächsisches Vorschrifteninformationssystem (NI-VORIS)**. <https://voris.wolterskluweronline.de/browse/document/6edf9705-df13-3d63-abba-0e51afbe0c52>.

¹⁶ VOLOSHANIVSKA, T., NITSEVYCH, O., MOROZOV, O., BEREZNIAK, V., KUZNIETSOV, M. (2023). Legal regulation of release of minors from punishment and from service of punishment: foreign experience, administrative and criminal aspect. **Syariah: Jurnal Hukum dan Pemikiran**, v. 23, n. 2, p. 151–161, 2023. <https://doi.org/10.18592/sjhp.v23i2.12286>.

¹⁷ CONSTITUTION DU 04.10.1958. **La Constitution le bloc de constitutionnalité**. <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur>.

¹⁸ CODE DE PROCEDURE PENALE AU 31.12.1957. **République Française Légifrance**. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071154/.

¹⁹ CODE DE PROCEDURE CIVILE AU 30.12.1976. **République Française Légifrance**. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/.

proposal of the Minister of Justice, who directly supervises their activities. In terms of their status, prosecutors are quite close to judges, with some exceptions, but they conduct their activities based on the same principles. The main organizational principles of the prosecutor's office include integrity, independence, subordination and responsibility. The court and the prosecutor's office thus form a single corps and have the right to change the position of a prosecutor to position of a judge and vice versa during the career²⁰.

In the event that the prosecutor violates the law during a criminal prosecution, he/she is not responsible, the prosecutor is not held liable for reimbursement of court costs, he/she shall not compensate for damages to the convicted person, which mostly represents a certain guarantee of independence and relieves the prosecutor of the need to participate in cases related to his/her persecution by citizens. Thus, taking into account the above, the French prosecutor's office is a body independent from the court or from the parties to criminal proceedings²¹.

According to the French Code of Criminal Procedure, officials and agents of the judicial police are under the supervision of the Prosecutor General, who has the right to instruct them to collect the necessary information if it is important for the administration of justice. The Prosecutor of the Republic accordingly manages the judicial police, receives information about crimes from the police, gives instructions on the investigation, monitors the police's compliance with the law. The prosecutor has the right to come directly to the scene of the crime instead of the police and can himself/herself carry out all the actions that are actually assigned to the judicial police, also the Prosecutor of the Republic personally or through deputies supports the prosecution in jury court, police or correctional tribunals, and has the right to issue orders to search for criminals.

Thus, in contrast to Ukraine, the prosecutor's office in France is not just independent, but, among other things, it can actually replace the body of inquiry and, in general, carry out all the necessary investigative actions in the case, and the difficulty of distinguishing powers of the prosecutor in the civil process in the legislation makes the French prosecutor's office similar to the German prosecutor's office, where this issue is also not sufficiently regulated²².

In the countries of the former Soviet socialist camp the prosecutor's office also has its peculiar features. Thus, according to the Constitution of Estonia, in Article 151, it is quite succinctly defined that the procedure for maintaining the prosecution and representation in court is established by law.²³ According to the Statute on the Prosecutor's Office, the Estonian Prosecutor's Office is a state institution subordinate to the Minister of Justice. The Ministry of Justice is defined as the highest state body of the prosecutor's office. Thus, prosecutors are accountable to the Minister of Justice, who oversees activities of the prosecutor's

²⁰ LEHEZA, Yevhen. PISOTSKA, Karina. DUBENKO, Oleksandr. DAKHNO, Oleksandr. SOTSKYI, Artur. The Essence of the Principles of Ukrainian Law in Modern Jurisprudence. *Revista Jurídica Portucalense*, December, n. 32, p. 342-363, 2022. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15).

²¹ VOLOSHANIVSKA, Tetiana, Inna POZIHUN, Serhii LOSYCH, Olha MERDOVA and Yevhen LEHEZA. 'Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors'. *Journal of Drug and Alcohol Research*, v. 12, n. 10, 2023. <https://doi.org/10.4303/JDAR/236269>.

²² LEHEZA, Yevhen, YANKOVYI, Mykola. MEDVEDENKO, Nadiia. VAIDA, Taras. KOVAL, Marat. Application of Artificial Intelligence in Motivating Court Decisions: Legal Basis and Foreign Experience. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, v. 24, n. 1, p. 58–69, 2024. <https://doi.org/10.30631/alrisalah.v24i1.1531>.

²³ EESTI VABARIIGI PÕHISEADUS. Vastu võetud 28.06.1992. RT 1992, 26, 349. Jõustumine 03.07.1992. *Riigi Teataja*. <https://www.riigiteataja.ee/akt/115052015002>.

office in criminal proceedings²⁴.

The prosecutor's office system is directly managed by the Prosecutor General, who is appointed to the position by the government on the proposal of the Minister of Justice for a term of five years. The prosecutor's office manages the pre-trial criminal investigation, supports the state prosecution, and may participate in investigative activities. Two general bodies are included in the prosecutor's office system, namely the State Prosecutor's Office and 4 district prosecutor's offices²⁵.

According to the law the tasks of the prosecutor's office include: ensuring legality and effectiveness of pre-trial criminal proceedings; supervising legality of operational investigative activities of investigative bodies, which are bodies of pre-trial investigation, during the detection of crimes or pre-trial proceedings of criminal cases; representation of the state prosecution in court; performance of tasks arising from international cooperation, participation in the work of Eurojust; other tasks assigned by law to the prosecutor's office.

The Prosecutor's Office of Estonia, like the Prosecutor's Office of France, manages the pre-trial investigation, but does not replace it. Thus, the prosecutor's office mostly supports the criminal prosecution in court, participates in the planning of investigative actions, conducts proceedings in cooperation with the police, state border guards, fiscal and other services.²⁶

In practically the same way activities of the prosecutor's office are regulated in the Republic of Latvia, at the same time, it is interesting that the prosecutor's office here is completely excluded from the Constitution of the Republic of Latvia, because we do not find any regulation regarding the prosecutor's office. The main principles of activities performed by the prosecutor's office are enshrined in the Law "On Prosecutorial Supervision in the Republic of Latvia", namely: the prosecutor's office is a single centralized system of three-level structural units headed by the Prosecutor General; prosecutors of the same position are interchangeable²⁷.

Unlike the previously considered European countries, in Latvia the prosecutor's office is directly defined as a body of judicial power that independently oversees legality. The task of the prosecutor's office is to respond to violations of the law and ensure the resolution of related cases in accordance with the procedure established by law²⁸.

The entire prosecutor's office system in Latvia is managed by the Prosecutor General. The the Prosecutor General appoints and dismisses prosecutors, as well as employees with whom establishment of

²⁴ YANKOVYI, Mykola LEHEZA, Yevhen., MEDVEDENKO, Nadiia. VAIDA, Taras. KOVAL, Marat. (2024). Application of artificial intelligence in motivating court decisions: legal basis and foreign experience. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 24(1), 58–69. <https://doi.org/10.30631/alrisalah.v24i1.1531>.

²⁵ DYMKO, Iegor. MURADIAN, Arsen. LEHEZA, Yevgeny. MANZHULA, Andrii. RUDKOVSKYI. Oleksandr Integrated Approach to the Development of the Effectiveness Function of Quality Control of Metal Products. *Eastern-European Journal of Enterprise Technologies* 6, no. 3 (90) (2017): 26–34. <https://doi.org/10.15587/1729-4061.2017.119500>.

²⁶ LEHEZA, Yevhen. DUBENKO, Oleksandr. PAVLYK, Liudmyla. PRASOV, Oleksandr. PAVLOV, Volodymyr. Foreign Experience of Responsibility for Driving Vehicles in Condition of Alcohol Intoxication: International Standards, Administrative and Criminal Aspects. *Revista Jurídica Portucalense*, n. 35, p. 161–174, 2024. [https://doi.org/10.34625/issn.2183-2705\(35\)2024.ic-08](https://doi.org/10.34625/issn.2183-2705(35)2024.ic-08).

²⁷ PROKURATURAS LIKUMS. TAS STAJAS SPEKA 01.07.1994. Izdevumā no 06.10.2021. *Likumi*. <https://likumi.lv/ta/id/57276-prokuraturas-likums>.

²⁸ KORNIIENKO, Maksym, DESYATNIK, Anatolii DIDKIVSKA, Galina LEHEZA, Yevhen and TITARENKO Oleksiy. 'Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect'. *Khazanah Hukum* 5, n. 3, p. 205–15, 2023. <https://doi.org/10.15575/kh.v5i3.31742>.

labor relations is within the competence of the Prosecutor General. District judicial prosecutor's offices are formed by the Prosecutor General in accordance with the distribution of territories of judicial activity. According to the Law "On the Judiciary", district prosecutors' offices perform the functions of prosecutors in the territories of judicial districts²⁹.

According to the Latvian legislator the main functions of the prosecutor's office include : implementation of control over pre-trial investigation and operational investigative activities, intelligence and counter-intelligence activities of state security agencies and compliance with the legislation on the system of protection of state secrets; carrying out a pre-trial investigation; initiation and implementation of criminal prosecution; support of the state prosecution; supervision over execution of sentences;

protection of the rights and legitimate interests of the individual and the state in accordance with the procedure established by law; submission of a statements of claim or filing a court compliant in accordance with the procedure established by law; participation in court proceedings in cases specified by law³⁰.

In Article 6 of the Law on the Prosecutor's Office it is clearly defined that the prosecutor in his/her activities is independent from the influence of other institutions or officials who exercise state power and management and he/she obeys only the law. Neither the Saeima, nor the Cabinet of Ministers, nor other state and local government institutions, state and local government officials, nor any types of companies and organizations, nor individuals have the right to interfere with the work of the prosecutor's office during investigation of cases or during performance of other functions inherent to the prosecutor's office. At the same time, any actions of the prosecutor can be appealed exclusively in accordance with the procedure established by law³¹.

In addition, a prosecutor has immunity, and initiation of a case against him/her and his/her detention, arrest, forced return or search may take place in the manner provided by law and with immediate notification of the Prosecutor General. Prosecutors bear no material responsibility for damages caused to a person by illegal or unjustified actions or decisions, such damages can be compensated only in exceptional cases, and exclusively by the state³².

Thus, in Latvia, the prosecutor's office is the only centralized system headed by the Prosecutor General, and prosecutors are independent in their activities and they obey exclusively the law. It can be said that in Latvia, as in other countries of the European Community, prosecutors are endowed with quite significant powers, and their responsibility is limited at the legislative level, which allows them to perform their duties, relying exclusively on the provisions of the current legislation, regardless of subordination, and therefore prosecutors have considerable independence.

²⁹ PAR TIESU VARU DATETS AR 15.12.1992. Stājies spēkā: 01.01.1993. **Likumi**. <https://likumi.lv/ta/id/62847-par-tiesu-varu>.

³⁰ LEHEZA, Yevhen. SHCHERBYNA, Bogdan. LEHEZA, Yulia. PUSHKINA, Olena. MARCHENKO, Olesia. Características de la suspensión o denegación total/parcial del cumplimiento de una obligación en caso de incumplimiento de la contraparte según la legislación civil de Ucrania. **Novum Jus**, v. 18, n. 2, p. 131–150, 2024. <https://doi.org/10.14718/NovumJus.2024.18.2.5>

³¹ VOLOBUIEVA, Olena, LEHEZA, Yevhen. PERVII, Vita. PLOKHUTA, Yevhenii. PICHKO, Roman. Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine. **Yustisia Jurnal Hukum**, v.12, n.3. p. 262–77, 2023. <https://doi.org/10.20961/yustisia.v12i3.79443>.

³² YUROVSKA, Viktoriia. LEHEZA, Yevhen. ZAMRYHA, Artur. ULOZHENKO, Vadym, BOHDAN. Bohdana. Administrative and legal regulation of the status of internally displaced persons in ukraine during the war. **University of western Australia law review**, v. 51, n. 2, p. 297-313, 2024. <https://www.uwa.edu.au/schools/-/media/>.

Conclusions

Thus, the higher degree of development and orientation of European states to democratic principles within functioning of all state institutions of the legislative, executive, and judicial branches of power, as well as a clear definition of the role and place, tasks and functions of the prosecutor's office in this system, leads to the absence or narrowing of the need to establish the prosecutor's office of supervisory powers. When reforming and optimizing activities performed by the Prosecutor's Office of Ukraine, one should take into account the fact that even in conditions of political and economic stability in the state, with the presence of civil society, it is difficult to create a benchmark for the system of prosecutor's offices. At the international level, there is no unified standard for the organization and functioning of such a system. That is why all innovations in the aspect of improving organization of the modern prosecutor's office must be related to the historical, cultural and legal processes regarding formation and development of the state; and such innovations must be also acceptable to the society of this country.

From the analysis of the above positions, it is possible to conclude that there is no single standard regarding the model of the prosecutor's office in Europe. The mentioned models of prosecutor's offices have advantages and disadvantages, but none of them is excluded and neither of the models is preferred. Regardless of the organizational structure of the prosecutor's office, "... states must take appropriate measures so that the legal status, competence and procedural role of prosecutors are established by law in such a way that there can be no legitimate doubts about independence and impartiality of judges" (para. 17 Recommendations (2000) 19).

It is emphasized that in the practice of borrowing experience of legislative regulation of the administrative and legal bases of activities inherent to the prosecutor's office and its officials in foreign countries, it is necessary to take into account the realities of today in activities of the prosecutor's office in Ukraine, and namely: significant workload, personnel starvation, insufficient funding. At the same time, we can state that what should really be implemented in Ukraine, even immediately, is the experience of European countries regarding guarantees of independence of the prosecutor on the example of Germany, France or Latvia.

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