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INTERNATIONAL LEGAL ANALYSIS OF PROSECUTOR'S SUPERVISION OVER THE FUNCTIONING OF THE AUTHORITIES THAT PROVIDE OPERATIONAL SEARCHING ACTIVITY

The legislation of Ukraine regulating powers of prosecutor's office in operational searching activity is considered and analyzed. The comparative analysis with provisions of the foreign legislation is carried out. Offers regarding improvement of implementation of public prosecutor's supervision of operational search activity are submitted.

Key words: *operational searching activity, European standards, European integration, public prosecutor's supervision.*

The main functions of the Prosecution of Ukraine, according to the Constitution of Ukraine (Art. Art. 121–123) are support of state accusation in court, representation of interests of citizens or state in court in cases determined by law, supervision over the observance of laws by authorities

that conduct operational searching activity, inquiry, pretrial investigation, and in case of execution of judicial decisions in criminal proceedings, and the application of other measures of coercion related to the restraint of personal liberty of citizens [1].

Expanding the powers of prosecutors in criminal proceedings is conditioned by the necessity of ensuring the proper law and order in Ukraine, effective protection of individuals, society and state from socially dangerous infringements on general social values, rights and legal interests of individuals, and bring national legislation according to which criminal prosecution in Ukraine, in line with international and European standards, is realized.

Problematic questions of prosecutor's supervision over the functioning of the authorities that provide operational searching activity, studied domestic and foreign scientists, including B. I. Baranenko, B. T. Biezliepkin, A.V. Bielousov, V. V. Hevko, V. A. Hlazkov, V. A. Dashko, E. O. Didorenko, Ie. A. Dolia, I. M. Doronin, V. I. Zazhytskyi, Iu. P. Kobets, Ie. H. Kovalenko, I. P. Koziakov, V. A. Koliesnik, M. I. Kurochka, S. A. Kyrychenko, A. O. Liash, V. T. Maliarenko, O. R. Mykhailenko, V. T. Nor, V. I. Nindypova, M. A. Pohoretskyi, B. H. Rozovskiy, V. B. Rushailo, V. A. Seliukov, I. V. Servetskyi, H. P. Sereda, A. H. Tsvetkov, M. Ie. Shumylo.

The aim of the article is an analysis of the powers of some foreign countries in developing proposals for improving national legislation in terms of strengthening guarantees of the legality of prosecutor's supervision of the operational searching activity.

The powers of the prosecution that are granted, in order to implement functions, determined in the Constitution of Ukraine, are established in the legislation of Ukraine.

Due to the reform of the criminal justice system in Ukraine, namely legislation that regulates procedure of operational searching activity and pretrial investigation of criminal offenses, particularly, in the part that establishes procedure of prosecutorial supervision, significant changes and additions has been made. First of all, the boundaries of the prosecutor's supervision on the legality of realization of operational searching activity greatly enhanced, and the prosecution provided a significant authorities in this area. After the comparing the Law of Ukraine «About operational searching activity», with the laws of the CIS countries, we can say, that the prosecutor's supervision over the legality of operational searching activity in Ukraine in the short term considerably will amplify [2].

Prosecutor is notified by the operational unit about all operational searching arrangements, independently of whether would human rights, during theirs exercising, be limited, or not. Such procedure of supervision is established by the legislator for ensuring the legality of operational searching activity. According to the CPC of Ukraine, materials of operational searching activities, received in compliance with the procedure established by law, can be used in criminal proceeding as evidences among with other evidence, the sources of which are specified in Ch. 2, Art. 84 of the CPC of Ukraine. In such a case the prosecutor's supervision will act as guarantee of the legality of operational searching activity and, consequently, a guarantee of legality of results. However, it should be borne in mind, that the proceeding of operational searching activity is always associates with the requirements of secrecy, consequently, of its involvement in other subjects, representatives of the authorized state bodies, usually do not promote on decision-making speed, confidentiality of information, obtained in result of its promotion, that is to some extent hindered its implementation. According to the analysis of the legislation of the CIS countries, such broad powers of prosecution for activities that make covered operational investigative work in any of them, is not provided. Guarantees of legality driving operational activities mainly provided by the rules which establish

the prosecution to authorize search operations that restrict human rights or the rules that shall govern the prosecutor's response to complaints and statements of citizens about violation of their rights during the operational searching activity. A number of laws of CIS countries on operational searching activity clearly established limits of the powers of the prosecutor, in view of the analysis can be argued that the prosecutor's oversight of operational and investigative activity in the CIS is not current and previous or next character and made not permanently how to monitor the activity and selectively, in order to respond to claims and reports of individuals and entities [3; 4; 5]. The authority owns the prosecution approval of departmental regulations, conducting operational-search activities [6; 3; 4]. These exercise supervisory powers of prosecution aims at preventing possible violations operative divisions, not to monitor their activities. In some CIS countries, clearly defined subject of public prosecutions, which ensures a certain independence of operational units, as defined by law supervision limits make it impossible to make operational investigative body fully controlled by the prosecutor's office [7].

Instead, the powers of the prosecution during the pretrial investigation of criminal offense in Ukraine and in CIS countries, whose legislation is akin, however, it was developed in limits of state formation, traditionally are wider than the prosecutor's supervision on searching activity. This is the essence of the institute of prosecution as a public authority of the state, whose specific functions, according to Art. 5 of the Law of Ukraine «About the Prosecution», is the supervision of law enforcement and other government agencies [8].

The questions of configuration changes and expansion of supervision of the operational searching activity arose in connection with the adoption in the 2012 CPC of Ukraine, according to which, the management of pretrial investigation was attributed to the functions of prosecutor [10].

The powers of the prosecutor's in pretrial investigation are defined by Art. 36 CPC of Ukraine. Given the analysis of this and other articles of the CPC of Ukraine we can conclude, that the procedural independence of the investigator is significantly limited now, as the adoption of the most significant decisions in criminal proceedings belongs to the competence of the prosecutor. According to the CPC of Ukraine prosecutor is authorized to start pretrial investigation on the grounds, provided by law, to have full access to records, documents and other information about the initiated pretrial investigation, to entrust its realization to the pretrial investigation agency, to entrust to investigator or to the pretrial investigation agency, in established by the prosecutor period, the realization of the pretrial investigative (searching) activity, the secret investigative (searching) activity and other procedural activity or give the instructions for their realization, or participate them, and, if necessary, realize some investigative (searching) or procedural activities personally, to cancel the unlawful and unjustified decision of the investigator in the manner prescribed by the CPC of Ukraine, to initiate the question to the head of the pretrial investigation agency about the removal of the investigator from realization of the pretrial investigation and the appointment of another investigator by legally specified grounds, as well as independently exclude the investigator, to entrust the implementation of pretrial investigation to another agency of pretrial investigation, in cases provided by the CPC of Ukraine, to take procedural decisions, including the closure of criminal proceedings and the extension of pretrial investigation terms and so on. In fact, the prosecutor is authorized to control all the actions of the investigator and to give guidance on further investigation and conduct an audit of pretrial investigation [11, p. 75–76]. One of the most important powers that are provided to the Prosecution by the CPC of Ukraine is to control the conduction of secret investigative (searching) actions and the right to make decisions about the

usage of materials, received in the result. However, according to the CPC of Ukraine, the sphere of criminal proceedings is expanded, and starts, according to Article 214 of CPC of Ukraine, after the entering data in the Unified Register of pretrial investigations. As a result of expanding the sphere of pretrial investigation of criminal offenses, simultaneously, the sphere of influence of the prosecutor in activity of state agencies in fields of identification, detection and investigation of crimes, increases too. In continental Europe prosecution occupies an intermediate position between the executive and judiciary branches of power. In Italy, Romania, Poland, prosecutors comprise to the corps of judges, are formed by the courts, but are in hierarchically organized system that functioning under the chairmanship of the Minister of Justice, namely, submits to the executive branch [11, p. 77–78].

In Germany, the public prosecutor's office is a part of the judiciary and follows the instructions of the executive power (Ministry of Justice).

Thus, the Prosecutor General of France is subordinate to the Minister of Justice and is entitled, within its authority, to give all required orders to officials of the public prosecutor's office. Its authority included the supervision of the judicial police, keeping the charges in court, participation in civil cases, when it is required by the public interest [12, p. 218].

Polish legislation enshrines the dual nature status, combining the duties of the General Prosecutor and Minister of Justice (Justice). The authority of Prosecutor in Poland embraces the support of state accusation in court, supervision on the legality during the consideration of civil and administrative cases, cases of misconduct, temporary detention and making other decisions about imprisoning. He has the right to appeal in court, to participate in the prevention of crime and criminal offenses. Instead of general supervision over the legality of the public prosecutor's office of Poland he cooperates with various state and public institutions of crimes prevention and misdemeanors. Polish Law «About the Public Prosecutor's Office» directly designates, that the cooperation with public authorities, government agencies and other public organizations in the prevention of crime and other offenses, is relied on Public Prosecutor's office. [13]

Attorney General is the chief lawyer of Great Britain and Wales also shall be a member of the ruling party of the Parliament. He is responsible to Parliament for the Department of the Treasury Solicitor's Department, for the Director of Public accusations, for the Director of the Bureau of the large-scale fraud and for the Director of Public Persecutions in Northern Ireland. The Attorney General acts as a consultant in the House of Commons, as a juridical counsel of the Crown in legal affairs, as government department's adviser, he gives answers to queries in the House of Commons. He is authorized to attend the meetings of the Standing Committee of Parliament that develop bills, he advises the House of Commons in the developing and conducting of parliamentary procedures, conduction and discipline of its members and international legal obligations. Attorney General is the highest official in the crime persecution because he exercises supreme control on the public persecution, contributes to a unified judicial policy in civil and criminal matters [14].

As for the guarantees of independence of prosecutors in Ukraine, the Law of Ukraine «About the Prosecution» (art. 16) prohibits any influence or pressure from public authorities, local governments, public organizations and their officials on the activity of prosecutors.

We can refer to the recommendations of the Council of Europe, to understand what prototype of the prosecution they perceive. Thus, the Recommendations of Re (2000) 19 of the Committee of Ministers to Member States, about the role of prosecutors in the criminal justice system, define following authorities of the prosecutors in all criminal justice systems :

to decide whether to open, or continue criminal persecution;

to support the prosecution in court;
 may appeal or make the appeal submission to all or some court decisions.
 In certain criminal justice systems the prosecution also:
 carries out state criminal policy (if possible, taking into account regional and local conditions);
 investigates, manages or supervises it;
 provides effective assistance to victims;
 makes decisions on measures, alternative to criminal persecution;
 supervises the execution of court decisions. [13]

It became obvious fact, that the functions of prosecution dissociate themselves in the field of criminal justice and in certain systems.

The Conclusion number 3 (2008) of the Consultative Council of European Prosecutors about «The role of prosecutors outside the criminal law» on the special authority of prosecutors outside the criminal justice system, which is a logical consequence of the continuation of the theme to the Recommendations, defines:

– the competence of prosecutors outside the criminal justice system should not limit the rights of individuals to file a claim or defense of their interests in a fair and impartial trial, even in cases where the prosecution acting or supporting to act as a one of the sides;

– in cases where the prosecution is authorized to make decisions, that concerns the rights and duties of individuals, the authority of the prosecution should be severely limited and defined by law, and could not prevent the sides in forming law remedy in fact and under the law in an independent and impartial courts. Prosecution authorities must act completely independently of any other authority, and their decisions must be reasonable and announced stakeholders [14].

In conclusion we can say, that currently the legislation that governs prosecutorial supervision over the activities of exercising the operational searching activity, experiencing difficult times now, because those Eurointegration processes, taking place in our country, have influence on legislation in the direction of changes to EU requirements and this would have a positive result, but as you can see, legislator has no time to bring in line the legislation that governing the appropriate direction with the requirements of the EU.

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