DIRECTIONS OF IMPROVING MECHANISMS OF STATE ADMINISTRATION BY THE PROSECUTION BODIES IN UKRAINE

Abstract. Today’s state leadership, at the request of modern Ukrainian society, faces one of the main tasks of consistently strengthening democratic administrative relations, including the law enforcement sphere, where the prosecutor’s office plays and should play a key role. Therefore, there is a natural need to carry out real reforms of the legal status of the prosecutor’s office entire system in Ukraine. The specified reforms should not run into the miscalculations of recent years, where the replacement of reforms was hidden in the desire to dismiss a significant part of the current employees of the prosecutor’s office. Today, reforms should really create from this important institution a mechanism for protecting the rights of citizens and improving the effectiveness of the rule of law.

Thus, it is not the personnel of the prosecutor’s office that is subject to reform, but rather the mechanisms of public management of the prosecutor’s office. In turn, this should affect the level of democracy, legality, justice, and fairness in Ukraine.

New approaches to reforming the mechanisms of public management of the prosecutor’s office must clearly include complex changes in the entire apparatus of public power aimed at protecting law and order in the state with the aim of creating a legally stable state. And not to include the step-by-step reform of each individual law enforcement agency and court. Only reforms in connection with a clear distribution of deterrence and counterbalance mechanisms will lead to real positive changes that will last for a long time.

Thus, the main goal of improving the mechanisms of public management of the prosecutor’s office of Ukraine and the corresponding reformist changes is to create the prerequisites for building such a system of the prosecutor’s office of Ukraine, the activity of which should be based, first of all, on the principles of efficiency, independence, responsibility and professionalism.
Keywords: the mechanisms of public management, prosecutor’s office, democracy, legality, justice.

Formulation of the problem. Today’s state leadership, at the request of modern Ukrainian society, faces one of the main tasks of consistently strengthening democratic administrative relations, including the law enforcement sphere, where the prosecutor’s office plays and should play a key role. Therefore, there is a natural need to carry out real reforms of the legal status of the prosecutor’s office entire system in Ukraine. The specified reforms should not run into the miscalculations of recent years, where the replacement of reforms was hidden in the desire to dismiss a significant part of the current employees of the prosecutor’s office. Today, reforms should really create from this important institution a mechanism for protecting the rights of citizens and improving the effectiveness of the rule of law.

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Analysis of recent research and publications. A large number of articles are devoted to the problems of improving the state management mechanisms of the prosecutor’s office in Ukraine, at the same time, the latest challenges for society in the form of external and internal threats require the improvement of legislative, economic and organizational aspects of the management of the prosecutor’s office. The existing works of such authors as O. Bezpalova, O. Yeschuk, R. Mazurik, O. Nevrozov, S. Tsyganok, P. Shaganenko allow us to start such work by directing the attention of researchers to the study of this phenomenon. After all, maintaining order and observing the law are key aspects in a democratic state and in a democratic society.

Therefore, insufficient attention has been paid to the study of ways to improve state management mechanisms by the prosecutor’s office in Ukraine.

The purpose of the article is to study ways of improving the state management mechanisms of the prosecutor’s office in Ukraine.

Presenting main material. Unequivocal changes in the organizational and legal mechanisms of management will be the introduction of amendments to the legislation regarding the introduction of a mandatory condition for persons who hold the positions of the Prosecutor General and his deputies, to have work experience in the prosecutor’s office or as a judge.

These clarifications will have a positive effect on improving the system’s operation for several reasons. Thus, the specified condition will somewhat minimize the politicization of the entire structure of the prosecutor’s office and will play its role in the principle of checks and balances in relations between branches of government.

In addition, this will ensure the appointment of a professional specialist, for whom the work of such an important structure as the Prosecutor’s Office will be
known, and accordingly, he will significantly save both the structure and each individual employee from possible unreasonableness in the further transformations of the Prosecutor’s Office to a modern universal democratic model, which will take into account, including the specifics of the prosecutor’s office of our state.

Also, this will enable the higher management of the prosecutor’s office to perform its procedural powers more efficiently, to make balanced and prompt decisions, since in addition to the administrative role, such a position of the head is also a procedural position, because the official is daily faced with the performance of functions inherent only to him, provided for by various regulations legal acts.

Among the powers of the Prosecutor General, authoritarian rights regarding the unjustified liquidation of certain structures in the apparatuses of the Prosecutor General’s Office and relevant links of the system need to be changed. It is proposed to develop a mechanism for a certain analytical study of the reasons for the need to liquidate structural subdivisions, and to coordinate the specified analytical documents, including decisions on liquidation, with certain self-governing bodies of the prosecutor’s office or trade union organizations.

In turn, there is the question of making changes not only to special laws, but also to the Code of Labor Laws regarding guarantees of protection of the employees’ rights of the prosecutor’s office. After all, the narrowing of the labor rights of prosecutors, to which the attention of scientists has been repeatedly drawn, is discriminatory in nature and has an extremely negative effect on the quality work of the motivational management mechanism. And in the future, after the renewal of the violated rights through the courts and the need to pay the corresponding sums of money to the employees whose rights have been violated, this also has a negative effect on the economic mechanism of management.

Another necessary change in the motivational, organizational and legal mechanisms of management is the improvement of the stability of the management positions of the prosecutor’s office. Yes, it is necessary to introduce amendments to the Constitution and the Law of Ukraine «On the Prosecutor’s Office» regarding the legislative fixation of the terms of appointment of heads and deputy heads of district and regional prosecutor’s offices to managerial positions, the impossibility of dismissing them from their positions before these terms expire. These changes will also reduce political pressure on prosecutors and enable them to perform their tasks and duties efficiently and effectively. In turn, the mechanisms of bringing them to disciplinary or criminal responsibility and depriving them of administrative positions in the case of obvious violations of the law by them are clearly established in the current normative legal acts [3, P. 150].

We believe that in recent years, the principle of transparency in the activities of law enforcement agencies, including the prosecutor’s office, has clearly gone beyond the legal field and requires a clear adjustment of the limits of its observance. In particular, the haste with publications in mass media, briefings, and press
conferences in recent years has led to complaints from process participants. And this, in turn, leads to a delay in the pre-trial investigation and administration of justice. Precisely for this purpose, it is proposed to make clear changes to strengthen the role of prosecutors in this area, as procedural heads of pre-trial investigations and public accusers in court.

At the same time, to consolidate the control of the powers of the direct heads of the prosecutor’s office, where the above-mentioned procedural heads work, in order to prevent the disclosure of the secret of the pre-trial investigation, to clearly follow the methodology of the investigation of certain categories of crimes, and to prevent the violation of the requirements of the law in terms of the rights of participants in the criminal process, including meeting the needs of society in explaining certain actions of law enforcement officers.

The role of investigative bodies and operative units in the implementation of the principle of transparency must be fully consistent with the position of the prosecutor’s office as a procedural management body [6, P. 8]. At the same time, the changes should ensure the impossibility of transferring the duties of law enforcement agencies to the prosecutor’s office and replacing them with the authority to comply with the principle of transparency by investigative bodies and operational units.

These changes will naturally have a positive effect on the improvement of the work regarding the impossibility of leaking information of the pre-trial investigation, which is extremely important in the modern conditions of the formation of a significant number of law enforcement agencies.

In connection with the deprivation of the prosecutor’s office of significant powers with regard to procedural influence on law enforcement agencies in order to qualitatively fulfill their duties in the field of fighting crime, fulfilling the legal requirements of the prosecutor, it is proposed to develop mechanisms for a certain influence of the relevant independent branches of the prosecutor’s office on the appointment of relevant heads of law enforcement agencies bodies, in order to establish proper cooperation in the performance of mutual duties. At the same time, it is necessary to clearly define the criteria for the prosecutor’s influence on the appointment of heads of law enforcement agencies of the appropriate level.

In addition, it is proposed to revise the functionality of the structural subdivisions of the Office of the Prosecutor General and, by analogy, regional prosecutors’ offices, with the aim of eliminating duplication of functions and optimizing the number of employees. This will improve the economic management mechanism. The specified changes must be made when the orders of the Prosecutor General are changed. At the same time, there is no question of reducing the total number of employees of prosecutor’s offices. Optimization in this case is possible due to the strengthening of the necessary structural units with additional staff units, and the elimination of those units whose existence is not justified by work overload [2, P. 43].

Undoubtedly, this work has led to the outflow of personnel from the prosecutor’s office, who are only considered prosecutors and during their work do
not even face the performance of the functions assigned to the prosecutor’s office. The effectiveness of each specific employee of the prosecutor’s office will only increase, and the trust of the society, taking this into account, with the correct reporting of information to the society, will only increase.

It is proposed to renew the mechanisms of the possibility of real response of the prosecutor to state authorities, local self-government, individuals and legal entities, for non-fulfillment of the legal requirements of the prosecutor, the non-fulfillment of which leads to the violation of the rights of individuals, the state or creates corresponding damage, including material nature.

To date, such mechanisms have not existed at the prosecutor’s office for several years. After all, the old such mechanisms were abolished, which were associated with their totalitarian nature, but new mechanisms that would correspond to the principles of the rule of law were never proposed. At the same time, the tasks of the prosecutor’s office to protect the rights of individuals and the state remained unchanged. In connection with this, it gave rise to many complaints from citizens and legal entities both to the prosecutor’s office and to other state bodies. These complaints do not find their final solution, due to the lack of such mechanisms for the protection of the rights of individuals. That is, today there is a practice when even about an obvious violation of the rights of individuals, it is not only impossible to renew them, but also to issue appropriate decisions on ascertaining their violation. Therefore, judicial protection of rights has not worked effectively in our country, and due to the complex legislative framework, there are no prerequisites that it will work at the moment.

For the fact that all administrative positions of prosecutor’s offices worked effectively, it is proposed to grant additional rights regarding the qualitative organization of work and control over its execution to the heads of departments of district prosecutor’s offices [4, P. 141]. To date, the head does not have the right of real influence on subordinate employees, and therefore such officials are not an effective institution, at the same time, the purpose of creating the specified positions is logically justified. The functionality of the initial departments is almost no different from ordinary employees of the prosecutor’s office, as the level of their wages.

It is believed that in the event of making the specified changes, it will effectively affect the work of not only organizational and legal mechanisms, but also motivational ones, which will generally lead to an improvement in the work of the said institution.

Aware of the debatable nature of the discussed changes in the mechanisms of public management of the prosecutor’s office of Ukraine, it should be noted that the system of the prosecutor’s office of Ukraine is a much larger category, consists of stable components of its functioning and is organizationally and structurally built in its system on certain principles of vertical management. This vertical is a complete set of structures of all branches of the prosecutor’s office, taken as a whole, with the same goals and tasks, which are determined by the functions assigned to them [5, P. 137].
It is the presence of coordination ties between these structures based on the principles of subordination through the distribution of relevant powers, the establishment of certain relationships between all its elements, that organizes and unites the prosecutor’s office into a single system.

That is, the degree of its rational construction, first of all, depends on the successful implementation by such an important institution as the prosecutor’s office of the specific functions established for it, enshrined directly in the Constitution of Ukraine with the sole purpose of protecting human rights and freedoms, the general interests of society and the interests of the state [1, P. 72].

Thus, the main goal of improving the mechanisms of public management of the prosecutor’s office of Ukraine and the corresponding reformist changes is to create the prerequisites for building such a system of the prosecutor’s office of Ukraine, the activity of which should be based, first of all, on the principles of efficiency, independence, responsibility and professionalism.

Based on the results of the study of the public management mechanisms latest theories by the prosecutor’s office of Ukraine, and the evaluation of the effectiveness of the reforms of the specified management mechanisms, the following conclusions can be reached:

1. Certain new theories of changing the mechanisms of public management of the prosecutor’s office of Ukraine were reflected in the implementation of a number reforms of the law enforcement system. Meanwhile, in connection with the desire to obtain, first of all, political results, the specified reforms could not lead to the stability and efficiency of the prosecutor’s office work. One of the gaps in their implementation is the lack of interaction during the implementation of reforms with the field of scientists and practitioners of the prosecutor’s office.

2. The implementation of the latest theories of changing the mechanisms of public management by prosecutor’s offices took place during the period of creation new law enforcement agencies, as well as during the period of reforming existing ones. At the same time, the lack of a comprehensive approach to the reform of the entire public administration apparatus in the field of the law enforcement system in connection with the implementation of appropriate mechanisms of deterrence and counterbalance between the law enforcement bodies themselves did not lead to the desired results of the high-quality functioning of the system for the protection of the individuals’ rights and the interests of the state.

At the same time, the declared leading role of the prosecutor’s office in the system of law and order was not reflected in the real mechanisms of legal influence, organization and control of the head, the prosecutor’s office, over investigative bodies and operative units.

The idea of depriving the prosecutor’s office of a number of administrative tools ran into the lack of any responsibility on the part of the bodies that should directly perform the functions of law and order, from fulfilling the legal requirements
of the prosecutor. The strengthening of the unjustified independence of law enforcement agencies led to their lack of control from any authority of the state apparatus.

3. The creation of self-governing bodies in the prosecutor’s office is one of the promising management mechanisms in the prosecutor’s office aimed at ensuring proper stability in the motivational management mechanism. At the same time, despite the fact that these self-governing bodies have taken over the specific functions inherent in such associations as trade unions, which work effectively in other institutions and organizations, these new bodies have so far not been able to work reliably to achieve those deterrent mechanisms against violation of the rights of prosecutors, which were declared.

4. Reforms of the prosecutor’s office carried out in recent years are not aimed at changing the mechanisms of its management, but primarily at «purging» the staff of the prosecutor’s office. In turn, a significant number of contests in the form of certifications of prosecutors negatively affected the work of the institution in combating crime and real protection of citizens’ rights.

Therefore, the new trends should be a real change in the management mechanisms of the prosecutor’s office, primarily strengthening and reliability of its administrative influence as a key player in the protection of public interests from illegal encroachments.

5. The legal mechanism of public management of the prosecutor’s office needs to be changed in order to bring various legal acts into line with each other in order to form a unified approach to the protection of the labor rights of prosecutors. These changes should eliminate discriminatory legal norms that are applied to prosecutors in violation of constitutional principles.

This will also have a positive effect on the motivational mechanism of management and eliminate the drag of court proceedings regarding the renewal of the violated labor rights of prosecutors, as well as on the economic mechanisms of management, regarding the absence of the need to pay significant sums of money to those prosecutors whose rights have been violated.

6. The tendency to increase the violated rights of persons, both victims and the accused, a significant number of complaints against the actions of law enforcement agencies, unambiguously characterizes the assessment of the effectiveness of the current management mechanisms of the prosecutor’s office from the negative side.

And therefore, when introducing changes in the work of management mechanisms, it is important to comprehensively analyze the causes of these negative trends in order to develop real tools to prevent these violations, and not to change approaches to the formation of the necessary political power of statistical information that veils the real problems of society.

Conclusions. New approaches to reforming the mechanisms of public management of the prosecutor’s office must clearly include complex changes in the
entire apparatus of public power aimed at protecting law and order in the state with the aim of creating a legally stable state. And not to include the step-by-step reform of each individual law enforcement agency and court. Only reforms in connection with a clear distribution of deterrence and counterbalance mechanisms will lead to real positive changes that will last for a long time.

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