



InterAcción y Perspectiv

Revista de Trabajo Social

ISSN 2244-808X
D.L. pp 201002Z43506

Enero-Junio 2024
Vol. 14 No. 1

Universidad del Zulia
Facultad de Ciencias Jurídicas y Políticas
Centro de Investigaciones en Trabajo Social

Interacción y Perspectiva
Revista de Trabajo Social
Vol. 14 N°1 202-210 pp.
enero-junio

Dep. Legal pp 201002Z43506
ISSN 2244-808X
Copyright © 2024

ARTÍCULO DE INVESTIGACIÓN

Apoyo normativo y jurídico a la reforma de la fiscalía en Ucrania en materia de responsabilidad social de las empresas **DOI:10.5281/zenodo.10436645**

Olena Gulak*, Spartak Pozniakov**, Iuliia Iarmolenko***, Pavlo Parkhomenko**** y
Lidiia Sukmanovska*****

Resumen

El propósito de este trabajo es analizar el nivel de efectividad de la reforma de las fiscalías e identificar aspectos problemáticos a través del prisma de la responsabilidad social corporativa. Factores como: el análisis del trabajo científico, la organización de las actividades de la oficina del fiscal en la etapa actual del desarrollo de Ucrania, el estudio de datos estadísticos, datos de estudios sociológicos y la efectividad de la interacción del sistema de aplicación de la ley, análisis de regulaciones y cambios legales, que regulan las actividades de la oficina del fiscal en su retrospectiva permitió formar varias conclusiones: 1) La necesidad de reformar la oficina del fiscal en la etapa actual está determinada por la demanda pública para la implementación del Estado de derecho y la protección de los derechos y libertades humanos y ciudadanos; la necesidad de cumplir con las obligaciones de integración europea asumidas por Ucrania; deshacerse de los vestigios antidemocráticos obsoletos; 2) Entre las principales transformaciones progresivas del soporte legal de la actividad de la fiscalía ucraniana, cabe señalar: privación de poderes generales de supervisión, liquidación de unidades de investigación, una limitación significativa de la representación en los tribunales; creación de nuevos órganos de autogobierno fiscal.

Palabras clave: apoyo jurídico, normativo y legal, fuerzas del orden, fiscalía, responsabilidad social de la fiscalía, orientación social de la reforma de la fiscalía.

Abstract

Regulatory and legal support for the reform of the prosecutor's office in Ukraine in terms of corporate social responsibility

The purpose of this paper is to analyze the level of effectiveness of the prosecutor's office reform and to identify problematic aspects through the prism of corporate social responsibility. Such factors as: the analysis of scientific work, the organization of the prosecutor's office activities at the current stage of development of Ukraine, the study of statistical data, data of sociological studies and the effectiveness of interaction of the law enforcement system, analysis of regulations and legal changes, which regulate the activities of the prosecutor's office in its retrospective allowed to form several conclusions: 1) The need to reform the prosecutor's office at the present stage is determined by public demand for the implementation of the rule of law and the

protection of human and citizens' rights and freedoms; the need to fulfill the European integration obligations assumed by Ukraine; getting rid of outdated antidemocratic vestiges; 2) Among the main progressive transformations of the legal support of the activity of the Ukrainian prosecutor's office, it should be noted: deprivation of general supervisory powers, liquidation of investigative units, a significant limitation of representation in courts; creation of new bodies of prosecutorial self-government.

Keywords: legal, regulatory and legal support, law enforcement agencies, prosecutor's office, social responsibility of the prosecutor's office, social orientation of the prosecutor's reform.

Recibido: 07/07/23 Aceptado: 22/07/2023

* Universidad Nacional de Ciencias de la Vida y del Medio Ambiente de Ucrania, Kiev, Ucrania E-mail: lenaquilac8118@ukr.net ORCID iD: <https://orcid.org/0000-0001-9004-0185>

** Universidad Nacional Agraria de Vinnytsia, Vinnytsia, Ucrania. E-mail: poznakovspartak@gmail.com
ORCID iD: <https://orcid.org/0000-0003-3861-3710>

***Universidad Nacional Agraria Bila Tserkva, Bila Tserkva, Ucrania. E-mail: mjc_33778972@ukr.net . ORCID iD: <https://orcid.org/0000-0002-8818-9025>

**** Tribunal de Distrito de Bakhmatsky de la región de Chernihiv, Chernihiv, Ucrania. E-mail: pashajudge@gmail.com . ORCID iD: <https://orcid.org/0000-0002-0275-9120>

*****Universidad Estatal de Asuntos Internos de Lviv; Leópolis, Ucrania. E-mail: lidia.sukmanovska@gmail.com . ORCID iD: <https://orcid.org/0009-0007-8320-5296>

1.- Introduction

The problem of reforming the prosecutor's office is significant and relevant at the current stage of the development and functioning of our state because the prosecutor's office, even after the reform and the introduction of significant changes to the Constitution of Ukraine (first of all, the loss of general supervisory powers and pre-trial investigation), namely: the removal of Section VII "Prosecutor's Office » based on Law of Ukraine No. 1401-VIII dated 02.06.2016 (Law of Ukraine, 2016) and the addition of Article 131-1 (Law of Ukraine, 1996) to Chapter VIII of the Constitution of Ukraine, which regulates the three main functions of this body: 1) maintenance of public prosecution in court; 2) organization and procedural management of pre-trial investigations, resolution of other issues following the law during criminal proceedings, supervision of covert and other investigative and search actions of law enforcement agencies; 3) representation of the state's interests in court in exceptional cases and the manner specified by law; the prosecutor's office remains the primary law enforcement agency, implementing the function of procedural management of pre-trial investigations and acting as a particular "arbitrator" in the transfer of pre-trial investigation materials from one law enforcement agency to another in the event of several organizational and legal conflicts.

At the same time, the legal regime of martial law has a significant impact on the organization of the work of law enforcement agencies, with a significant increase in their powers and society's demands on these agencies.

Offenses against children in the occupied territories appear to be the most resonant, apart from directly military ones, and therefore the issue of legal responsibility for sexual and other violence against children in wartime is becoming more relevant.

Therefore, the activity of the prosecutor's office now requires efficiency, fairness, maximum possible openness, and activity based on the principles of ensuring human and citizen rights in order to restore public trust in this powerful law enforcement agency, without cooperation with which procedural investigative activity and the forwarding of pre-trial investigation materials are impossible to court.

In addition, Ukraine's path to the EU involves the effective implementation by the state of the anti-corruption function, one of the most critical components of which is implemented by the specialized anti-corruption prosecutor's office - a newly created unit within the prosecutor's office that carries out procedural management of the activities of NABU detectives and presents the materials of the pre-trial investigation in the High Anti-Corruption Court (Order of the Prosecutor General's, 2020). Moreover, it is pretty symbolic that the package of anti-corruption legislation together with the central anti-corruption Law of Ukraine "On Prevention of Corruption" (Law of Ukraine, 2014a) and the Law of Ukraine "On the Prosecutor's Office" (Law of Ukraine, 2014b) were adopted on the same day, namely: 14.10 .2014. Moreover, only recently, after long delays, the head of the specialized anti-corruption prosecutor's office was appointed, which is an essential step in reforming this department, considering the important social challenges.

2.- The aim of the study, Materials and methods

The purpose of this work is to analyze the level of effectiveness of the reform of the prosecutor's office and to identify problematic points in terms of corporate social responsibility.

General scientific and unique scientific methods of cognition were used to achieve the goal, particularly dialectical, formal-logical, analysis, synthesis, systemic-structural, comparative-legal, formal-legal, and prognostic.

Several scholars from various fields of law dealt with the problems of reforming the prosecutor's office. Since the body has been in a state of reform for the last few years (and not only) (the most significant changes of which, in our opinion, took place with the adoption of the amendments as mentioned above to the Constitution of Ukraine), the issue of the necessity and identification of ways to reform the prosecutor's office is still relevant.

At the same time, active military actions, the death of tens of thousands of our citizens in the war, and other global changes of a socio-political nature require a critical review of the principles of the prosecutor's office as a body that should have high trust on the part of society.

Among the scientific output in the context of the researched issues during the last few years, it is worth highlighting the works of V. Boyarova, L. Omelchuk, A. Chornobai, A. Lapkina, M. Kostytskyi, N. Kushakova-Kostytska, A. Bondar, H. Lopushniak, I. Verkhovod, and others, whose works have a significant impact in terms of the problems of reforming the prosecutor's office and serve as a basis for analysis and further scientific research.

In particular, P. Dikhtievsky and A. Babinskaya analyzed problematic issues of the right of citizens to hold the position of the prosecutor in Ukraine (Dikhtievsky, Babinskaya, 2018); A. Bondar – public participation in the process of reforming the domestic prosecutor's office (Bondar, 2019); L. Omelchuk - the problems of reforming the prosecutor's office in Ukraine in the context of the experience of Georgia (Omelchuk, 2019); A. Chernobay - in the light of constitutional changes (Chernobay, 2019); A. Lapkin and T. Bodnaruk studied the main directions of reforming the prosecutor's office at the current stage (Lapkin, Bodnaruk, 2020); M. Kostytskyi and N. Kushakova-Kostytska studied worldview and psychological problems related to the change in the constitutional status of the prosecutor's office in Ukraine (Kostytskyi, Kushakova-Kostytska, 2019); V. Boyarov - individual issues of reforming the prosecutor's office (Boyarov, 2019).

The problems of the functioning and activity of the system of new law enforcement agencies, whose activities are aimed primarily at combating and preventing corruption, were investigated in the work of Gulak O., Kurylo V., Dubchak L., Golovko L., Holovii L. (Gulak et al., 2015; Gulak et al., 2021; Dubchak et al., 2021; Gulak et al., 2022). Furthermore, public control over the activities of law enforcement agencies was studied in a recent work by the co-authors of the same scientific work (Gulak et al., 2023). In the context of writing the article, the work of Ladychenko V., Danyliuk Yu., Vasiuk O. et al. was used, which studied the peculiarities of ensuring security and law and order at the level of local self-government bodies (Ladychenko et al., 2021a; Ladychenko et al., 2021b; Vasiuk O. et al., 2020).

3.Results and Discussion

At this stage of reforming the prosecutor's office system through the prism of social responsibility, it has not been fully studied.

V. Boyarov raises profound questions about the functioning of the prosecutor's office, its assignment to one or another branch of government, and in general, the expediency of maintaining such an expensive body for the budget of the poorest country in Europe, noting the following: "the appearance in the Criminal Procedure Code of

procedural heads (Article 36) is a purely political decision. It is quite possible that this issue - leaving the pre-trial investigation in such a form as the functions of the prosecutor's office - may be recognized by the Constitutional Court as not following the Basic Law (but apparently, the authorities do not have the political will for this today)." (Boyarov, 2019).

In turn, A. Chernobaj and S. Hrynevych raised a range of practical questions related to adopting updated legislation. Thus, the developers of the Ukrainian Law "On the Prosecutor's Office," according to scientists: "... such important points of reorganization as: "a significant number of vacancies that will be opened after the test selection of prosecutors of local prosecutor's offices were not taken into account; the process of lustration prescribed in the Law of Ukraine "On Purification of Power," which, even according to the conclusion of the Venice Commission, was applied contrary to legal methods and not following the Constitution and European standards; retirement of prosecutors and investigators; similar processes of police reform" (Chernobaj, 2019). A. Chernobaj and S. Hrynevych believe that a whole series of novelties of this law have significantly worsened the legal status of the prosecutor to some extent.

A. Lapkin and T. Bodnaruk, in their study on the topic: "The main directions of the reform of the prosecutor's office at the current stage" (Lapkin, Bodnaruk, 2020), analyze the main directions of the work of the prosecutor's office at the current stage, since the adoption of the updated Law of Ukraine "On the Prosecutor's Office," carrying out a constitutional reform on justice and making significant changes to the law as mentioned above in 2019. The authors emphasize the inconsistency and heterogeneity of the reform; the absence of a clear definition of the purpose, tasks, and functions of the prosecutor's office since, in their opinion: "The purpose is too vague, the tasks at the legislative level are not fixed, and the functions are reflected differently in the Constitution of Ukraine and relevant legislation" (Lapkin, Bodnaruk, 2020). A. Lapkin and T. Bodnaruk emphasize the difficulties in carrying out the procedure for selecting candidates for the positions of prosecutors since the concepts of higher legal education and work experience in the field of law are not defined in detail and are not normatively fixed, which carries purely subjective and corruption factors.

The analysis of the specified scientific works gives reasons to state the following:

- The need to reform the prosecutor's office at the current stage is determined by the following: public demand for the implementation of the rule of law and the protection of human and citizen rights and freedoms; the need to comply with the European integration obligations undertaken by Ukraine; getting rid of outdated undemocratic vestiges.
- In Ukraine's application to join the Council of Europe (Conclusion No. 190 (1995) of the Parliamentary Assembly of the Council of Europe, 1995), one of the obligations of Ukraine was to change the role and function of the prosecutor's office by transforming it into a body that would meet the standards of the Council

of Europe, namely – requirements contained in the Recommendation of the Committee of Ministers of the Council of Europe "On the role of the prosecutor's office in the criminal justice system" (Parliamentary Assembly of the Council of Europe, 1995).

- A whole series of regulatory amendments testify to Ukraine's intentions to effectively and efficiently reform the domestic prosecutor's office into an effective and transparent law enforcement body that would function on stable European legal foundations, the priority of which would be based on ensuring human rights and freedoms. Among the major transformations, the following should be noted: deprivation of general supervisory powers, liquidation of investigative units, a significant limitation of representation in court; creation of new prosecutorial self-government bodies; implementation of retraining of prosecutorial employees; integrity check.
- At the same time, several legal deficiencies were identified, which significantly affect the organization of the practical activities of the prosecutor's office and require further analysis and corresponding regulatory changes.

4. Conclusions

As part of the scientific research, an analysis of the effectiveness of the reform of the prosecutor's office in terms of corporate social responsibility was carried out and several problematic aspects were identified. In particular, the analysis of the scientific development, the organization of the activities of the prosecutor's office at the current stage of the development of Ukraine, the study of statistical data, in particular the level of offenses, the materials of criminal proceedings committed, registered and brought to court, the data of sociological studies and the effectiveness of the interaction of the law enforcement system, the analysis of regulatory and legal changes regulating the activities of prosecutor's offices in their retrospect made it possible to form some conclusions:

- The need to reform the prosecutor's office at the current stage is determined by: public demand for the implementation of the rule of law and the protection of human and citizen rights and freedoms; the need to comply with the European integration obligations undertaken by Ukraine; getting rid of outdated undemocratic vestiges;
- Among the main progressive changes in the legal support of the activities of the Ukrainian prosecutor's office, the following should be noted: deprivation of general supervisory powers, liquidation of investigative units, a significant limitation of representation in court; creation of new prosecutorial self-government bodies; implementation of retraining of prosecutorial employees; integrity check;

- Within the scope of the study, several legal shortcomings were identified, which significantly affects the organization of the practical activities of the prosecutor's office, which require further analysis and corresponding regulatory changes.

Bibliographic references

- Bondar, A. (2019). Public participation in the process of reforming the Prosecutor's Office of Ukraine. Problems of applying the provisions of the Constitution of Ukraine in the activities of the prosecutor's office: theory and practice: materials of the round table (December 18, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine, P. 29-32. URL: https://ccu.gov.ua/sites/default/files/library/materialy_kruglogo_stolu_18.12.1_9.pdf
- Boyarov, V. (2019). Regarding some issues of reforming the prosecutor's office. Problems of applying the provisions of the Constitution of Ukraine in the activities of the prosecutor's office: theory and practice: materials of the round table (December 18, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine, 2019. P. 36-39. URL: https://ccu.gov.ua/sites/default/files/library/materialy_kruglogo_stolu_18.12.1_9.pdf
- Chernobay, A., Hrynevych, S. (2019). Reforming the Prosecutor's Office of Ukraine in the Light of Constitutional Changes: Realities and Hopes. Problems of applying the provisions of the Constitution of Ukraine in the activities of the prosecutor's office: theory and practice: materials of the round table (December 18, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine. P. 91-95. URL: https://ccu.gov.ua/sites/default/files/library/materialy_kruglogo_stolu_18.12.1_9.pdf
- Dikhtievsky, P., Babinskaya, A. (2018). Regarding the issue of the right of citizens to occupy the position of prosecutor in Ukraine. Administrative law and process. No. 1. P. 42-49. URL: http://www.library.univ.kiev.ua/ukr/host/viking/db/ftp/univ/apip/apip_2018_20.pdf
- Gulak, O., Kurylo, V., Dubchak, L. (2021). To the question of ways to overcome corruption in Ukraine. Law and public administration. № 1. P. 196-201. URL: http://pdu-journal.kpu.zp.ua/archive/1_2021/31.pdf
- Gulak, O., Golovko, L., Holoviy, L. (2022). Legal responsibility for corruption and related offenses in the field of land relations. Law. Human. Environment. Issue 1. Vol. 13. P. 73-80.

- Gulak, O., Holoviy, L. (2015). Reforming the system of internal affairs bodies of Ukraine: present and prospects. International Scientific Journal. Nº 5. P. 67-71. URL: <https://journals.indexcopernicus.com/api/file/viewByFileId/174089.pdf>
- Gulak, O.; Halai, A., Iarmolenko I., Spodynskyi O., Kapitanenko, N. (2023). Public control over the activities of the State Bureau of Investigation: a comparative analysis. Cuestiones Políticas. Vol. 41 (77).
- Kostytskyi, M., Kushakova-Kostytska, M. (2019). Worldview and psychological problems associated with the change in the constitutional status of the prosecutor's office in Ukraine. Problems of applying the provisions of the Constitution of Ukraine in the activities of the prosecutor's office: theory and practice: materials of the round table (December 18, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine, P. 44-47. URL: https://ccu.gov.ua/sites/default/files/library/materialy_kruglogo_stolu_18.12.19.pdf
- Ladychenko, V., Gulac, O., Yemelianenko, K., Danyliuk, Y., Kurylo, V. (2021b) Ensuring Sustainable Development of Local Self Government: Foreign Experience for Ukraine. European Journal of Sustainable Development. Vol. 10 (4). P. 167-178. Doi: 10.14207/ejsd. 2021.v10n4p167.
- Ladychenko, V., Gulak, O., Danyliuk, Y. (2021a). Ensuring security and law and order by local self-government bodies: current state and ways of settlement. Nº 4. Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine. P. 31-39. DOI: 10.32886/instzak.2021.04.03
- Lapkin, A., Bodnaruk, T. (2020). The main directions of reforming the prosecutor's office at the current stage. Prosecutor's Office. No. 12. P. 290-294. URL: <http://pgp-journal.kiev.ua/archive/2020/12/51.pdf>
- Law Of Ukraine. (1996). Constitution of Ukraine: Law of Ukraine dated 28.06.1996 Nº 254/96. Available Online. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80#Text>
- Law Of Ukraine. (2014a). On prevention of corruption: Law of Ukraine dated 14.10.2014 Nº 1700-VII. Available Online. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>
- Law Of Ukraine. (2014b). About the Prosecutor's Office: Law of Ukraine dated 14.10.2014 Nº 1697-VII. Available Online. URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>

- Law Of Ukraine. (2016). On amendments to the Constitution of Ukraine (regarding justice): Law of Ukraine dated June 2, 2016 Nº 1401-VIII. Available Online. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>
- Omelchuk, L., Koposov, O. (2019). Reforming the prosecutor's office in Ukraine in the context of Georgia's experience. Problems of applying the provisions of the Constitution of Ukraine in the activities of the prosecutor's office: theory and practice: materials of the round table (December 18, 2019). Kyiv: National Academy of the Prosecutor's Office of Ukraine, P. 56-59. URL: https://ccu.gov.ua/sites/default/files/library/materialy_kruglogo_stolu
- Order of the Prosecutor General's Office. (2020). On the approval of the Regulation on the Specialized Anti-Corruption Prosecutor's Office of the Prosecutor General's Office: Order of the Prosecutor General's Office dated March 5, 2020 Nº 125. Available Online. URL: <https://zakon.rada.gov.ua/laws/show/v0125905-20#Text>
- Parliamentary Assembly Of The Council Of Europe. (1995). Conclusion No. 190 of the Parliamentary Assembly of the Council of Europe regarding Ukraine's application to join the Council of Europe (Strasbourg, September 26, 1995). URL: https://zakon5.rada.gov.ua/laws/show/994_590
- Vasiuk, O., Gulac, O., Shust, V., Marchenko, S., Halai, A., Halai, V. (2020) Legal grounds for social work organization in rural communities of Ukraine. European Journal of Sustainable Development. Vol. 9, Nº 3, pp. 503-512. Doi: 10.14207/ejsd.2020.v9n3p503. URL: <http://ojs.ecsdev.org/index.php/ejsd/article/view/1099/1079>.
- Lopushniak, H., Verkhovod, I., Oleksenko, R., Vonberg, T. (2024). Assessment of the social protection system reform in the context of achieving the sustainable development goals. Interacción Y Perspectiva, 14(1), 26-42. Recuperado a partir de <https://produccioncientificaluz.org/index.php/interaccion/article/view/40836>