DOI 10.5281/zenodo.35885601

PROKURATURA UKRAINY W SYSTEMIE ORGANÓW WYMIARU SPRAWIEDLIWOŚCI: NOWE PODEJŚCIA ZE WZGLĘDU NA ZASADĘ WIERNOŚCI KONSTYTUCYJNEJ

Mykoła Oniszczuk
doktor habilitowany nauk prawnych, Zasłużony Prawnik Ukrainy,
rektor Krajowej Szkoły Sędziów Ukrainy (Kijów, Ukraina)
e-mail: metod.vrj@ukr.net
ORCID: 0000-0002-0588-0540

Mychajło Sawczyn
doktor habilitowany nauk prawnych, profesor,
Dyrektor Instytutu Naukowo-Badawczego Prawa Porównawczego i Prawa Międzynarodowego Użhorodzkiego Uniwersytetu Narodowego (Użhorod, Ukraina)
e-mail: michaelsavchyn7@gmail.com
ORCID: 0000-0002-9551-1203

Streszczenie. Z punktu widzenia osiągnięć współczesnej doktryny konstytucjonalizmu, w szczególności zasady wierności konstytucyjnej, artykuł koncentruje się na przepisach nowych zasad organizacji prokuratury, które wynikają ze zmian do Konstytucji Ukrainy (sekcja „Wymiar sprawiedliwosci"), jako organu sprzyjającego wymiaru sprawiedliwości.

Artykuł analizuje wizję funkcjonowania prokuratury na podstawie instancyjnej, ale nie hierarchicznej, co pozwoli jej sprawować kontrolę proceduralną w postępowaniu karnym i występować w sądzie w roli oskarżyciela publicznego w sposób bardziej obiektywny i uzasadniony.

Ze względu na funkcje prokuratury jej działania powinny, zdaniem autorów, być związane z organizacją systemu sądowego. W związku z tym prokuratura powinna zostać utworzona na zasadzie instancyjniej, co będzie sprzyjać również lepszemu zabezpieczeniu dostępu do wymiaru sprawiedliwości i szybkiemu rozstrzygnięciu pytań dotyczących zadowolenia lub odrzucenia sądem wniosków prokuratora o podjęcie środków zabezpieczenia dochodzenia przedprocesowego.

W artykule podkreślono potrzebę zabezpieczenia skutecznych gwarancij niezależności prokuratora i niedopuszczalności ingerencji w działalność prokuratora wyższego szczebla. W przypadku stwierdzenia takich okoliczności należy przyciągnąc sprawców do odpowiedzialności prawnej.

Autorzy zwracają również uwagę, że procedura polityczna dotycząca ogłoszenia Parlamentem o braku zaufania do prokuratora generalnego nie przyczynia się do zapewnienia jego bezstronności i niezależności. Biorąc pod uwagę znaczny wpływ prokuratury na sądownictwo, taka procedura jest niedopuszczalna, ponieważ taka procedura zagraża niezależności władzę sądowniczej, ponieważ wpływ władzy wykonawczej i sił politycznych reprezentowanych w parlamencie prowadzi do nierównowagi w zapewnianiu równości stron w postępowaniu.

Słowa kluczowe: konstytucjonalizm, wsparcie oskarżenia publicznego, zasada

wierności konstytucyjnej, prokuratura, kontrola proceduralna w postępowaniu karnym, sprawiedliwość, hierarchia, uprawnienia.

PROSECUTOR'S OFFICE OF UKRAINE IN THE SYSTEM OF JUSTICE: NEW APPROACHES OBSERVING THE PRINCIPLE OF CONSTITUTIONAL FIDELITY

Mykola Onyshchuk
Doctor of Juridical Science, Honored Lawyer of Ukraine,
rector of the National School of Judges of Ukraine (Kyiv, Ukraine)
e-mail: metod.vrj@ukr.net
ORCID: 0000-0002-0588-0540

Mykhailo Savchyn
Doctor of Juridical Science, professor, the Head of Sientific Research Institute of comparative Public law and international law Of Uzhhorod National University (Uzhhorod, Ukraine)
e-mail: michaelsavchyn7@gmail.com
ORCID: 0000-0002-9551-1203

Abstract. From the perspective of achievements of modern doctrine of constitutionnalism, in particular the principle of constitutional fidelity, the article is focused on the provisions of the new principles of Prosecutor's Office organisation, arising from the amendments to the Constitution of Ukraine (Section "Justice"), as a justice promoting body.

The article considers the vision of the Prosecutor's Office functioning on an instance basis but not on a hierarchical one, which will enable it to exercise the procedural control in criminal proceedings and maintain the public prosecution in court more objectively and reasonably.

Based on the functions of the prosecutor's office, its activities, according to the authors, should correspond to the organization of the judicial system. In view of this, the prosecutor's office should be organised on the instance basis, which will also help to ensure better access to justice and prompt decision by the court on the issue of granting or denying the prosecutor's requests to take pre-trial investigation measures.

The article indicates the need to establish effective guarantees for the independence of the prosecutor and the inadmissibility of interference in his activity by the higher level prosecutor. In case such circumstances are found, perpetrators should be brought to justice.

The authors also point out that the political procedure of declaring Parliament's no-confidence motion against the Prosecutor General does not contribute to ensure his impartiality and independence. Given the significant influence of the prosecutor's office on the judiciary, such procedure is unacceptable, while as a result it threatens the independence of the judiciary, since the influence of the executive and political forces, represented in parliament, leads to an imbalance in ensuring the equality of parties in the judicial process.

Key words: constitutionalism, maintenance of public prosecution, principle of constitutional fidelity, Prosecutor's Office, procedural control in criminal proceedings, justice, hierarchy, authority.

Introduction. According to the principle of constitutional fidelity, its prescriptions must be properly specified in the laws, without distorting of fundamental constitutional values and principles. While determining the level and the quality of the constitutional provisions concretization concerning the status of the prosecutor's office, the constitutional objectives, the system of principles of justice, and the functions of the prosecutor's office which derive from the content of those principles should be taken into account. Currently, Ukraine is dominated by an approach that appeals to the doctrine of the rule of parliament, according to which the Legislature has a wide margin of discretion to specify the provisions of the constitution in law. However, such a position is questionable in terms of organic constitutionalism, since the parliamentary majority is often prone to arbitrary decisions, which violate minority rights and sometimes, more significantly, distort public aims and interests and attack the foundations of modern constitutionalism.

After amending the Constitution of Ukraine on the justice issue, the section on the prosecutor's office was removed from its structure, and the rules of activity of the prosecutor's office defining its functions and organization were included in the section on justice. Thus, the prosecutor's office has been implemented in the justice system, as it is usually established in European countries. So the Prosecutor's Office is subject to the general principles of justice set out in the Article 129 of the Constitution of Ukraine.

The purpose of this article is to analyze new approaches to defining the place, role and functions of the prosecutor's office in the light of the justice constitutional principles of justice and the modern constitutionalism doctrine. This involves a comparative analysis of the prosecutor's model in relation to the judiciary and its organization. It also refers to the principles of integrity and functionality on the basis of which the constitutional principles of justice are analyzed, and the legal status of the prosecutor's office is analyzed through the as well. The variability of models of organizational building of the prosecutor's office is investigated in accordance with the principle of constitutional fidelity, taking into account the latest constitutional amendments. The standards of prosecutors office activity in respect of dignity and human rights are briefly outlined.

European experience in the functioning of the prosecutor's office in the justice system

The place and role of the prosecutor's office is a subject of debate not only in Ukrainian constitutional doctrine. In political and legal practice, the interaction of authority institutions becomes extremely political, because the Soviet and post-Soviet stereotypes of legitimacy make the prosecutor's office a leading institution in the field of criminal justice.

According to the Judge of Turin city (Italy) J. Obert, the experience of many countries shows that cases of corruption committed by centers of economic, financial and political power have often occurred in corruption cases. This is why there is an urgent need for a court to investigate (and direct judicial policy) in a direction that is completely independent of governmental structures. It is unrealistic to guarantee the independence of the judiciary, when the executive bodies are still left with the possibility of keeping control over the prosecutors in order to prevent prosecutorial investigations *(Oberto, Zhepinski 2002. p.5).* The independence of the prosecutor's office from the influence of the executive and political forces is a key guarantee of legitimacy in their work to promote justice. The spillover of the executive authorities

and criminal justice has a negative impact on the judiciary independence. Jurisdictional means cannot be used against fundamental constitutional purposes - to limit the arbitrariness of power and to provision of the human rights and freedoms.

At the same time, the considetarion of the prosecutor's office, along with the Constitutional Court of Ukraine, the Accounting Chamber and the Ombudsman, as controlling and supervisory power and a kind of an independent state power branch is widespread in Ukraine. In the special literature for the status of the prosecutor's office, the question of its legal status is explored very abstractly, almost unrelated to the content of the constitutional principles of justice *(Komarnitska, Pryadko 2015. 61–66; Sukhonos 2011. P.209–213).* In this aspect, the prosecutor's office, according to the legal regime of its activity, seems to be closer to the public administration bodies.

The status of the prosecutor's office issue is solved differently on the European continent: in the Anglo-American legal family countries and in some Europian ones (Poland, France), there are units within the Ministry of Justice that perform separate functions of the prosecutor's office; in the countries of the Romano-German legal family, institutions such as the prosecutor's office are part of the judicial system (Austria, Spain, Italy, Germany). In the most of post-Soviet countries, however, the prosecutor's offices act as specialized bodies (Russia, Belarus, Kazakhstan, etc.), which is explained by the tradition of power organization laid down by Emperor Peter I, reproduced in the practice of government during the Russian Empire and the Soviet Union period.

Theses on the special status of the prosecutor's office as a separate institute of government contradict two fundamental principles of constitutionalism. First, a priori the state is considered as the most potential violator of human rights, and through the separation of powers and the system of checks and balances the restriction of the state is achieved, its natural will to control all privacy spheres and to interfere with the private sphere of the person is appeased. Therefore, a public administration body cannot be implemented into the justice system. Secondly, the right to defense involves the free choice of defense counsel and the principle of non-interference by the state, except in cases if the person who requires the support in material, psychological or physiological condition, or due to the peculiarities of the process and the complexity of the case, cannot afford a lawyer.

At least the prosecutor's office is a constitutional body of specialized competence that **exercises the powers conducive to the administration of justice**. The prosecutor's office is called to ensure the lawfulness of criminal prosecution of persons and to support public accusation in court, as well as to supervise the lawfulness in places of temporary detention and imprisonment. Previously, in accordance with paragraph 9 of the transitional provisions of the Constitution of Ukraine, the prosecutor's office continued to exercise the functions of supervising the observance and application of laws and the preliminary investigation until the laws governing the formation and operation of the relevant bodies' structure came into force. These constitutional prescriptions, which were formally temporary in nature, became virtually permanent in the long term. Today, in accordance with the 2016 Constitution, in addition to supporting public prosecution, the prosecutor's office provides organization and procedural guidance of pre-trial investigation, resolution of other issues in the course of criminal proceedings, oversight of unspoken and other examinative proceedings and investigative actions peformed by the law enforcement bodies and representing the

interests of the state in court in exceptional cases and in the manner prescribed by law *(article 131-1 of the Constitution of Ukraine).* Therefore, the loss of the oversight function by the prosecutor's office brought it closer to the organically inherent functions of the justice system and the courts in particular, and laid the foundations for the transition to new principles of activity and organization.

From the analysis of the prosecutor's office social purpose in accordance with the constitutional principle of separation of powers and guarantees of access to an independent and impartial court, it follows that the natural function of this institution is to assist in the administration of criminal justice, that is, the procedural guidance of the pre-trial investigation and the support of public prosecution in court. Naturally, these provisions do not need to be detailed at the level of the Constitution of Ukraine, since this is the sphere of regulation of criminal procedural legislation. At the constitutional level, it is sufficient to define these functions. The constitutional consolidation of the prosecutor's office's powers of procedural guidance in the conduct of inquiries and pre-trial investigations, together with public prosecution, is one of the guarantees of the prosecution's functions in promoting justice.

The system of constitutional principles of justice and the function of the prosecutor's office

The constitutional backgrounds of justice concerning the prosecutor's office activity include the following once: equality of parties in the process; the parties' competitiveness and freedom to give evidence before the court; support of public prosecution in court; reasonable time for trial; ensuring the right to review the case and in the cases specified by law - to appeal against the court decision. Prosecutor's office should perform its functions in accordance with these backgrounds and taking into account the principle of constitutional fidelity, which should be consistent with the current legislation on the prosecutor's office issues. The methodical specification and detailization of the constitution requires coordination of the decisions of the parliament and the constitutional court; this harmonization is not in the mechanism of consultation, but in a common understanding of the essence and content of the fundamental principles of law and standards for legislative regulation and the adoption of judgments that derive from the content of constitutional values and principles *(Savchin, 2016, p.46).*

Therefore, the organization of the prosecutor's office should be understood precisely in terms of constitutional principles. In terms of organization, the judiciary is not built on subordination relations. The key role is played by the requirements of due process, whereby a court decision can be appealed to a higher court. Thus, the principle of authority must also form the basis of the prosecutor's office.

A significant role is played in support of the public prosecution in court and the exercise of procedural guidance by the prosecutor's office as well. It should be emphasized that obtaining a court's authorization to carry out certain investigative measures or to take certain precautionary measures against suspects or to take pre-trial investigative measures requires a high degree of coordination between the prosecutor's office and the court. Conducting appropriate procedural actions in accordance with the requirements of due process includes the independence of a prosecutor who handles the procedural guidance or support of a public prosecution in court. This implies that the most efficient and effective prosecutor's office can exercise its powers in the judicial district which jurisdiction extends to the relevant territory. Therefore, the notion of the prosecutor's office as a certain hierarchy of bodies, which is peculiar to Ukraine, does

not correspond to the constitutional principles of justice. In this aspect, the Law of Ukraine “On the Prosecutor's Office” should be revised and should be amended in order to properly specify the provisions of the Constitution of Ukraine.

However, references to "cultural heritage", "legal tradition" or "constitutional history" as justification for the continued preservation of hierarchy (not instance authority) in the organization of the prosecutor's office are not sufficient, since it is difficult to consider them as legal including the necessity to preserve the so-called general supervision. .

The nature of human rights is that they express the individual's claim to the state for the protection of his interests and material and spiritual goods, which are a prerequisite for the development of the human personality. The objective nature of human rights defines certain negative and positive obligations of the state to protect them.

The nature of human rights is that they express the individual's claim to the state for the protection of his interests and material and spiritual goods, which are a prerequisite for the development of the human personality. The objective nature of human rights defines certain negative and positive obligations of the state to protect them.

In addition, the differentiation of the state's human rights obligations is determined by the category of law-based interference that is necessary in a democratic society, relevant and sufficient, without prejudice to the substantive content of the law (for example, the case-law of the European Court of Human Rights, including the tendency to abuse in the application of precautionary measures in a criminal case in the absence of proper judicial review (Kotiy v. Ukraine, case no. 28718/09), weak institutional capacity of the prosecutor's office to protect the personal data of a person, including health status (Panteleyenko v. Ukraine, case no. 11901/02), maladministration of complaints by the prosecutor's office regarding the obligatory placement of a person to a psychiatric hospital (Zaychenko v. Ukraine (no. 2), case no. 45797/09), etc.).

Since only the individual determines the relevance of a particular subjective public right for himself, the prosecutor's office thus sets out unattainable goals for itself. At the same time, constitutional goals are procedural in their nature, whereby human rights goals do not depend on prosecutorial oversight or other palliative institutions but are achieved through an access to an independent and impartial court and a condition of trust in the relationship between the administration and iprivate entities.

The requirement to minimize the discretion of public authorities derives from the basis of trust and the right to be heard as part of the procedural guarantees of human rights and fundamental freedoms. Therefore, entrusting prosecutors with certain procedural actions with third parties for reasons of human rights protection is an overly abstract rule, which is in practice a source of administrative arbitrariness leading to human rights abuses. That is why not only the powers of the prosecutor's office but also its role and place in the justice system were revised in the amendments to the Constitution of Ukraine in 2016 (section "Justice").

At one time in the textbooks on the Russian Empire state law j the autocracy or the principle of irresponsibility of the monarch was justified, whereas in European countries these issues were considered exclusively in the plane of privileges and the prerogative of the monarch, who could not ruleaccording to his self-will in view of the legal tradition and that is why the sole institute with the analogical wide discretion couldn’t function. After all, the person himself is better aware of the relevance of his own life requests, the needs from which the interests and subjective rights afforded by legal protection.

Prosecutor's Office: a hierarchy or an instance authority formation?

Today, the prosecution system is hierarchical with its subordination relations. The prosecutors office system is headed by the Prosecutor General, who is appointed and dismissed by the President of Ukraine with the consent of the Verkhovna Rada of Ukraine. The appointment of the Prosecutor General is based on the results of consultations between the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine and his deputies, as well as representatives of parliamentary fractions. The Constitution of Ukraine does not define any criteria for candidates for the post of Prosecutor General.

At the same time, amendments to the Constitution on justice did not affect the institutional mechanisms for appointing and dismissing of the Prosecutor General. According to paragraph 25 of part one of Article 85 of the Constitution of Ukraine, the Verkhovna Rada of Ukraine may express a lack of confidence in the Prosecutor General, which results his dismissal. The dismissal of the Prosecutor General may be based on a negative assessment of his work by the Parliament. As a result of the vote in Parliament, the Procesutor General exercises his authority by writing a resignation letter. Thus, the results of consultations between parliamentary fractions may lead to a decision on the negative evaluation of the prosecutor's office, which may result in a vote of mistrust in the Prosecutor General. However, the Prosecutor General is not a political office because he heads an institute that is apolitical by its nature, and therefore the political procedure of declaring Parliament's mistrust of the Prosecutor General does not contribute to ensure his impartiality and independence. Given the peculiarities of constitutional history and the significant influence of the prosecution on the judiciary, such a procedure is inadmissible. In fact, this is an institutional flaw in the Constitution of Ukraine, which weakens the guarantees of the judiciary independence.

The above approach has been repeatedly criticized as one that ultimately attacks the independence of the judiciary, since the influence of the executive and political forces represented in parliament leads to an imbalance in ensuring equality of arms in the process. The prosecution party represented by the prosecutor relies on extensive resources related to the exercution of authorities. Therefore, in any criminal case, there is a threat of political pressure on the pre-trial investigation, in particular, and on judicial review in general, with a view to issuing a sentence, which, although legal, is formal but unfair in substance.

International law in the shape of soft law permits the active role of prosecutors in criminal proceedings, including prosecution, and, once it is permitted by law or in accordance with the local practice, in the crime investigation, the oversight of the lawfulness of these investigations, the supervision of the execution of court decisions and the exercise of other functions as representatives of State interests (paragraph 11 of the UN Guidelines on the Role of Prosecutors). In order to prevent third parties from influencing the prosecutors, the State should ensure that they fulfill their professional responsibilities in a situation free from threats, obstacles, intimidation, unnecessary interference or unjustified prosecution (civil, criminal or other liability) (para. 4). At the same time, the prosecutors are called upon to provide procedural guidance in investigating the criminal case and bringing those responsible to justice, respecting the rights of the victims and guaranteeing them fair compensation.

In the light of such standards, due process requirements are given to prosecutors: when evidence against suspects is obtained, as they become aware or as they have

reasonable grounds to believe, by unlawful methods that are gross violations of the rights of the suspect, especially those involving the use of torture or cruel, inhuman or degrading treatment dignity, acts or punishments, or other human rights abuses, they refuse to use such evidence against any person other than those who applied such methods, or, accordingly, inform the court and take all necessary measures to ensure that those responsible for using such methods were brought to court (para.16).

Independence must be guaranteed to the prosecutors in order to meet these requirements. The exercise of such powers is possible in close cooperation with the court whose jurisdiction extends to the relevant territory where the crime is being investigated.

The set of its constitutional functions points to the institutional failure of the prosecutor's office as a hierarchy. The prosecutor's office, as a justice assisting body, carries out public prosecution and procedural guidance in criminal justice, taking into account the requirements of prosecutors' independence. Even though the constitutional order is being renewed from pro-Moscow pro-militant (illegal) armed formations that are managed, trained in the occupied territories in Ukraine, tthat are maintained, supplied and provided with weapons and military ammunition by the Russian Federation, the activities of military prosecutor's offices are tied to the jurisdiction general courts, which are competent to review and consent to certain procedural actions.

In light of the requirements for the independence of investigators and prosecutors, the existence of a hierarchical system of prosecutors does not meet the constitutional principles of inadmissibility and indepndence of courts. Thus, the Law of Ukraine “On the Prosecutor's Office” establishes a system of hierarchy through the mechanism of their subordination, at the top of which is the Prosecutor General's Office (Article 7). It is no coincidence that the reasoning of the functioning of the military prosecutor's offices gives arguments that are too abstract in nature, such as "the peculiarities of the status of military prosecutors are derived from the features of the objects to which the exercise of their powers by which the objects of the military sphere are directed"*(Shandula, 2017, p.176).* In the case of the military prosecutor's offices, there is an institutional problem that can be solved in two ways: 1) the military prosecutor's offices can act at the appropriate military courts - then the latter should be renewed; 2) Military prosecutors must act in the ordinary prosecutors' offices acting in the general courts of the courts as specialized prosecutors at the location of the respective military garrisons or military units.

The prosecutor's office's connection with the relevant courts is also confirmed by this. Pursuant to Article 132 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine), general rules for the application of criminal proceedings are stipulated, which are specified in the following provisions of the CPC of Ukraine. Their point is that the prosecutor should request the investigating judge to take appropriate action in the local court. Institutionally, it is logical that such decisions were made in close cooperation between the prosecutor and the investigating judge.

The instantaneous nature of the "prosecutor's office-court" relationship is also indicated by the existing legal framework for deciding on unspoken investigative actions, which, in accordance with Article 247 of the CPC of Ukraine, are taken by investigative judges at courts of appeal, within the territorial jurisdiction of which the judicial authority is located. Although such rules violate victims' rights to judicial protection within the meaning of Article 55 of the Constitution of Ukraine and Article 6 of the European Convention on Human Rights, given that much of the evidence in

criminal cases is obtained through vague investigative actions, they testify to the role of prosecutors as justice support instances.

The involvement of the prosecutor's office in the relations of justice is indicated by other constitutional changes that have taken place recently, in particular, the constitutional reference that "in the justice system bodies and institutions are formed to ensure the selection of judges, prosecutors, their professional training, evaluation, consideration of cases on their disciplinary responsibility…" (Article 131 (10) of the Constitution of Ukraine).

Unfortunately, the stated constitutional imperative as of the developing date of this article has not yet found its reproduction (consolidation and development) in the relevant legislation, namely: in the laws of Ukraine "On the Prosecutor's Office" and "On the Judiciary and Status of Judges".

At the same time, the creation of the Legal Reform Commission by the newly elected President of Ukraine V. Zelensky obviously intensifies the search for new models of organization of prosecutor's office activity and implementation of relevant constitutional provisions that would be more in line with the established and widespread practices of developed countries of continental Europe.

Human rights and standards of prosecutors activity

Depriving the prosecutor's office of the High Council of Justice, combined with the provision of its functions to guide the pre-trial investigation and support of public prosecution, enables prosecutors to concentrate on their natural activities - establishing the evidence base of the prosecution before the trial.

In support of the public prosecution, the prosecutor's office must proceed from such principles. First of all, the Miranda rule, which is the fundamental basis of trust between the state and the individual, must be considered. In particular, it involves informing a person of the reasons for his or her arrest or detention, explaining the content of his or her rights, and allowing him / her to defend himself / herself personally and to seek legal assistance from a defense lawyer (Article 29 (4) of the Constitution of Ukraine). Such standards are indirectly supplemented by the constitutional principle of non-testimony against oneself, close relatives and family members (Article 63 of the Constitution). The taking of evidence in violation of these principles should result in the court finding them inadmissible, and the fact of violation of such standards of protection is a ground for bringing a prosecutor to disciplinary liability.

Second, according to the fundamental requirement of due process, which guarantees a person to be heard before an independent and impartial court, the relevant and admissible evidence in a criminal case is factual data, documents and other materials that have been investigated directly by the court. Therefore, it is incumbent on the investigating, pre-trial and prosecuting authorities to provide a sufficient, complete and objective evidence base to prove the guilt of the accused before the court, in particular, witnesses must give proper testimony before the court. The testimony they give before an investigator or prosecutor can form the basis of a charge without the use of pressure or torture, cruel, inhuman or degrading treatment.

If the circumstances of torture are established during a court hearing, the obtained evidence must be declared inadmissible by the court, and in accordance with the preliminary nature of the acts of the judiciary, this becomes a ground for bringing the prosecutor to disciplinary liability. Actually, the provisions of Article 87 of the CPC of Ukraine are aimed at such purposes of due process of the law, which is precisely in line

with the provisions of the Constitution of Ukraine.

It should be noted separately that according to the report on the evaluation of the implementation of the CPC of Ukraine, there was an imbalance in ensuring the principle of parties' competitiveness in the criminal process (*Report 2015, p .49*). In particular, the judges confirmed that justifications for permitting unspoken investigative actions in such cases remain inaccessible for protection even after its execution or expiration. In case of application of the Law of Ukraine "On State Secret", the defense can only receive a written answer, which confirms the fact of permission to conduct unspoken investigative actions by a court decision or denies it. This situation does not allow the defense party to assess the lawfulness of conducting unspoken investigative actions and, if necessary, to declare the inadmissibility of the evidence obtained. Therefore, in the aspect of the right to defense, effective control over the use of unspoken investigative (investigative) actions should be introduced, and the prosecution side of the prosecution should be provided with sufficient and timely access to criminal proceedings, including evidence by itself or in collections with other evidence can be used to prove the innocence or lesser degree of guilt of the accused, or to assist in the mitigation of punishment.

Such standards of participants in criminal proceedings treatment stipulate that the prosecutor's office should be responsible for the formation of evidence base in criminal proceedings and presentation of evidence in court so that they are recognized by the court as admissible, proper, sufficient and necessary for the adoption of reasonable and lawful verdict. It is on the basis of competitiveness and the freedom to present evidence before the court. The prosecutor's office will be responsible for establishing a proper evidence base in criminal proceedings and bringing the accused of the crime to trial. So, a balance in ensuring the rights and freedoms between the victim (s) and the accused must be maintained.

Conclusions. According to the essential content of the constitutional principles, the prosecutor's office is a body for the promotion of justice. On this basis, the Law of Ukraine "On the Prosecutor's Office" should specify the provisions of the Constitution of Ukraine regarding the organization of the activity of this body with a view to ensure the right to a fair and impartial court on a qualitatively new and humanistic basis, in particular:

1) the prosecutor's office should be constituted on an authority instance principal, not a hierarchical one, which would facilitate better access to justice and prompt resolution of the court's request or satisfaction of the prosecutor's requests for pre-trial investigative measures;

2) it is necessary to establish effective guarantees for the independence of the prosecutor and the inadmissibility of interference with his activity by the highest level prosecutor; in case if such circumstances are found, bring the perpetrators to justice, including dismissal and the prohibition to hold prosecutorial and judicial positions, as well as to practice law within a certain period;

3) effective parliamentary control through annual hearings of reports in the profile committee and at parliamentary meetings regarding the use of unspoken investigative actions in accordance with Articles 30-32 of the Constitution of Ukraine should be established, as well as the specialized ombudsmen office on privacy, information and freedom of expression should be created.

Only with the new qualitative approaches based on the doctrine of constitutionalism, which establishes significant obstacles to the abuse of powers, in

particular at its own discretion, to intervene in the sphere of privacy for the highest reasons for the protection of human rights, should the philosophy of real reform of the prosecutor's office be built.

References:

1. On the Prosecutor's Office: Law of Ukraine of October 14, 2014 No. 2232 – VIII. Bulletin of the Verkhovna Rada of Ukraine. 2015. № 2–3. P. 12.
2. Criminal Procedure Code of Ukraine of April 13, 2012. Bulletin of the Verkhovna Rada of Ukraine. 2012. № 9–10, 11–12, 13. P. 88.
3. UN Guidelines on the Role of Prosecutors: Adopted by the Eighth United Nations Congress on Crime Prevention and Offender Treatment, Havana, Cuba, August 27 - September 7, 1990: URL: http://zakon5.rada.gov.ua/ laws/show/995_859
4. Report on the evaluation of the implementation of the Criminal Procedure Code of Ukraine / Council of Europe. Strasbourg, 2015 .71 p. URL: https://rm.coe. int/168044f56b
5. Komarnitska O. The status of the prosecutor in accordance with the Law of Ukraine "On the Prosecutor's Office" of October 14, 2014, taking into account the provisions of the CPC of Ukraine. Journal of the Academy of Advocates of Ukraine. 2015. No. 2 (27). T. 8. P. 61-66.
6. Oberto J., Zhepinski A. Commentary on the Law No. 3018-II "On the Judiciary" / Council of Europe. Strasbourg:, 2002.
7. Savchin M. V. Constitutional innovations and fidelity to the constitution. Viche. 2016. № 7–8. P. 44 –47.
8. Sukhonos V. V. The concept and essence of the legal status of the Prosecutor's Office of Ukraine. State and Law. 2011. Issue 51. P. 209–213.
9. Shandula O. O. Features of legal status of prosecutors of military prosecutor's offices. Bulletin of the National Academy of Law. 2017. № 1 (88). P. 173–181.