

Review Paper

# The Role of the Prosecutor's Office in Legal Relations: Analysis of Functions and Impact on the Judicial System

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## ABSTRACT

Ukraine's aspirations to achieve advanced standards of the rule of law have underpinned the modernization of its criminal justice and law enforcement systems over recent years. The Ukrainian prosecutor's office holds a special position in the latter since it is not connected to any state-related structures and serves its purpose in terms of the system of checks and balances. The purpose of the academic paper is to define the role of the prosecutor's office in modern legal relations, as well as their impact and significance for the judicial system. The object of research is the prosecutor's office as a participant in legal relations. The research methods include analysis, systemic and structural, comparative legal, dialectical. Ukraine has chosen the strategic path of joining the EU and NATO, and the reform of the Ukrainian prosecutor's office is an important aspect of the development of the rule of law. The European option of Ukraine requires the legislator to revise the main institutions of the judicial branch, adopt new legislative acts and significantly modernize the system and functions of state authorities, especially the prosecutor's office. The activities of the prosecutor's office are aimed at establishing and ensuring human rights and freedoms. Currently, the mechanism of the prosecutor's office is one of the most important factors of legality. The prosecutor's office is an authoritative body that performs various functions – from supervising compliance with the law to supporting public prosecution in court. The issues of organizing the activities and functions of the prosecutor's office have repeatedly attracted the interest of scholars. The system of participation of prosecutors in court proceedings under the current legislation is multidimensional: participants in court proceedings participate not only in criminal but also in civil, commercial and administrative proceedings. The paper examines the main aspects of the activities of the prosecutor's office in Ukraine, analyzes the legal framework for the activities of the prosecutor's office of Ukraine, and considers the main functions of this state body. The main aspects of the impact of the prosecutor's office of Ukraine on the judicial system are explored and the importance of the prosecutor's office for the judicial branch of power is established. The place of the prosecutor's office in legal relations with other public authorities is defined.

## HIGHLIGHTS

- ① The prosecutor's office in Ukraine holds a unique and independent position, functioning as a self-governing system of justice and representation of state interests in court, and its institutional strengthening, particularly elevating the status of the Prosecutor General's Office, is essential for reinforcing human rights and law enforcement capacity in the country.
- ② While debates persist on whether the prosecutor's office should be integrated into the judicial system, the current constitutional definition and legislative reinforcement of the prosecutor's

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independence are crucial for maintaining its role as a de facto state body with procedural independence, tasked with protecting human rights, public interests, and ensuring law and order in Ukrainian society.

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The realities of today, including complications in the foreign policy arena, lead to domestic problems, which ultimately require active action and active development from state bodies, including the prosecutor's office. Enforcing the rule of law is one of the fundamental responsibilities of the legal systems of civilized nations, and this responsibility is placed on the law enforcement authorities. The role of the prosecutor's office in most European countries characterized by a strong, developed legal system is limited to initiating criminal prosecution and supporting the state prosecution in court proceedings. In turn, the prosecution authorities in modern Ukraine play an important role in ensuring the protection of human and civil rights and freedoms, as well as the interests of the state and society in general. Given the current European integration processes, the development of legal regulation of law enforcement agencies, including prosecutors, and their influence and importance in the judicial system, is becoming increasingly important to ensure the rule of law and compliance with the Constitution of Ukraine and laws.

The purpose of the research is to define the role of the prosecutor's office in modern legal relations, as well as its impact and significance for the judicial system.

### Literature Review

A number of scholarly works are devoted to the essence and legal aspects of the prosecution bodies, in particular, the role of the prosecution in the system of state bodies (Moskaliuk and Lytvyniuk, 2017), problems of reforming the prosecution (Skybenko, 2016), principles of the prosecution bodies (Savranchuk, 2018), the essence of the prosecution's activities and functions (Belov and Shved, 2023), features of the relationship between the prosecution and other state authorities in Ukraine (Bortun 2010, Rossokha 2016), the role of the prosecution in the criminal justice system (Khlyvniuk, 2009; Kosiuta, 2023).

The functions and role of the prosecution authorities in light of contemporary realities are given a great deal of attention in the scientific literature (Lipinska, 2018; Podkopaiev, 2019; Tolochko, 2016; Bysaha and Shved, 2023). Scholars have repeatedly drawn attention to the features of the role of the prosecutor's office in court proceedings, including criminal, civil, and administrative ones (Marochkin *et al.* 2015). Minimizing political interference in the exercise of powers granted to prosecution and law enforcement bodies is an important issue (Krapyvin, 2023).

The issue of the place of the prosecutor's office in the mechanism of ensuring the state's constitutional security is also given attention (Shved *et al.* 2020).

Despite a wide range of studies on the organization of the prosecutor's office and its functions, the issue of the role of the prosecutor's office in the judicial system and its importance for them remains open.

### THE RESEARCH METHODS

The method of analysis and comparative legal method were used in the process of studying the legal characteristics of the prosecutor's office. The systemic and structural method and the method of synthesis provided a thorough examination of the functions, powers and responsibilities of the prosecutor in the judicial process. The dialectical method was used to analyze the influence of the prosecutor's office on the judicial system. The main areas of improving the prosecutor's activity in criminal proceedings are considered by applying the methods of doctrinal analysis, legal forecasting and legal modeling.

### RESULTS

In addition to meeting basic life needs, the government, civil society, and ordinary Ukrainians also made significant efforts to maintain the combat capability of the Armed Forces, socio-economic life under conditions of Perestroika, and to address postwar reconstruction issues. This applies to legal issues such as bringing perpetrators to justice for

international crimes and compensation for damages caused by the war (Krapyvyn, 2023).

Law enforcement bodies are undergoing significant changes in accordance with modern realities. Ukraine is establishing an effective and well-coordinated system of law enforcement authorities, including the prosecutor's office, in order to ensure the protection of the rights and freedoms of individuals and citizens.

Ukraine is currently facing the process of reforming state bodies, especially the prosecutor's office. This process poses the task of creating an effective model of functioning of the prosecution authorities, taking into account the recommendations of European institutions. It is worth noting that this issue became relevant with Ukraine's accession to the Council of Europe, which, accordingly, imposed a number of obligations on the state, including reforming law enforcement bodies, including changing the role and functions of the prosecutor's office.

When studying the legal nature of the prosecutor's office, it should be emphasized that the Basic Law was amended in 2016, namely, section VII, which was called "Prosecutor's Office", was excluded from its content. However, Article 131-1, which lists the duties attributed to the prosecutor's office, was added. The interesting fact here is that the aforementioned article is contained in the section entitled "Justice". In this case, it is reasonable to ask the following question: "Can the prosecutor's office be attributed to the judicial branch of power?" We believe it isn't possible. At the same time, by analyzing the scientific works on prosecution bodies, one can find the opinion that prosecution bodies, according to the functions and activities they perform, are most similar to the judicial authorities (Moskaliuk and Lytvyniuk, 2017, pp. 183-188). There is also an opinion that the prosecutor's office can be considered as an institution of the executive, legislative power or an independent monitoring and supervisory branch of power. On the one hand, the idea that the prosecutor's office of Ukraine is not an independent branch of government and it is also gaining popularity; on the other hand, it is difficult to attribute it to the legislative, executive or judicial authorities (Skybenko, 2016, pp. 188-192). I.V. Lipinska notes that it is not logical to attribute the prosecutor's office to any branch of power since

the nature, functions and tasks of this body differ significantly (Lipinska, 2018).

Therefore, the prosecutor's office in Ukraine occupies a separate and independent position in the state bodies. Furthermore, the organization, management and activities of the prosecutor's office are subject to extensive legal regulation, which is reflected in separate collections. Legal regulation is primarily influenced by legal standards, which are determined by objective and subjective factors, such as the economic state of society, social structure, legal culture, development of science, etc. In addition, these factors include different levels of complexity of the subject matter, ways and methods of legal regulation of the prosecutor's office (Prosecutor's Office of Ukraine. Educational-methodical manual, 2020).

Paying attention to the tasks and functions of the prosecutor's office, it can be observed that this is a complex and necessary set of social relations requiring proper legal regulation of the activities of bodies and officials and each prosecutor, in particular, in order to ensure proper performance of their duties, which in turn leads to constant active behavior.

Referring to the Constitution of Ukraine, we notice only three spheres of activity of the prosecutor's office, while the Law of Ukraine "On the Prosecutor's Office", Article 2, part one, enshrines four functions of the prosecutor's office (please, refer to Figure 1). There is a slight inconsistency between the provisions here. The prosecutor's office's duties are slightly limited by the Basic Law; specifically, lawmakers eliminated the role of representing people's rights and freedoms from the standards when it was included in the law. This has caused a number of discussions; however, scholars point out that this is due to the desire to create a European model of the prosecutor's office (Lipinska, 2018).

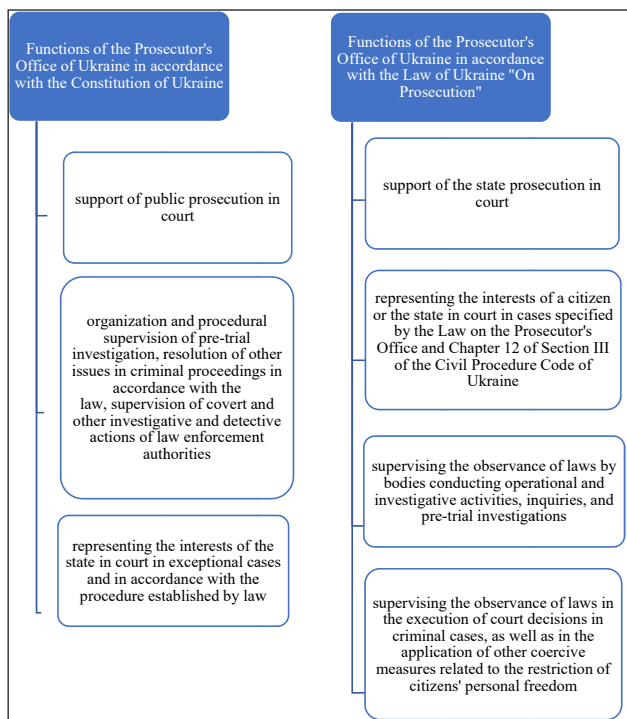
In confirmation of the foregoing, it is advisable to draw attention to paragraph nine of the Transitional Provisions of the Constitution of Ukraine, according to which the prosecutor's office is entrusted with the function of pre-trial investigation until the functioning of the bodies to which the law will transfer the relevant functions, as well as the function of supervision over compliance with the norms of current legislation during the execution

of court decisions, measures of a coercive nature related to the restriction of personal freedom of citizens – until the entry into force of the law on the creation of a dual system of regular penitentiaries (Constitution of Ukraine, 2020).

When comparing and analyzing the functions of the prosecutor’s office, it is worth noting that the function of general supervision over the observance and application of the current legislation was withdrawn from the prosecutor’s office. The relevant government bodies have assumed most of the responsibility for fulfilling these duties.

In situations where state authorities, local self-government bodies or other public authorities are entrusted with the protection of the rights of the state, the prosecutor’s office acts unlawfully and without the powers of an authorized body.

There are different definitions of the term “function”. Legal sources define it as follows: “The work performed by the body, its duties, scope of activity or operations” (Law of Ukraine “On Prosecution”, 2024).



**Fig. 1:** Functions of prosecution bodies in Ukraine (Constitution of Ukraine, 2020; Law of Ukraine “On Prosecution”, 2024)

When someone refers to the “function of the prosecutor’s office”, they often mean the actual activities of the prosecutor’s office. The literature often uses the phrase “area of prosecutorial activity”

to refer to the activities of the prosecutor’s office. The theoretical grounds for this identification are not always established.

The definition “direction of activity” generally refers to a line of movement; it outlines the direction of development or personality in motion, without specifying its purpose. The term “prosecutorial function” is not as broad as its equivalent “the scope of prosecutors’ activities”. The function of the prosecutor’s office reflects both its social orientation and the nature of its activities. In view of this, it is possible to distinguish different types of prosecutorial activities within the same function (Law of Ukraine “On Prosecution”, 2024).

Summarizing the function of the prosecutor’s office, it is relevant to note that the prosecutors while performing their duties are obliged to exercise all their powers in the framework of the law. Thus, the special permissive method of legal regulation is used by state authorities, in particular, the prosecutor’s office. Authorizing norms are a kind of specialized legal framework that defines a certain range of powers. The list of prosecutors’ powers is compiled for particular functions related to the work of the prosecutor’s office, taking into consideration the differences in the way each of these powers is applied. Specific powers are required to perform all functions of the prosecutor’s office.

Considering the place of the prosecutor’s office among other state bodies, it is important to take into account the general role of law enforcement authorities in the state mechanism. The analysis of scientific studies in this area gives grounds to recognize that the legal nature of the prosecutor’s office is one of the most controversial aspects at this stage of development. The differences are primarily due to the fact that some experts do not consider law enforcement agencies as part of the executive branch; however, they allocate them in a separate block to ensure the functioning of state authorities, while supporters of strict legal structures generally consider them part of the executive branch, mainly or partially judicial (Bielov and Shved, 2023, pp. 88-94).

New arguments for or against expanding the powers and authority of the prosecutor’s office in various areas of activity regarding its status and functions in the state power have emerged within

the framework of the latest judicial reform. The powers of the prosecutor, which are important for strengthening the rule of law and protecting citizens, are periodically changed. There are two phases in the reform of the prosecutor's office in Ukraine: transitional and political and legal stabilization. The types of prosecutors in each jurisdiction are based on objective goals, such as the conduct of legal proceedings, the maintenance of public safety, or criminal activity (Lisitsyna *et al.* 2019).

It has been already mentioned that some legal theorists believe that the prosecutor's office should be integrated into the judicial system and return to its original position in the judicial system.

It should be emphasized that attempts to incorporate the prosecutor's office into the judicial branch were made immediately after Ukraine gained independence. Therefore, the draft Constitution of Ukraine was submitted for discussion by a resolution of the Verkhovna Rada as of June 1, 1992, where the section containing provisions on the prosecutor's office was included in Chapter 21 entitled "Judicial Power" in the draft Constitution of Ukraine. However, the legislator subsequently rejected this position of the prosecutor's office (Rossokha, 2016).

The traditional three branches of state power, namely the legislative, executive and judicial branches, combine state power and can potentially have autonomous legal bodies. Their existence is conditioned by the need to develop state regulation and compliance with the Constitution of Ukraine, as well as the need for democratic control over various bodies in cases of violation.

It is obvious that the main function of the prosecutor's office should be expected to be its participation in the administration of justice. The prosecutor's office should administer justice by performing the functions defined by the Constitution and the law of Ukraine in order to ensure the balance of interests of an individual, society and the legal system. This is of crucial importance. Nevertheless, it is advisable to support those scholars who believe that the removal of the "prosecutor's office" from the Constitution of Ukraine and the inclusion of prosecutors in the section "Justice" is a positive step towards reforming the state. (Reference on the study and generalization of the application of

the provisions of the Constitution of Ukraine, the Code of Administrative Proceedings of Ukraine, the Law of Ukraine "On the Prosecutor's Office" regarding the participation of the prosecutor and the prosecutor's office in administrative proceedings. The Sixth Administrative Court of Appeal).

The Prosecutor's Office of Ukraine is defined by the legislator in Article 1 of the Law of Ukraine "On Prosecution" as a unified system that performs the functions established by its Constitution, including ensuring the protection of human rights and freedoms and serving the general interests of society and the state (Law of Ukraine "On Prosecution", 2024).

The prosecutor's office has full authority to define the concept of a system established by science and its main features. The holistic nature of the system is used to distinguish between its components, which include:

- ♦ system as an indivisible complex of interconnected elements;
- ♦ its special harmony with the environment;
- ♦ any system under study is an element of a higher-order system, and other elements of such systems are lower-order (Bortun, 2010, pp. 55-62).

The prosecutor's office can be considered as a complex legal phenomenon that functions in accordance with certain laws and has features that place it in a prestigious position among other state institutions.

The prosecutor's office, like all other social systems, involves both internal connections and relations between its individual components and external connections with other systems or their respective components. Basically, the main features of the prosecution system should be analyzed through the prism of organizational legal relations in which this particular system operates.

As noted above, the prosecutor's office has several areas of activity that start with court decisions, such as monitoring compliance with laws in criminal cases, and continue with other direct activities, such as supporting public prosecution and representing the state in court (Malyga, 2020).

The proper implementation of state legislation is the most important task that requires coordination

of legal policy. The main goal in this area is to protect the rights and freedoms of individuals and prevent unlawful intrusions. The state policy in the law enforcement sphere is aimed at bringing their actions within the state in line with international norms and requirements while preserving the social and service aspect of these organizations by optimizing their assignments (Shved *et al.* 2020).

The Ukrainian prosecutor's office is undoubtedly one of those entities permitted to take part in the formation (with certain powers) and implementation of state policy in the field of law enforcement. The prosecutor's office of Ukraine is entrusted with ensuring the rights and freedoms of citizens, establishing the rule of law, counteracting criminal activity in society, and strengthening law and order. Given the growing number of threats to the internal security of the state and the criminalization of society, it is imperative for the prosecution authorities to strengthen the performance of their law enforcement duties.

Institutional affiliation and functional content of the prosecutor's office in the system of public authorities are crucial factors in the formation of national models of prosecution bodies. Criminal procedure, social principles and their correlation are crucial factors in law enforcement. Despite its uniqueness, each specific model consists of several types and has more common features for one of them.

## DISCUSSION

The prosecutor's office and the court have a common task of "establishing legality and exercising controlling powers in criminal law". At the same time, the control over the activities of the prosecutor's office is entrusted to the court since they are subject to appeal. In addition, the prosecutor's office does not control the activities of the court; however, it may appeal against court decisions made against suspected violators (Comparative study of training of prosecutors: international standards, foreign experience, comments for Ukraine).

Does this close relationship (interaction) between the courts and the prosecutor's office mean that they constitute a unified system of bodies or a single branch of government?

The issue is ambiguous. The primary function of courts in any democratic country is to resolve

specific legal issues. As a rule, the court cannot initiate court proceedings on its own. Therefore, it must obtain information from the party with the relevant procedural right, such as the plaintiff, the applicant and the prosecutor.

On the other hand, the prosecutor's office has a separate competence. In the case of bringing public prosecution to the court or in the case of representing prosecutors, prosecutors may apply to the court by establishing evidence of an administrative or criminal offense, filing lawsuits, appealing cases, filing applications for reviewing court decisions based on newly discovered or exceptional circumstances (Malyga, 2020).

Thus, the prosecutor's office is an active institution that does not resolve any conflict of law but can seek legal assistance to resolve it. In addition, in contrast to the judicial system, the prosecution system and executive authorities are structured in a hierarchical manner and with a certain degree of centralization.

The possibility of including other subjects, such as courts and judges, in the judicial system has not been studied. As a rule, the judicial power is considered to be a state function that belongs exclusively to the competence of the court (Bortun, 2010, pp. 55-62).

The term "judicial power" has various meanings in legal literature, science and practice. The judicial power can be characterized as a court consisting of the following institutions. Modern scholars usually define it as a set of institutions that perform judicial processes. Some experts define the function of justice as the judicial power (The role of the prosecutor's office in the criminal justice system: Recommendation Rec (2000) 19 adopted by the Committee of Ministers of the Council of Europe on October 6, 2000). The term "judicial power" should be interpreted in a broad sense, not just as a reference to state institutions, and should not be confused with the term "justice" (Prylutskyi, 2012).

In a more general context, the judicial power is viewed only as an integral part of the state power with its own exclusive right to decide legally significant cases that have legal weight and are exercised exclusively by constitutional bodies (courts) within the limits of competence, law and specific procedural procedures. At the same time, it is also noted that the definition provided is not

exhaustive and it can only be understood through a detailed explanation of its functions (Khlyvniuk, 2009).

Given that the prosecutor's office must support public prosecution in court, Article 129 of the Constitution of Ukraine clearly states that justice cannot be administered without the participation or consent of any particular person. The prosecutor's office can be considered as an institution that effectively manages the court and works for justice. The prosecutor's office is necessary for the administration of justice in criminal cases. According to the definition, the prosecutor's office is a functional institution that administers justice in the organizational sense (Marochkin *et al.* 2015).

According to foreign experience, the prosecutor's office is organizationally separated from the judicial system and the legislative power and cannot be designated exclusively for the administration of justice as a single entity. The reason is that it does not exercise judicial power, and prosecutors use their own powers to protect human rights and freedoms, as well as the general welfare of society and the state, primarily in court.

The judicial power is not structured in the same way as other branches of government, and the prosecutor's office may exist within the judicial authorities. The exclusivity, completeness, and independence of the judicial power are undoubtedly questionable due to its corporate nature and limited functions (Kosiuta, 2023, pp. 104-116).

Considering the system of judicial authorities in a broad sense, the prosecutor's office can be viewed as an autonomous and impartial entity in the field of justice, which creates conditions for its implementation and represents the interests of society. The Ukrainian version of the Constitution assigns to the prosecutor's office a unique role as an official representative of the public, which is exclusive to its own jurisdiction and includes the protection of justice and the functioning of the courts (Tolochko, 2016, pp. 282-285).

We believe that the speed of such changes, their relevance to modern realities, and the ability to protect the citizens' rights and the state's interests are still critical. If we do not oppose the constitutional definition of the prosecutor's office and the legislative strengthening of guarantees

of prosecutor's independence, the abolition of supervisory powers outside the criminal sphere would be an unjustified reduction of the law enforcement and human rights potential of the prosecutor's office.

## CONCLUSION

The establishment of the prosecutor's office and its legal status is a long-term, historically determined, approved activity. This institution was founded on the basis of historical development, state mechanisms and economic advancement. When establishing or updating a prosecutor's office, it is important to take into account the interests of society, its culture and traditions, as well as the history and intelligence level of the people.

Legislation on prosecution is being developed in almost all places in order to prevent interference of the legislative and executive branches of power in the procedural activities of prosecutors. The powers of the legislative and executive branches are defined in such a way that they cannot legally interfere with prosecutorial proceedings; however, there are certain limitations to such intervention.

The prosecutor's office is granted a unique and independent position in the system of law enforcement authorities, which allows it to be defined as a *de facto* state body with a special constitutional, administrative and legal status. This gives them procedural independence to effectively and impartially perform their tasks, the main purpose of which is to protect human rights and public interests, as well as to supervise the establishment of law and order in society and the state, accountable only to Ukraine, the Verkhovna Rada of Ukraine and the citizens of Ukraine.

Referring to the foregoing, it can be concluded that the prosecutor's office in Ukraine functions as a self-governing system of justice and representation of state (public) interests in court. Institutional strengthening of this system objectively requires raising the status of the Prosecutor General's Office. Reviewing the competence of the prosecutor's office beyond the criminal sphere is necessary to legitimize the strengthening of human rights and law enforcement capacity in modern Ukraine.

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