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## International Legal Standards of Prosecutorial Activity and Status of Prosecutors: Implementation in Ukraine and in Individual Member States of the European Union

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### Abstract

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The relevance of the subject under study lies in the fact that today Ukraine is striving for integration with the European community. Since the adaptation of Ukrainian legislation to European regulations is an integral part of this accession, it is necessary to improve international cooperation, improve the regulatory framework that will comply with European principles and standards, and introduce new methods based on the positive practices of foreign countries. Such measures will help increase the effectiveness of prosecutors' implementation of procedural guidance during pre-trial investigation and judicial review of criminal proceedings, ensure the effectiveness of punishments, and reduce the crime rate. In this regard, this paper is aimed at determining the current state of implementation of international standards of prosecutorial activity in the national legislation of Ukraine. The leading methods of research of the chosen problem are theoretical, namely analysis, synthesis, generalisation, modelling; empirical – observation, study, and generalisation of the state of implementation of international standards in Ukrainian legislation. The paper analyses compliance with the international principles of prosecutorial activity by such countries as France, Germany, Spain, defines the specific features of their guarantee, and considers national practice. Based on the identified data, particular recommendations have been developed aimed at improving the role of international standards in prosecutorial activities, since the prosecutor is a key figure in criminal prosecution. The results of this study are the coverage of the importance of international standards of prosecutor's activity and the status of prosecutors, highlighting examples of their positive implementation in the legal systems of Ukraine and foreign countries, identifying the state of bringing Ukrainian legislation to the legislation of the European Union, as well as the development of recommendations that will help improve the current situation with the introduction of international standards and reduce the overall crime rate in Ukraine, thereby ensuring the protection of constitutional rights, freedoms, legitimate interests of the population. Having analysed the specific features of implementing international standards of prosecutor's activity and the status of prosecutors, their role, and importance, it can be concluded that the current situation in Ukraine requires considerable improvement of the legislative framework that governs the activities of the prosecutor's office. To improve the efficiency and effectiveness of the prosecutors' work, it is necessary to modernise the specialised legislation, incorporating the best foreign practices

**Keywords:** international principles, independence of prosecutors, functions of the prosecutor's office, International Association of Prosecutors, Standards of the International Association of Prosecutors

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## Introduction

Despite the key role that prosecutors play in resolving legal cases, especially when it comes to criminal proceedings, very little is mentioned in international documents about prosecutors, compared with references to judges and advocates [1]. Thus, neither the International Covenant on Civil and Political Rights<sup>1</sup> nor the United Nations (UN) case law considers or regulates the status and activities of employees of the prosecutor's office. Despite the lack of sufficient attention in international regulations, prosecutors are important figures in implementing many of the principles consolidated in international instruments, such as the right to a fair trial, the right to be heard by a court, the principle of equality before the law and before the court, and the prohibition of torture<sup>2</sup>. The importance of the functioning of the prosecutor's office is also prescribed in several UN conventions on crime<sup>3</sup>, the purpose of which is to improve the effectiveness of investigations and prosecutions of serious crimes such as drug trafficking, organised crime, and corruption. These international legal instruments require member states to ensure that any legal powers that may be exercised to prosecute the above-mentioned offences are "used to maximise the effectiveness of law enforcement measures" [2]. International standards developed by the European community help achieve a unified approach to determining the prosecutor's activity, the quality of prosecutor's activity, and the status of prosecutors [3]. They contribute to improving the effectiveness of the investigation of criminal offences, an integral figure of which is the prosecution – the prosecutor. International standards are aimed at strengthening European integration, creating a unified system for investigating and preventing crimes, which positively affects the overall crime rate and ensures the sustainable development of countries [4].

The theoretical significance of this study is confirmed by the analysis of the most relevant available practices regarding the implementation of international standards of prosecutor's activity and the status of prosecutors in Ukraine and other foreign European countries, which have a developed legislative framework that offers effective methods for fast, high-quality, and effective investigation of crimes. Thus, this study considered and analysed the international regulations that establish key international standards and principles of prosecutor's activity and the status of prosecutors, as well as foreign practices. The practical significance of this study lies in the possibility of determining the current state of implementation of international standards in the national legislation of Ukraine, developing recommendations

for increasing the impact of international standards to improve the statutory framework governing prosecutor's activities and improving the functions of the prosecutor's office.

Thus, *the purpose of this study* is a full, comprehensive, and in-depth study of the role of international standards in the process of carrying out prosecutorial activities, which is aimed at procedural management of pre-trial investigation of criminal offences, protection of constitutional rights and freedoms of citizens. Furthermore, the implementation of international standards in national regulations accelerates European integration, establishes international legal cooperation, and adapts national legislation to the legislation of the European Union (EU). *The objectives of this study* are as follows:

- 1) definition of the concept and role of international standards of prosecutorial activity and the status of prosecutors;
- 2) analysis of international legal documents, research of historical development of international standards and their design;
- 3) consideration of the current state of implementation of international standards of prosecutorial activity in the national legislative framework of such countries as France, Germany, and Spain;
- 4) identification of the current situation with the implementation of international standards in the national practice of Ukraine;
- 5) development of recommendations that help accelerate the implementation of international standards in Ukrainian legislation and accelerate European integration.

## Literature Review

At present, international standards of prosecutorial activity and the status of prosecutors are relevant because most countries of the world strive for international cooperation, especially in the legislative sphere. International standards regarding the status, role, and activities of the prosecutor's office have received a lot of attention from researchers. Thus, S. Oleksiiev considers the implementation of international legal norms in the legal system of Ukraine [5]. He notes that the process of adapting the national legislation of Ukraine to the EU legislation is currently underway, namely in the field of prosecutor's activity [5]. K. Ambos considers the institution of the European prosecutor's office, the guidelines that guide prosecutors when carrying out their activities as a party to the prosecution [6]. K. Birzhu analyses

<sup>1</sup>International Covenant on Civil and Political Rights. (1966, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_043/ed19661216#Text](https://zakon.rada.gov.ua/laws/show/995_043/ed19661216#Text).

<sup>2</sup>*Ibidem*, 1966.

<sup>3</sup>United Nations Convention Against Transnational Organised Crime. (2000, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_789/ed20001115#Text](https://zakon.rada.gov.ua/laws/show/995_789/ed20001115#Text).

the impact of international standards on the International Criminal Court, where one of the key figures is precisely the prosecutor [7]. S. Edgett defines the role of principles in the constitutional procedure, examines how the implementation of international principles affects the state of the national legislative framework, recognises that international cooperation can solve problems related to gaps in regulatory provisions [1]. R. Etinski and B. Tubik analyse the role of international law, the impact on the national legal systems of various countries [8]. G. Michelini and M. Cadelli consider the principle of independence as a key principle of prosecutor's activity, its most important components and implementation in practice [9]. J. Hodson investigated the role and status of the prosecutor in criminal proceedings, considered the principles that guide the prosecutor's office in its professional legal activities [3]. D. Lopez-Medina defines international standards that increase the effectiveness of the investigation of criminal offences in the context of the international judicial system [10]. A. Mammadov also focuses on the principles of law governing the organisation of legal proceedings in international law, including the rule of law, independence, reasonable terms of consideration of cases [11]. V. Michel analyses the key role of prosecutor's independence and prosecutorial impartiality and objectivity in criminal proceedings [12]. E. Michut, K. Dzhigay, V. Mitsilegas, F. Giufriada determine that the European government plays an essential role in ensuring the internal security of the European community both through security policy and through the effectiveness of EU institutions [13; 14]. The European prosecutor's office is a newly created institution that, with its form of organisation and its attributes, aims at ensuring the internal security of the EU [13; 14].

### **Materials and Methods**

At various stages of this study, a wide interrelated set of research methods was used, which helped extensively determine the development features of international standards governing the status and activities of prosecutor's offices, identify the current issues and suggest solutions for them to improve the mechanism for adapting Ukrainian legislation to EU legislation, improving the effectiveness of criminal action by the prosecution. Thus, the main methods used to conduct this study are as follows:

- theoretical methods – the study of scientific literature, regulatory documents, both Ukrainian and international, to clarify the state of the subject under study, the essence of standards, their role, and functions in the institution of prosecutor's office. Analysis, synthesis, generalisation, and modelling were employed, which allowed characterising the terminology and identifying key features of international standards;

- empirical methods – observation, study, and generalisation of the mechanism of implementation of

international standards in the Ukrainian legislative system. Special attention was paid to the implementation of international standards in the legislative provisions of Ukraine concerning the prosecutor's activity and the status of the key figure criminal action – the prosecutor.

The first stage of the study involved a theoretical analysis of regulatory documents, which consolidated the fundamental international legal standards governing the status and activities of prosecutor's offices. The author of this study also analysed scientific studies, dissertations of foreign and Ukrainian researchers who focused on investigating the development of international standards, examined the historical development of key principles that govern the activities and status of prosecutors. The paper also analyses the role and functions of the prosecutor's office, which must comply with the fundamental guidelines. The author considers the issues that arose in the process of developing international standards. Considerable attention is paid to the analysis of Ukrainian regulations regarding the status and activities of prosecutor's offices, the author also considers the implementation of international standards in the national legislation of Ukraine to improve the effectiveness of the prosecution's activities. The paper highlights the fundamental tasks, purpose, and methods of the present study.

The second stage included the analysis of the state of implementation of international legal standards of prosecutor's activity and the status of prosecutors in Ukraine and in individual EU Member States. This stage also involved the identification of the main issues, advantages, and disadvantages of applying international standards in Ukrainian prosecutorial practices. Furthermore, the study established how the implementation of the principles affected the prosecutor's activity. In the course of the study, the conclusions were verified and specified.

The third stage saw the completion of the theoretical analysis of regulatory documents establishing international standards and principles governing the activities of the prosecutor's office and the status of prosecutors. The author clarifies their theoretical and practical conclusions, summarises the results, and proposes his solutions to modern issues concerning the implementation of international regulations.

Theoretical analysis of international legal documents, namely criminal procedural legislation, recommendations of Council of Europe bodies, UN commissions, helps improve the modern procedure for implementing international legal norms in Ukrainian legislation, increase the significance and effectiveness of the prosecutorial activities. The methodology and techniques used in this study provided the necessary reliability and trustworthiness of the results.

### **Results and Discussion**

The United Nations is essential in developing standards and principles that establish the status and activities

of the prosecuting authorities. International standards of prosecutorial activity are certain rules of conduct governed by the international community of prosecutor's offices, which they are obliged to comply with to guarantee the rule and primacy of law in the state, protect the rights and freedoms of citizens, and form a high level of respect of citizens for the prosecutor's office. The adoption of standards and principles of activity of prosecutor's offices has passed a long historical path of development. Thus, the sixth UN Congress on Crime Prevention and Treatment of Offenders, held in 1980, noted that there is a need to define international standards for the prosecutor's office [6]. The Congress indicated that the effective implementation of Article 14 of the International Covenant on civil and political rights<sup>1</sup> is related to the proper selection and training of prosecutor's office employees: "UN Member States must ensure that employees of the prosecutor's office must be properly qualified to perform their tasks and perform them in a way that does not depend on personal or group interests". The importance of establishing standards governing the status and activities of prosecutors was also confirmed at the seventh UN Congress, which was held in 1985. Representatives of the UN Member States who attended the Congress noted that the developed standards can guarantee the objectivity and impartiality of prosecutors during criminal prosecution, as well as help avoid discrimination in the selection and appointment of prosecutors. The Seventh Congress also called for consideration of the development of draft guidelines on the selection, training, and status of prosecutors, their expected tasks and behaviour, immunity, means to increase and improve their contribution to the smooth performance of the criminal justice system and their cooperation with the police [1]. Based on the results of previous Congresses and developed recommendations, the eighth UN Congress (1990) on Crime Prevention and Treatment of Offenders established fundamental principles concerning the role of prosecutors, their status, and functions. Their goal is formulated as follows: "The fundamental principles of the activities and status of prosecutors have been defined and consolidated to help Member States guarantee the

effectiveness, impartiality, and fairness of prosecutors in criminal proceedings. They should be respected and taken into account by the governments of Member States in national legislation and practice. Furthermore, they should be brought to the attention of prosecutors, as well as other judicial bodies, executive and legislative branches of government and citizens"<sup>2</sup>.

To ensure the implementation of these principles, the International Association of Prosecutors (IAP) was established in June 1995 at the United Nations in Vienna. Moreover, the world has become witness to the need for expanding international cooperation between prosecutors and increasing the speed and efficiency of mutual assistance, asset tracking and other international cooperation activities. One of the key objectives of IAP is to enhance the role and importance of internationally recognised standards and principles as necessary mechanisms for the proper and independent prosecution of offences. This objective contributed to the development of Professional Responsibility Standards in 1999<sup>3</sup> and the consolidation of the main duties and rights of prosecutors (hereinafter – the "IAP Standards"), which established the fundamental place of the prosecutor's office in the administration of justice. The IAP Standards<sup>4</sup> supplement and expand the Guidelines<sup>5</sup>. They constitute an international standard for the behaviour of prosecutors and prosecutor's offices. Furthermore, the IAP Standards<sup>6</sup> promote international cooperation, emphasising the need for independence, objectivity, and impartiality of prosecutors [10]. One of the main issues in creating internationally recognised rules of conduct for prosecutors, which the latter should follow in their activities, was the differences in substantive law, evidence, and procedures due to the different legal traditions and legal systems existing around the world. Although this problem currently exists, it is less influential, as different legal traditions and systems begin to unite and acquire features of each other. The IAP Standards<sup>7</sup> are particularly important since they are not the result of an agreement between states or governments, but were written and adopted by prosecutors themselves from all over the world and various legal traditions. In 2008, through Resolution 17/2 of the Commission on Crime

<sup>1</sup>International Covenant on Civil and Political Rights. (1966, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_043/ed19661216#Text](https://zakon.rada.gov.ua/laws/show/995_043/ed19661216#Text).

<sup>2</sup>Fundamental Principles Concerning the Role of Lawyers. (1990, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_313#Text](https://zakon.rada.gov.ua/laws/show/995_313#Text).

<sup>3</sup>Standards of Professional Responsibility and Fundamental Duties and Rights of Prosecutors adopted by the International Association of Prosecutors. (1999, April). Retrieved from [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/Ukrainian.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/Ukrainian.pdf.aspx).

<sup>4</sup>*Ibidem*, 1999.

<sup>5</sup>Guidelines on the Role of Prosecutors. (1990, August). Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/prosecutors.pdf>.

<sup>6</sup>Standards of Professional Responsibility and Fundamental Duties and Rights of Prosecutors adopted by the International Association of Prosecutors, op. cit.

<sup>7</sup>*Ibidem*, 1999.



Prevention and Criminal Justice<sup>1</sup>, the IAP Standards<sup>2</sup> have been recognised by the United Nations as additional provisions to the Guidelines on the status and activities of prosecuting authorities<sup>3</sup>. Member States were invited to encourage prosecuting authorities to comply with the IAP Standards<sup>4</sup> to improve the system of criminal prosecution and prevent the commission of crimes [8].

At present, in many states, the prosecutor's office is a constitutional body and a key institution in the justice system, especially in the criminal prosecution procedure, which helps maintain the effectiveness of criminal prosecution and the independence of the judicial system [11]. Prosecutors of all European states, including Ukraine, can make decisions on initiating, conducting, and continuing criminal prosecution, as well as on appealing certain decisions of judicial authorities. There are also general tasks of the prosecutor's office, such as implementing national criminal policies, deciding on alternatives to prosecution, etc. Furthermore, the prosecutor has the right to take part in other types of trials, for example, civil [3]. Considering the most general functions of the prosecutor's office, it is difficult to imagine that their proper implementation depends on the legislative and executive branches of government. Therefore, it is necessary to consider the content of such an international standard as the independence of the prosecutor's office. The independence standard helps ensure that principles such as legality, impartiality, and hierarchy are respected. There are different types of independence. Thus, it can be addressed to the work of an individual prosecutor who solves a particular case – such independence is called functional, since certain powers are performed by a clearly defined person [9]. Researchers also distinguish institutional or structural independence, when a certain case is sent either to the prosecutor's office as an institution, or to the Prosecutor General as the head of the service [12]. The importance of the prosecutors' independence is also confirmed by the report of the European Commission for Democracy Through Law (Venice Commission) on the European Standards as Regards the Independence of the Judiciary,

which noted that the prosecutor's office should acquire an autonomous status, and prosecutors should become independent of the executive and legislative branches of government<sup>5</sup>. This is also emphasised by the UN Special Rapporteur, who considered the independence of judges and lawyers within the UN. He focuses his attention on the importance of autonomy and functional independence of the prosecutor's office, as this will increase the authority of the prosecutor's office and increase public confidence in justice<sup>6</sup>.

As for the definition and content of the prosecutors' independence, there are many opinions of researchers that have certain differences from each other. For example, a non-governmental organisation such as the International Commission of Jurists refers to making the justice system fully independent, which includes a set of judges, advocates, and prosecutors<sup>7</sup>. However, there is also an opinion that the content of the independence of the prosecutorial authorities differs from the independence of the judiciary, since they are usually hierarchical institutions subordinate to higher bodies. It should be emphasised that these features of structural independence should be compatible with the functional independence of prosecutors in the application of the law, and this makes it more similar to the functional independence of the judicial system [15]. Some authors also argue that if independence is interpreted as the subordination of a judge exclusively to the law during the criminal trial, the prosecutor can never be independent in criminal procedure, since they act as a party to the prosecution in defence of the rule of law [16]. However, to protect the rule of law, the activities of the prosecutor's office must be lawful, that is, within the limits established by law, and without interference from any other branches of government. Some researchers note that the principle of independence of prosecutors should be considered in a broad sense and closer to the content of independence of the judicial system, which means a guarantee that the prosecutor's office will not be influenced by other branches of government – neither executive nor legislative [17].

One of the best ways to see the development of

<sup>1</sup>The Commission on Crime Prevention and Criminal Justice Resolution No. 17/2, "Strengthening the Rule of Law through Improved Integrity and Capacity of Prosecution Services". (2008, April). Retrieved from [https://www.unodc.org/documents/commissions/CCPCJ/Crime\\_Resolutions/2000-2009/2008/CCPCJ/Resolution\\_17-2.pdf](https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2000-2009/2008/CCPCJ/Resolution_17-2.pdf).

<sup>2</sup>Standards of Professional Responsibility and Fundamental Duties and Rights of Prosecutors adopted by the International Association of Prosecutors. (1999, April). Retrieved from [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/Ukrainian.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/Ukrainian.pdf.aspx).

<sup>3</sup>Guidelines on the Role of Prosecutors. (1990, August). Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/prosecutors.pdf>.

<sup>4</sup>Standards of Professional Responsibility and Fundamental Duties and Rights of Prosecutors adopted by the International Association of Prosecutors. (1999, April). Retrieved from [https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-\(1\)/Ukrainian.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards-(1)/Ukrainian.pdf.aspx).

<sup>5</sup>Report of the European Commission for Democracy Through Law (Venice Commission) on European Standards as Regards the Independence of the Judiciary. (2011, January). Retrieved from <https://rm.coe.int/1680700a60>.

<sup>6</sup>Report of the Special Rapporteur on the independence of judges and lawyers. (2017, June). Retrieved from <https://undocs.org/en/A/HRC/35/31>.

<sup>7</sup>Report of the European Network of Councils for the Judiciary for 2014-2016. (2016). Retrieved from [https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj\\_report\\_independence\\_accountability\\_prosecution\\_2014\\_2016.pdf](https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_prosecution_2014_2016.pdf).

the principle of independence of the prosecutor's office is to analyse certain provisions adopted by the Council of Europe bodies. Chronologically, the regulatory documents developed within this organisation over the past two decades demonstrate a certain tendency to increase the importance of the prosecutors' independence. Back in Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 to Member States on the role of the prosecutor's office in the criminal justice system<sup>1</sup>, the possibility of subordination of the prosecutor's office to the government was not excluded, subject to certain safeguards, such as the legality of government powers regarding prosecutors, as well as the publicity and written general instructions. It also stated that in case of the possibility provided for by national legislation, the government can instruct the prosecutor in individual cases. As for internal functioning, this recommendation<sup>2</sup> makes provision for the application of the principles of impartiality and independence in the distribution of cases. The independence of the prosecutor's office is considered as a consequence of the independence of the judiciary, which should perform its functions without interference, guided by the principles of separation of powers. Therefore, the independence of prosecutors is similar to that of judges [9]. Some authors distinguish between external and internal independence and state that prosecutors should enjoy external independence, which means that it is impossible for other state or non-state authorities to interfere illegally or unlawfully [18]. Furthermore, the prosecutor's office should have internal independence and be capable of freely performing its functions and making decisions, even if the ways of action vary from one legal system to another [18].

Analysing the case law of the Court of Justice of the European Union (also the European Court of Justice), a stronger position on the independence of the prosecutor's office from the executive branch can be noted. Thus, some cases establish the autonomy of the German prosecutor's office. Under the Law of Germany "On the Judiciary", the prosecutor's office is accountable to the Minister of Justice, who can supervise and manage it<sup>3</sup>. The European Court of Justice calls these ministerial powers external, which may affect the decision of the prosecutor's office. The court notes that the instructions issued by the Minister of Justice cannot go beyond the

law because this would violate the principle of independence, which would adversely affect the effectiveness of prosecutor's activities [13]. It is also worth mentioning the prosecutor's office of France. Thus, in France, the prosecutor's office is a hierarchical institution that obeys the instructions of senior managers. The Minister of Justice has the right only to issue general instructions on the development of criminal policy, which is accompanied by a clear prohibition to instruct on individual cases [9]. The court emphasises that independence requires adequate legislative or organisational rules to ensure that this body is not vulnerable to receiving individual instructions from the executive government. In Spain, the prosecutor's office can be considered as a constitutional institution. The prosecutor's office acts to protect the rule of law, the rights of citizens and the public interest, as well as to protect the independence of the judiciary and the satisfaction of public interests. These functions are performed based on four principles: legality, impartiality, unity of action, and hierarchical dependence. Although there is no hierarchical dependence of prosecutors on the government, the state Prosecutor General is appointed and dismissed by the King on the recommendation of the government and after approval by the General Council of the Judiciary. Notably, Spain belongs to the minority of countries where the pre-trial investigation is headed by a pre-trial (investigative) judge, not a prosecutor. However, the task of bringing an indictment and taking part in the prosecution part of the procedure belongs to the prosecutor's office [19]. Law 50/1981 of 30 December 1981 on the Public Prosecution Service Status and Organisation<sup>4</sup> notes on the autonomous functioning of the prosecutor's office. The Law<sup>5</sup> also specifies that according to the principle of impartiality, the prosecutor's office shall act objectively and independently to protect its legitimate interests. In Spain, according to legislative acts, it is strictly forbidden to influence the independence of the judiciary, and violation of this rule can entail the initiation of legal proceedings. This prohibition applies both to external organisations and individuals, as well as to relations between judges. However, as for the individual actions of judges or prosecutors, they must act autonomously and have the right and duty to refrain from a case where their impartiality could be jeopardised [19].

<sup>1</sup>Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System. (2000, October). Retrieved from <https://www.legislationline.org/documents/id/7987>.

<sup>2</sup>Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System. (2000, October). Retrieved from <https://www.legislationline.org/documents/id/7987>.

<sup>3</sup>The Law of Germany "On the Judiciary". (1972, April). Retrieved from [https://www.gesetze-im-internet.de/englisch\\_drig/englisch\\_drig.html](https://www.gesetze-im-internet.de/englisch_drig/englisch_drig.html).

<sup>4</sup>Law of the Kingdom of Spain No. 50/1981 "On the Regulation of the Charter of the State Representation Service". (1981, December). Retrieved from [https://old.pravo.org.ua/files/zarub\\_zakon/Isp\\_1981.pdf](https://old.pravo.org.ua/files/zarub_zakon/Isp_1981.pdf).

<sup>5</sup>*Ibidem*, 1981.

The international standard of independence is also contained in Council Regulation (EU) 2017/1939 of 12 October 2017<sup>1</sup>, which introduces enhanced cooperation on the establishment of the European prosecutor's office. Article 6 of the above-mentioned rules<sup>2</sup> defines the independence of the European prosecutor's office as a European body, as well as the independence of the European chief prosecutor, their deputies, European prosecutors, and European delegated prosecutors. The Regulations<sup>3</sup> also note that the above-mentioned prosecutors are prohibited from requesting or accepting any external instructions, and the EU Member States and the bodies, offices, and institutions of the EU do not have the right to influence them. Summarising the analysis of European trends, it can be said that despite the content of the independence of the prosecutor's office may differ from the independence of the judiciary, it is an indispensable element of the rule of law.

The Prosecutor's Office of Ukraine constitutes a single system that is endowed with functions established by the Constitution of Ukraine<sup>4</sup> and aimed at protecting human rights and freedoms, the common interests of society and the state. At the same time, the functions of the Prosecutor's Office are also prescribed by the Law of Ukraine "On the Prosecutor's Office" of 14 October 2014<sup>5</sup>, namely: 1) maintaining public prosecution in court; 2) representing the interests of a citizen or the state in court in cases defined by this law<sup>6</sup> and Chapter 12 Section III of the Civil Procedural Code of Ukraine<sup>7</sup>; 3) supervision of compliance with laws by bodies engaged in intelligence, inquiry, and pre-trial investigation activities; 4) supervision of compliance with laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures relating to the restriction of personal freedom of citizens. Notably, to perform its functions, the Prosecutor's Office engages in international cooperation and adheres to the developed international legal standards [5]. Thus, the special legislation stipulates that the Prosecutor's Office adheres to certain key principles in its activities, including the rule of law, recognition of a person, their life and health, honour and dignity, inviolability and security

as the highest social value, legality, justice, impartiality and objectivity, independence of prosecutors<sup>8</sup>. Special attention should be paid to the consolidation of such a foundation of the prosecutor's office's activities as the prosecutors' independence, which constitutes a key international legal standard. The content of this guideline makes provision for the existence of guarantees against illegal political, material, or other influence on the prosecutor to make decisions in the performance of official duties. Ukrainian legislation also states that the Prosecutor's Office is described by a lack of political influence. Thus, the legislative, executive, and judicial branches of government have no right to interfere in its activities.

The principle of transparency of the prosecutor's office's activities is also widely covered in the legislation of Ukraine. Thus, transparency ensures honest prosecutorial activities aimed at respecting the rights and interests of victims, witnesses, as well as the fundamental rights of suspects and accused persons, and other procedure participants pursuant to high standards of human rights protection. Transparency is ensured by open and competitive employment of the prosecutors, free access to reference information, and the provision of information on demand, if the law does not establish restrictions on such provision<sup>9</sup>.

One should also pay attention to compliance with such standards as professional ethics and behaviour of prosecutors. The prosecutor must know and follow the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may cause conflict issues [20]. If a conflict requiring recusal exists and is not subject to refusal, or informed consent has not been obtained, the prosecutor must refuse to continue their involvement in the case. In addition, the prosecutor should not allow their professional activities to be influenced by personal, political, financial, professional, commercial, ownership, or other interests and relations. Such an international standard as equanimity is described by the fact that all citizens are equal before the law and the court; the prosecutor must not conduct cases concerning their close persons, relatives, acquaintances<sup>10</sup>.

<sup>1</sup>Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. (2017, October). Retrieved from <https://eur-lex.europa.eu/eli/reg/2017/1939/oj>.

<sup>2</sup>*Ibidem*, 2017.

<sup>3</sup>*Ibidem*, 2017.

<sup>4</sup>Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed19960628#Text>.

<sup>5</sup>Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18/ed20141014#Text>.

<sup>6</sup>*Ibidem*, 2014.

<sup>7</sup>Civil Procedural Code of Ukraine. (2004, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1618-15/ed20040318#Text>.

<sup>8</sup>Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18/ed20141014#Text>.

<sup>9</sup>Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18/ed20141014#Text>.

<sup>10</sup>Fundamental Principles Concerning the Role of Lawyers. (1990, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_313#Text](https://zakon.rada.gov.ua/laws/show/995_313#Text).

The prosecutor must not identify or display prejudice based on race, gender, religion, national origin, disability, age, sexual orientation, gender identity, or socio-economic status in words or behaviour. The prosecutor should not use other inappropriate considerations, such as extraneous, political or personal, when exercising the prosecutor's discretion [21].

Having analysed the Ukrainian legislation, it can be concluded that the regulatory provisions governing the status of prosecutors and prosecutor's activities currently implement the principles of efficiency, professionalism, independence, and responsibility. It is necessary to assess the compliance of prosecutors with the criteria of professional competence, integrity, professional ethics, as well as to provide an opportunity for all candidates who have the necessary theoretical knowledge and practical skills to take the position of prosecutor in the prosecutor's office on a competitive basis. The main task of the prosecutor's office is to ensure respect for constitutional human rights and freedoms during the investigation of criminal offences, coordinate the development of appropriate criminal law policies to approach European standards, ensure openness and transparency in its activities, and strengthen public confidence. It is impossible to complete these tasks without establishing and maintaining a professional culture of prosecutor's office employees aimed at regularly improving the quality of their activities, continuous training, and encouraging the use of innovations. According to the author of this study, a comprehensive and unbiased system for assessing the quality of the prosecutor's work should be developed, which would include such criteria as direct performance of powers, innovation, desire for development, self-improvement, attitude towards colleagues, leadership, etc. Furthermore, to strengthen the skills of prosecutors and, accordingly, the quality of their activities, it is necessary to systematically conduct trainings and other forms of education, where employees can learn about international legal standards of prosecutors' activities, the practice of their application, innovations, and trends. One should not forget about the motivation of prosecutors to encourage and retain the best employees.

To increase public confidence in the prosecutor's office, it is necessary to introduce effective methods of monitoring compliance with the norms of prosecutor's ethics and integrity: conducting trainings on professional ethics and integrity, avoiding conflicts of interest and preventing corruption cases. Moreover, one should regularly inspect knowledge of ethics and integrity. To prevent corruption, it is necessary to introduce appropriate control methods and ensure the protection of corruption whistle-blowers so that they can safely and confidentially report cases of corruption without prejudice to their rights.

It is also worth mentioning the independence of the prosecutor's office. Thus, as previously mentioned,

prosecutors are independent of the executive and legislative branches of government. They also cannot be subjected to groundless inspections by the highest-level prosecutor's office. Furthermore, prosecutors have the right to appeal against illegal actions, instructions, pressure from their managers or other colleagues.

All these recommendations are aimed at better realisation of the mission of the prosecutor's office, aimed at such fundamental guidelines as respect for human rights and freedoms, protection of human life and health, honour and dignity, inviolability, and security to achieve a high level of trust in the work of prosecutors and the prosecutor's office in general.

### **Conclusions**

In summary, the context of the aspirations of Ukraine for European integration reveals that such international legal standards of the status of prosecutors and prosecutor's activities as the rule of law, recognition of a person, their life and health, honour and dignity, inviolability and security as the highest social value, legality, justice, impartiality and objectivity, independence of prosecutors, transparency of activities, compliance with professional ethics and behaviour have a massive impact on the organisation and activities of the prosecutor's office in Ukraine. They "direct" the actions of the prosecutor, establish prohibitions, restrictions, and obligations that must be strictly observed upon exercising their powers. One of the main international legal standards is the independence of prosecutors primarily from the executive and legislative branches of government, autonomy in decision-making, the absence of interference by state and local authorities, and any unlawful influence. This principle is analysed according to international regulations, and the study identified its implementation in certain countries of the world, namely in France, Germany, and Spain, and its enormous role in ensuring high-quality and effective prosecutor's activities. The independence of the prosecutor's office serves as a guarantee of impartiality, which, for its part, leads to the creation of a transparent prosecutor's office. This independence should also be maintained in the face of inappropriate pressure that may arise from the media and individuals or interest groups in the community, or even the public in general. The IAP Standards also emphasise that decisions of the prosecutor's office should be made without outside influence in situations where prosecutors can exercise discretion regarding the decision on criminal prosecution.

The author of this paper concluded that Ukraine embodies such international standards as the rule of law, legality, justice, impartiality and objectivity, the independence of prosecutors, the inadmissibility of unlawful interference of the prosecutor's office in the activities of executive, legislative, and judicial authorities, respect for the independence of judges, transparency of the prosecutor's office, strict compliance with



the requirements of professional ethics and behaviour, equanimity, objectivity. At present, there is a need to improve the guarantees of ensuring their implementation. For high-quality implementation of prosecutor's activities, it is necessary to harmonise the legislation of Ukraine with the EU legislation, establish international cooperation with international institutions that have introduced international legal standards for the activities of prosecutors, namely with the International Association of Prosecutors.

Furthermore, the author has developed particular recommendations aimed at ensuring that prosecutors effectively exercise their powers pursuant to high European standards for the protection of human rights.

In particular, the most critical among them are the introduction of a system and criteria for assessing the quality of work of prosecutors, strengthening their skills and, accordingly, the quality of the latter's activities through systematic training and other forms of education in the main areas of activity, providing material and non-material incentives to stimulate the work of prosecutors, applying methods of monitoring compliance with the norms of prosecutorial ethics and integrity, regular testing of knowledge on ethics and integrity, protecting corruption whistle-blowers, establishing an effective mechanism for prosecutors to appeal against unlawful actions, instructions, pressure from their managers or other colleagues.

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## Міжнародно-правові стандарти прокурорської діяльності та статусу прокурорів: втілення в Україні та в окремих країнах-членах Європейського Союзу

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### Анотація

Актуальність обраної теми дослідження полягає в тому, що на сьогодні Україна прагне до інтеграції з європейською спільнотою. Оскільки адаптація національного законодавства до європейських положень є невід'ємною складовою інтеграції, необхідно удосконалювати міжнародне співробітництво, покращувати нормативно-правову базу, яка буде відповідати європейським принципам і стандартам, впроваджувати нові методики, ґрунтуючись на позитивному досвіді зарубіжних країн. Такі заходи допоможуть підвищити ефективність здійснення прокурорами процесуального керівництва під час досудового розслідування та судового розгляду кримінальних проваджень, забезпечити ефективність покарань, знизити рівень злочинності. У зв'язку з цим наукова стаття спрямована на визначення сучасного стану втілення міжнародних стандартів прокурорської діяльності в національне законодавство України. Провідними методами дослідження обраної проблеми є теоретичні, а саме: аналіз, синтез, узагальнення, моделювання; емпіричні – спостереження, вивчення і узагальнення стану втілення міжнародних стандартів в національне законодавство. У роботі проведено аналіз дотримання міжнародних засад прокурорської діяльності такими країнами, як Франція, Німеччина, Іспанія, визначено особливості їхнього гарантування, розглянуто національну практику. На основі виявлених даних розроблені конкретні рекомендації, спрямовані на підвищення ролі міжнародних стандартів у прокурорській діяльності, оскільки прокурор є ключовою фігурою кримінального переслідування. Результатом наукової роботи є розкриття значущості міжнародних стандартів прокурорської діяльності та статусу прокурорів, виокремлення прикладів їхнього позитивного втілення в правові системи України та зарубіжних країн, виявлення стану приведення українського законодавства до законодавства Європейського Союзу, а також розробка рекомендацій, які допоможуть удосконалити сучасну ситуацію із запровадженням міжнародних стандартів і знизити загальний рівень злочинності в Україні, тим самим забезпечуючи захист конституційних прав, свобод, законних інтересів населення. Проаналізувавши особливості втілення міжнародних стандартів прокурорської діяльності та статусу прокурорів, їхню роль та значущість, можна зробити висновок, що сучасна ситуація в Україні потребує значного удосконалення законодавчої бази, якою регулюється діяльність прокуратури. Для підвищення ефективності та результативності роботи прокурорів необхідно модернізувати профільне законодавство з урахуванням передового іноземного досвіду

**Ключові слова:** міжнародні принципи, незалежність прокурорів, функції прокуратури, Міжнародна асоціація прокурорів, Стандарти Міжнародної асоціації прокурорів

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