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FEATURES OF THE FUNCTIONING OF THE PROSECUTION AUTHORITIES IN FRANCE AND GERMANY AND THE OPTION OF THEIR IMPLEMENTATION IN UKRAINE

Abstract. ***Purpose.*** The aim of this article is to analyze the experience of the functioning of the prosecutorial institution in Germany and France, and to outline the potential for its implementation in Ukraine. ***Results.*** From an organizational and structural perspective, the prosecution service in France is a centralized system. It operates through the Prosecutors General, General Advocates and their deputies at the appellate and cassation courts, as well as the Prosecutors of the Republic and their deputies at courts of major jurisdiction, all of whom have the status of magistrates within the judiciary. The structure of the prosecution service corresponds to that of the court system. The prosecution is viewed as a body safeguarding public interest, which is why some positions, such as Assistant Prosecutor General, are referred to as General Advocates. A notable characteristic of the development of the prosecutorial institution in both France and Germany is that, having initially emerged as an instrument for persecuting opponents of the ruling regime, it has gradually transformed into one of the key mechanisms for upholding the rule of law and public order by assisting the courts in the administration of justice. ***Conclusions.*** It is concluded that there exist various models for organizing prosecution authorities across Europe, none of which is ideal. Nevertheless, many modern democratic states have achieved significant results in ensuring the high quality and effective operation of this institution, recognizing it as a key instrument in upholding the rule of law, legality, and public order. Therefore, the experience of countries such as France and Germany deserves special attention in the context of reforming the prosecution system of Ukraine. Specifically, the French model of incorporating the prosecution service into the executive branch–namely the Ministry of Justice–relieves the prosecution of excessive administrative burdens, allowing it to focus solely on legal functions such as criminal prosecution and supporting the judiciary in the administration of justice. In turn, the German model demonstrates a well-structured approach to the training and staffing of prosecution bodies, which enables a reduction in personnel without compromising the quality and efficiency of prosecutorial functions.

Key words: prosecution service, executive authorities, judiciary, legal status, prosecutors, civil servants, powers.

1. Introduction

An essential stage in the reform of any state institution involves defining the conceptual foundations upon which the process of transformation in a particular area of public relations will be based. The term *concept* (from Latin *conceptio* – perception) refers to a system of notions regarding certain phenomena or processes; a way of understanding or interpreting events; the core idea behind any theory. The term is also used to denote the main idea in scholarly, artistic, political, or other types of human activity (Shynkaruk, 2002).

In legal encyclopedic literature, a legal concept is interpreted as a guiding idea or viewpoint on a particular legal phenomenon. It serves as an important tool for the development of legal science and scientifically grounded state-legal construction (Shemshuchenko, 1998).

It is evident that the reform of the prosecution service in Ukraine also requires the identification of its conceptual foundations, as these foundations reflect the direction of the reform process, the priorities, ideas, views, and beliefs underlying the proposed or ongoing changes. These foun-

dations characterize the design and intent to be implemented during the reform.

In recent years, Ukraine has firmly pursued integration into the European Union, which requires the alignment of key public and state institutions with European standards and requirements. This also applies to the organizational and legal principles governing the structure and operation of the prosecution service. Accordingly, there is a need to study international, including European, experience in reforming prosecution institutions and their transformation into their current forms.

Analyzing the formation of the organizational and legal foundations of prosecutorial activity in leading countries of the world and the transformations they have undergone will help identify important elements necessary for defining the conceptual framework of reforming the domestic prosecution service.

The purpose of this article is to analyze the functioning of the prosecution service in Germany and France and propose potential avenues for implementing their elements in the Ukrainian context.

2. The Origins and Formation of the Prosecutorial Institution in France

The conceptual foundations of the prosecution service, in its modern understanding, originated in France. The French prosecutorial institution was established in the 14th century as a mechanism for asserting royal authority. At that time, the prosecution service was directly subordinate to the King of France. King Philip IV the Fair is considered the founder of the European model of the prosecution service, having codified its legal status and functions. On March 25, 1302, he issued an ordinance on the appointment of permanent royal prosecutors who would operate at parliaments (courts) in Paris, Tours, and Rouen, as well as at the offices of bailiffs and seneschals (local judges). French monarchs selected the most qualified lawyers to represent royal interests in court and entrusted them with specific important cases. For this reason, until the abolition of the monarchy, prosecutors in France were referred to as "men of the king." Upon fulfilling these ad hoc or permanent assignments, royal representatives would return to their legal practice (Sukhonos, 2001).

At the outset of its existence, the French prosecution service performed primarily punitive functions–that is, it was responsible for criminal prosecution of individuals deemed dangerous by the royal authority. N. Kholodnytskyi notes that the scope of activity of royal prosecutors continuously expanded and extended beyond purely legal matters. The prosecutor, in the fullest sense of the term, served as the king's eyes, through whom the monarch could monitor the proper functioning of the entire state apparatus. A significant portion of prosecutorial work consisted of oversight and supervisory functions, again carried out in the interest of the crown. In particular, in fulfilling these responsibilities, the Prosecutor General, while defending the interests of the royal crown, ensured that no nobleman usurped titles, interfered with trade or industry, or unlawfully exercised authority. The prosecutor monitored appointments of royal officials, assessing their qualifications to ensure that the king's interests were not compromised. Eventually, the prosecutor's responsibilities expanded to include supervision over the functioning of seigniorial and ecclesiastical courts (Kholodnytskyi, 2014).

Thus, as V.V. Sukhonos rightly points out, the French prosecution service initially functioned purely as a representative of the king's interests in court. The scholar emphasizes that only later–significantly later–did it evolve into an institution tasked with protecting the interests of the state and society at large (Sukhonos, 2007). A similar view is held by A.M. Dolhopolov, who notes that as long as the king remained the owner of domains and the suzerain of his vassals, his prosecutor was nothing more than a fiscal agent of the crown. However, once royal authority came to embody and represent the public interest, the private interests of the monarch began to align with those of the state, and the royal prosecutor, once a mere agent of the former, became an institution of the latter (Dolhopolov, 2015).

During the 16th to 18th centuries, the French prosecution service underwent a series of reforms and transformations that strengthened it as a powerful state institution with clearly defined duties and a broad scope of activity (Dolhopolov, 2015). It is worth noting that at a certain point in French history–namely during the French Revolution–the activities of the prosecution service were temporarily suspended (Dolhopolov, 2015). However, its operations were soon restored due to the pressing need for legal oversight and criminal prosecution, which attests to the prosecution service's vital role as a law enforcement institution.

Between 1789 and 1819, France adopted nearly 30 general and special laws regulating the legal status and functions of the prosecution service. Of particular importance among these were the Law on the Judiciary of 1801 and the Code of Criminal Procedure of 1808 (Niroda, 2015), which established the prosecution service as a crucial mechanism of the rule-of-law state (Sukhonos, 2001).

As a result of these reforms and transformations, the main areas of responsibility of the French Republican prosecution service became the following:

1. **In criminal matters** – initiating criminal proceedings, supervising the activities of judicial police and investigating judges, participating in and supporting public prosecution in court proceedings, and ensuring the enforcement of judicial decisions;

2. **In civil matters** – representing the interests of the state or performing the role of an impartial advisor and oversight authority with the right to issue opinions;

3. **In the sphere of judicial-administrative activity** – exercising general oversight over the judiciary, the legal profession, and correctional institutions, as well as maintaining judicial statistics (Sukhonos, 2007).

During the period of the First Empire, the French prosecution service acquired features similar to those of its modern form. It was headed by the Minister of Justice. Prosecutors General operated at the cassation and appellate courts, supported by several associates, who were divided into assistants and General Advocates – the latter presented oral arguments in court. Prosecutors of the appellate courts were directly subordinate to the Minister of Justice, while the prosecution office of the Court of Cassation held a special position. Prosecutors of the Republic were assigned to courts of first and higher instance and reported to the prosecution office of the appellate court (Niroda, 2015).

In the current French system, the prosecution service is part of the **executive branch** and is subordinated to the Ministry of Justice. The organization and functions of the prosecution service, as well as the procedural status of prosecutors, are regulated by the French Code of Criminal Procedure, the Code of Judicial Organization, and **Ordonnance No. 58-1270 of December 22, 1958**, on the organic law concerning the status of the judiciary (*Ordonnance N° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*, 1958). Prosecutorial officers are closely affiliated with the judiciary (both are referred to as *magistrats*) as they receive identical training and frequently transition between prosecutorial and judicial positions during their careers. Prosecutors are appointed by decree of the President of the Republic upon the recommendation of the High Council for the Judiciary (*Omelchuk & Klitynska, 2016*).

From an organizational and structural perspective, the French prosecution service is a centralized system. It operates through Prosecutors General, General Advocates, and their deputies at the appellate and cassation courts, as well as through Prosecutors of the Republic and their deputies at high courts of first instance, all of whom hold the status of magistrates. The structure of the prosecution service mirrors that of the judiciary. It is regarded as an institution that defends public interest, which is why some positions – for example, assistants to Prosecutors General – are referred to as General Advocates. Each appellate court is served by a Prosecutor General and their assistants. The Prosecutor General is directly subordinate to the Minister of Justice and is authorized to issue instructions to all prosecutors within the jurisdiction of the appellate court. The Prosecutor General also supervises all judicial police personnel within their area. They personally or through their deputies represent the prosecution in the appellate court and the court of assizes.

Prosecutors of the Republic operate within courts of first instance and high instance, as well as within correctional tribunals, and conduct criminal prosecution in all matters falling within their territorial jurisdiction. They or their deputies represent the prosecution in most assize and correctional courts and, when necessary, also in police courts. They are subordinate to the Prosecutors General at appellate courts. The French prosecution service is responsible for supporting the public prosecution in court, ensuring the enforcement of criminal law, overseeing investigative bodies, and coordinating their activities (*Plakhina, 2014*).

L.V. Omelchuk and A.R. Klitynska, in their analysis of prosecutorial organization in European countries, note that under French law, the prosecutor must be immediately informed of all committed crimes and of any individuals detained in order to ensure a fair investigation and the protection of human and civil rights and freedoms. Any victim of an offense may file a complaint with the police or gendarmerie, which is subsequently forwarded to the prosecution office. Alternatively, complaints may be submitted directly to the prosecution. The prosecutor oversees the subsequent investigation, issues instructions regarding the direction of the investigation, and decides whether to bring charges. Where appropriate, they may also decide to terminate criminal proceedings or close the case, in accordance with their powers (*Omelchuk & Klitynska, 2016*).

The powers of French prosecutors also include: monitoring the legality of judicial decisions and their enforcement (*Plakhina, 2014*); implementing state criminal policy as defined by the Minister of Justice; and directing and coordinating local authorities in the implementation of local crime prevention programs (*Omelchuk & Klitynska, 2016*).

Additionally, under French law, prosecutors may participate in civil proceedings. A prosecutor may either intervene in an ongoing civil case – for instance, to provide a legal opinion – or initiate such a case independently by filing a civil claim in court. V.K. Puchynskyi and I.V. Plakhina note that prosecutors may bring civil actions only in cases expressly provided by law. For example, under the French Civil Code, a prosecutor may initiate proceedings in the following cases:

– Declaration of death (*Art. 90*);

– Presumption of absence if a person has not been declared absent (*Art. 112*);

– Declaration of presumed absence (*Art. 122*);

– Imposition of penalties on officials or spouses who married without officially published banns (*Art. 192*);

– Custody arrangements in divorce cases (*Art. 302*);

– Declaration of legal incapacity for persons with mental disorders lacking a spouse or relatives (*Art. 491*);

– Appointment of a guardian for a spendthrift (*Art. 514*);

– Recognition of rights of incapacitated persons or minors arising from donations or wills in their favor (*Art. 1057*);

– Elimination of violations during the formation of a company and changes to its status (*Art. 1839*).

When initiating a civil case, the prosecutor acts as a principal party – the plaintiff. The prosecutor may also join any civil proceedings between private parties to issue an opinion at their own discretion if such intervention is deemed appropriate. In certain legally defined matters – such as changes in an individual's personal legal status – the prosecutor's participation in proceedings is mandatory (*Plakhina, 2014*).

3. Organization and Functioning of the Prosecution Service in Germany

The French model of organizing and operating the prosecution service was later adopted by a number of European countries, including Germany, where this institution was established in 1818 (*Zahynei, Drahan, Yarmysh, 2015*). Its primary purpose was to carry out law enforcement functions, including the initiation of criminal proceedings, bringing and supporting charges in court, and enforcing judicial decisions (*Plakhina, 2014*). The activities of German prosecutors are regulated by the Basic Law (Constitution) of Germany, the constitutions of the federal states (Länder), the German Code of Criminal Procedure of 1877, the German Judiciary Act (*Gerichtsverfassungsgesetz*), administrative orders issued by the Federal Ministry of Justice and by the justice ministries of the Länder, as well as other normative acts (*Zahynei, Drahan, Yarmysh, 2015*).

An interesting feature of the German system is the absence of a standalone law dedicated solely to the prosecution service. Instead, the institutional foundations and operations of this authority are outlined in Chapter 10 of the aforementioned Judiciary Act. In addition, the legal status of prosecutors is determined by federal legislation on public service and civil servants, as well as by relevant legal acts of the Länder, as prosecutors are classified as civil servants. At the same time, in terms of their independence from external influence or pressure while carrying out their professional duties, prosecutors are afforded protections comparable to those of judges. Matters such as prosecutorial jurisdiction over criminal and other cases, representation in court hearings, case assignment plans, managerial responsibility, the authority to sign legal documents, the formation of investigative teams, and other related issues are governed by ministerial orders – for example, the *Directive on the Organization and Operations of the Public Prosecution Office* (*Khovroniuk, 2012*).

Currently, Germany has a Federal Public Prosecutor General at the Federal Court of Justice, 24 prosecution offices at the Higher Regional Courts (Oberlandesgerichte), and 115 prosecution offices at the Regional Courts (Landgerichte). Prosecution offices are established at the level of the Länder courts and are headed by the respective Chief Public Prosecutor. At the higher courts of the Länder, public prosecutor's offices are also established and led by the Land's Prosecutors General. At first-instance courts, prosecution offices are not formally established, although branches of the Länder prosecution services may operate there without having independent legal entity status (*Zahynei, Drahan, Yarmysh, 2015*).

From the outset, the German prosecution service has been institutionally subordinated to the Ministry of Justice, rather than the Ministry of the Interior, in order to reflect "the legal, rather than coercive, will of the state" (*Nevzorov, 2016*). Nevertheless, the Federal Prosecutor General is appointed by the President of Germany with the consent of the Bundestag and exercises their functions under the general supervision of the Federal Minister of Justice. Prosecutors at the higher and regional courts of the Länder are subordinate to the respective state Ministers of Justice (*Zahynei, Drahan, Yarmysh, 2015*). Given the prosecutorial system's subordination to the justice ministries, overall management of the prosecution offices in each Land is exercised by the corresponding state Minister of Justice.

Formally, prosecutors are obliged to comply with general instructions issued by the Minister of Justice. However, as noted by M. Khovroniuk, they often avoid following such instructions in the name of professional independence. When responding to ministerial directions, prosecutors act in accordance with civil service legislation. According to these rules, a prosecutor–like any other civil servant–may submit a reasoned objection to a directive. If the supervisor insists on implementation, the prosecutor is obligated to comply unless the directive would result in

criminal liability. Prosecutors are also required to follow lawful instructions from their superior prosecutors (*Khovroniuk, 2012*).

It is also worth noting that the Federal Prosecutor General does not have authority to issue directives to prosecutors of the Länder and does not exercise administrative oversight over them. This responsibility lies with the Prosecutors General of each Land. In specific cases, however, the Federal Prosecutor General may transfer proceedings from federal jurisdiction to the prosecution services of the Länder or, conversely, assume responsibility for cases from their jurisdiction (*Zahynei, Drahan, Yarmysh, 2015*).

W. Zelter emphasizes that the prosecution service in Germany occupies a unique position. On the one hand, it is an independent organ of criminal justice in relation to the judiciary and is not part of the judicial branch; rather, it exercises judicial functions jointly with the courts to ensure justice. As such, it does not fall under the judiciary as defined by Article 92 of the Basic Law. On the other hand, considering its specific procedural powers, it also cannot be classified as part of the executive. As a state authority responsible for public prosecution, bound by law and, like the courts, obliged to pursue truth and a just verdict, the prosecution service operates within the broader framework of the justice system. Its independence from the judiciary is explicitly established in the Judiciary Act, which states that the prosecution service performs its duties independently of the courts (*§150 of the Judiciary Act*) (*Zelter, 2016*).

The primary sphere of activity of the modern prosecution service in the Federal Republic of Germany lies in the area of criminal prosecution and the enforcement of judgments in criminal cases. A criminal case may be initiated either by the police–who then immediately transfer it to the prosecutor–or directly by the prosecutor. Criminal offenses are primarily investigated by police services under the authority of the federal government or the Minister of the Interior of the respective Land. However, the prosecution service is considered the "master of the investigation" (*Herr des Verfahrens*), regardless of who initiates it. The prosecutor brings formal charges, and judicial proceedings in such cases are conducted with the mandatory participation of a prosecutor as the representative of the state (*Nevzorov, 2016*).

In addition to its prosecutorial powers, the German prosecution service also:

– oversees the execution of court decisions in criminal matters;

– pursues certain public order offenses;

– represents the interests of the state in specific categories of cases–for example, when an individual challenges before a court the decision of the police or municipal authorities to impose a fine or other penalty for a public order violation, the prosecution service acts as the legal representative of the state (*Khovroniuk, 2012*).

A few words should be said about the personnel policy within the German prosecution service. First and foremost, it is important to note that the prosecutorial staff in Germany is significantly smaller than in many other European countries, including Ukraine. The ratio does not exceed 10 prosecutors per 100,000 inhabitants, despite the absence of specialized prosecution offices in the country (*Khovroniuk, 2012*).

In selecting personnel for prosecutorial positions, eight key criteria are applied, which all candidates must meet. Among the most important are:

– the ability to distinguish between justice and injustice,

– awareness of the scope and limits of authority and powers,

– and resilience under pressure.

Compliance with these criteria is assessed during an interview, which includes role-playing scenarios, responses to test questions, and other evaluative methods (*Khovroniuk, 2012*).

M. Khovroniuk notes that despite the rigor of this process, occasional selection errors still occur–about one or two per hundred candidates. Each interview is conducted in the presence of a psychologist, who advises the selection committee, which always includes the Chief Public Prosecutor and/or a presiding judge. However, the psychologist does not directly question the candidate. Each interview lasts approximately two to three hours, allowing for no more than four candidates to be evaluated per day. In addition to passing the interview, candidates must submit standard documentation–such as a medical certificate and a criminal record clearance. Each successful candidate is appointed to a specific position within a particular prosecution office. Upon starting their post, the new prosecutor is assigned to a more experienced colleague who co-signs all procedural documents for a certain period (*Khovroniuk, 2012*).

It is worth emphasizing that the personal qualities assessed during recruitment play a significant role not only in hiring decisions but also in future career advancement within the prosecution service.

Attention should also be drawn to the issue of maintaining disciplinary standards within the prosecution service of the Federal Republic of Germany. Compared to Ukraine, Germany applies a broader range of disciplinary sanctions to prosecutorial staff for committing disciplinary offenses. In Ukraine, the following disciplinary sanctions may be imposed on a prosecutor:

1. reprimand;

2. prohibition, for up to one year, on promotion to a higher-level prosecution office or on appointment to a higher position within the current prosecution office (excluding the Prosecutor General);

3. dismissal from the prosecution service (*Law of Ukraine on the Prosecutor's Office*, 2014).

In Germany, prosecutors may be subject to the following disciplinary measures:

1. warning;
2. fine – up to €2,500;
3. reduction in salary – up to 20% for a period of up to three years;
4. transfer to a lower salary grade;
5. dismissal with forfeiture of a special pension (in which case a regular pension is paid) (*Khovroniuk, 2012*).

Thus, it becomes evident that the prosecution services in France and Germany occupy a distinct place within their respective systems of public institutions. On the one hand, they are organizationally subordinated to the executive branch, specifically the Minister of Justice; on the other, their functional mandate places them closer to the judiciary. This dual nature is also reflected in the legal status of prosecutors: while they are civil servants, they enjoy a number of judicial guarantees, particularly independence from external interference in the performance of their duties. Moreover, the organizational and legal frameworks for training and selecting prosecutors closely resemble those established for the judiciary.

One of the essential characteristics of the development of the prosecution services in France and Germany is that, although they initially emerged as instruments for persecuting political opponents and dissenters, they gradually evolved into key mechanisms for ensuring the rule of law and legal order by supporting the judiciary in the administration of justice. The transformations that have occurred within the prosecution services of both countries have largely aimed to serve this purpose. As a result, they relinquished their general supervisory functions and powers, narrowing their scope of activity to criminal prosecution and the enforcement of judicial decisions. Prosecutorial participation in civil proceedings is strictly regulated by law and remains limited in scope. The functional convergence of the prosecution service with the judiciary has led to the implementation of systems for training and safeguarding prosecutorial independence similar to those designed for national judicial institutions in France and Germany.

4. Conclusions

To conclude, it is evident that various models of organizing the public prosecution service exist across Europe, none of which can be considered ideal. Nonetheless, many modern democratic states have achieved notable success in ensuring a high level of quality and functionality of this institution as a crucial instrument for upholding the rule of law, legality, and public order.

In this regard, the experiences of countries such as France and Germany deserve particular attention and consideration in the context of reforming the prosecution service of Ukraine. Specifically, the French model of integrating the prosecution service into the structure of the executive branch, particularly the Ministry of Justice, relieves prosecutorial bodies of excessive administrative responsibilities and allows them to focus exclusively on legal functions, such as criminal prosecution and assisting courts in the administration of justice. Meanwhile, the German model demonstrates how a well-designed approach to recruitment and personnel training enables the maintenance of a lean prosecutorial staff without compromising the quality or effectiveness of its functional duties.

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ОРГАНІВ ПРОКУРАТУРИ ФРАНЦІЇ ТА НІМЕЧЧИНИ, ТА МОЖЛИВОСТІ ЙОГО ВИКОРИСТАННЯ В УКРАЇНІ

Анотація. ***Метою*** статті є на прикладі аналізу досвіду функціонування інституту прокуратури в Німеччині та Франції запропонувати та можливості його використання в Україні. ***Результати.*** В організаційно-структурному аспекті прокуратура Франції є централізованою системою органів. Вона діє в особі генеральних прокурорів, генеральних адвокатів та їхніх заступників при апеляційному та касаційному судах, прокурорів республіки та їх заступників при судах великої інстанції, що мають статус магістратів судової системи. Структура прокуратури збігається зі структурою судів. Прокуратура розглядається як орган, що захищає інтереси суспільства, тому деякі їх посади, наприклад, помічників генерального прокурора, називають генеральними адвокатами. Однією з суттєвих особливостей становлення й розвиток інституту прокуратури у Франції та Німеччині є те, з`явившись як інструмент переслідування ворогів правлячої влади, незгодних, вона поступово перетворилася на один з ключових засобів підтримки режиму законності та стану правопорядку в державі й суспільстві через сприяння судам у відправленні правосуддя. ***Висновки.*** Зроблено висновок, що на сьогодні у Європі існують різні моделі організації органів прокуратури, жодна з яких не є ідеальною, тим не менш багато сучасних демократичних держава досягли значних результатів у забезпечення високого рівня якості та функціонування даного інституту як одного з ключових інструментів забезпечення верховенства права, законності та правового порядку в суспільстві. У зв'язку з цим, досвід таких країн як Франція та Німеччина заслуговує на особливу увагу та використання в процесі реформування прокуратури України, а саме: за прикладом Франції включення органів прокуратури до складу системи гілки влади, зокрема до складу Міністерства юстиції звільняє органи прокуратури від зайвої організаційно-управлінської роботи та дозволяє сконцентрувати свої зусилля виключно на правовій сфері, зокрема щодо здійснення кримінального переслідування та сприяння судам у відправленні правосуддя; за прикладом Німеччини грамотно вироблений підхід до підготовки та формування кадрового складу органів прокуратури дозволяє суттєво зменшити їх штат без негативних наслідків для якості та ефективності виконання ними свого функціонального призначення.

Ключові слова: прокуратура, органи виконавчої влади, система правосуддя, паровому статусі, прокурорів, державні службовці, повноваження.

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