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**FOREIGN EXPERIENCE OF COORDINATING
THE ACTIVITIES OF PROSECUTOR'S OFFICES WITH PUBLIC MANAGEMENT
AND ADMINISTRATION BODIES: POSSIBILITIES OF IMPLEMENTATION
IN UKRAINE**

The article focuses on the analysis of the foreign experience of coordinating the work of the prosecutor's office with the state administration and administration in the context of the European and Euro-Atlantic integration processes in Ukraine.

To achieve the goal of the research, the author studied the experience of such EU member states as Bulgaria, Poland, Spain, as well as the USA. The author argues that the introduction of coordination mechanisms between the prosecutor's office and state administration is aimed at eliminating differences between these entities in order to effectively exercise their powers and ensure a unified position for solving joint tasks. The comparative analysis shows that the goal of coordinating the activities of the prosecutor's office and state administration bodies in different countries is to effectively ensure the interests of the state and citizens without harming their honesty, independence and autonomy.

It was found that in the analyzed states there are different approaches to the implementation of coordination mechanisms between the prosecutor's office and state authorities, which has its own advantages and disadvantages. The author concludes that when introducing foreign experience into the Ukrainian legal system, one should take into account unique national features and strive to complement them with the necessary elements of globalization processes, and not replace them.

The results of the study contain recommendations for improving the coordination mechanism, in particular, by applying the approaches of the USA, Poland and Bulgaria regarding the cooperation of prosecutor's offices with a wide range of subjects to jointly solve tasks that belong to the competence of each of them. Taking into account the regional peculiarities of the dynamics of crime in Ukraine, it is also proposed to implement the experience of Spain in strengthening regional cooperation between the prosecutor's office and local state authorities.

Key words: *foreign experience, coordination, prosecutor, powers, prosecutor's office, public management and administration bodies, implementation.*

Великодний Д. В. Зарубіжний досвід координації діяльності органів прокуратури з органами публічного управління та адміністрування: можливості впровадження в Україні

У статті аналізується іноземний досвід координації роботи прокуратури з органами державного управління в контексті європейських та євроатлантичних інтеграційних процесів в Україні.

З метою досягнення цілей дослідження автор вивчив досвід таких держав-членів ЄС, як Болгарія, Польща, Іспанія, а також США. Автор стверджує, що впровадження координаційних механізмів між прокуратурою та держав-



ним управлінням спрямоване на усунення розбіжностей між цими суб'єктами для ефективного здійснення їхніх повноважень та забезпечення єдиної позиції у вирішенні спільних завдань. Порівняльний аналіз показує, що метою координації діяльності прокуратури та органів державного управління в різних країнах є ефективне забезпечення інтересів держави та громадян без шкоди для їх честності, незалежності та автономії.

Було встановлено, що в аналізованих країнах існують різні підходи до реалізації координаційних механізмів між прокуратурою та органами державної влади, які мають свої переваги та недоліки. Автор робить висновок, що при впровадженні іноземного досвіду в українську правову систему слід враховувати унікальні національні особливості та прагнути доповнювати їх необхідними елементами глобалізаційних процесів, а не замінювати їх.

Результати дослідження містять рекомендації щодо покращення координаційного механізму, зокрема, шляхом застосування підходів США, Польщі та Болгарії щодо співпраці прокуратур з широким колом суб'єктів для спільного вирішення завдань, що належать до компетенції кожного з них. З урахуванням регіональних особливостей динаміки злочинності в Україні також пропонується впровадити досвід Іспанії у зміцненні регіональної співпраці між прокуратурою та місцевими органами державної влади.

***Ключові слова:** іноземний досвід, координація, прокурор, повноваження, прокуратура, органи публічного управління та адміністрування, впровадження.*

Formulation of the problem. Throughout the entire period of independence, Ukraine has been consistently developing a system of bodies engaged in the protection of human rights and freedoms, the general interests of society and the state, which inextricably includes the prosecutor's office. The effective work of the prosecutor's office in the conditions of modern challenges in Ukraine requires coordination with public management and administration bodies.

The need for active use of mechanisms for streamlining interaction between prosecutor's offices and public administration bodies is due to the complexity and multi-institutional nature of problems in the state, which require concerted actions and the unification of efforts of several specialized subjects. Thanks to the streamlining of management procedures and the establishment of a constructive dialogue, these bodies exercise mutual purposeful influence, which allows effective solving of joint tasks.

These factors, as well as the European and Euro-Atlantic integration course of Ukraine, determine the empirical necessity of studying foreign approaches to the implementation of the coordination mechanism with the aim of their further implementation in domestic practice.

Analysis of recent research and publications. The problems of the peculiarities of the activities of the prosecutor's office in foreign countries were revealed in the works of such scientists as S.V. Banah, V.V. Dolezhan, I.V. Lipinska, M.V. Kosyuta, V.V. Sukhonos, O.M. Tolochko, A.O. Falkovsky and others. However, despite the presence of thorough achievements, the latter did not cover the issue of foreign peculiarities of coordination with public management and administration bodies, which determines the relevance of this study.

The purpose of the article is to determine the specifics of the implementation of the mechanism of coordination of activities of the prosecutor's office with public management and administration bodies in foreign countries with the aim of implementing the latter in Ukraine to create the basis for further state and social transformations.

Presenting main material. The Prosecutor's Office supervises compliance with the law, facilitating the prosecution of persons who have committed criminal offenses, and also takes measures to cancel illegal actions and promptly restore violated rights. The prosecutor's office also participates in civil, economic and administrative cases in cases provided for by law.

For the effective performance of these tasks, it is often necessary to coordinate the efforts of the prosecutor's office with the state administration bodies in order to eliminate contradictions



between them regarding the exercise of powers and ensure a unified position aimed at protecting the rights and freedoms of citizens, as well as the general interests of society and the state.

Studying the foreign experience of coordinating the activities of prosecutor's offices with public administration and administration bodies is an urgent issue for Ukraine. In many countries of the world, such as France, Germany and Great Britain, the prosecutor's office plays an important role in ensuring law and order, interacting with other state structures. The application of foreign experience in Ukraine can contribute to the improvement of legal regulation and increase the efficiency of the activities of the prosecutor's office [1].

The effectiveness and importance of coordination encourages the prosecutor's office to conduct it with the public management and administration bodies in different countries of the world on various issues, primarily regarding the performance of law enforcement functions. Considering the importance of foreign experience, we consider it expedient to consider the approaches of individual states in more detail.

The duty to coordinate the activities of the prosecutor's office with other government agencies on matters of legitimate concern to such agencies, if this is permitted by law and does not jeopardize the investigation or other purposes of criminal justice, is provided by the federal law of the United States of America.

In 1981, the Attorney General's Task Force on Violent Crime, a bipartisan group of prominent national criminal justice experts charged with studying federal, state, and local law enforcement needs, recommended that the Attorney General create a forum to improve communication at all levels. The Attorney General acted on this recommendation and formed the Law Enforcement Coordination Committee to improve coordination and cooperation among law enforcement agencies to improve the effectiveness of the criminal justice system in the federal judicial district.

To help shape programs in federal districts, Congress created the position of Law Enforcement Coordinator. The latter's mission is to promote coordination, communication, and cooperation among federal, state, local, and tribal law enforcement agencies. This person, under the direction of the US Attorney, develops training and information programs for law enforcement officers and prosecutors; acts as an information resource about federal laws and programs; and functions as a liaison between Department of Justice departments as well as other federal agencies (such as US Immigration and Customs Enforcement, US Treasury, US Postal Service, US Secret Service, US State Department) and local law enforcement agencies.

The focus of the Law Enforcement Coordinator program varies by region. However, in general, the focus includes national priorities such as counter-terrorism, gun crime, organized crime, drug trafficking, Safe Neighborhoods, as well as local priorities that meet the specific needs of a particular law enforcement agency, community [3].

Separate issues of implementation of the coordination mechanism are defined in the Criminal Justice Standards, formed by the American Bar Association in February 2008. Thus, according to the latter, when performing the duties assigned to the prosecutor's office, the prosecutor must know about the experience, skills and professional abilities of the police and other law enforcement agencies assigned to the investigation. Prosecutors should facilitate training of police and other law enforcement agencies on potential legal issues and best practices in criminal investigations.

Before and throughout the course of complex or unusual investigations, the prosecutor must work with the police and other involved agencies and experts to develop an investigation plan that analyzes: the predicate of the investigation or the information about the matter that becomes known; investigation purposes; potential methods of investigation and the merits of each, individually and in combination, in obtaining relevant information and admissible evidence; legal issues that may arise during the investigation.

Also, the prosecutor must contribute to the timely informing of the police and other authorities about significant events in the investigation. At the same time, the prosecutor should not try to circumvent ethical rules by instructing or recommending others to use means that the prosecutor is ethically prohibited from using. The prosecutor can provide law enforcement officers with legal advice on the use of means of investigative activity, which law enforcement agencies have the right



to use. In addition, the prosecutor must make efforts to prevent the police and other law enforcement agencies and their personnel from releasing information that the prosecutor is prohibited from releasing or that could adversely affect the investigation or any potential prosecution [2].

Revealing the peculiarities of the implementation of the coordination mechanism of the US prosecutor's office with other state authorities, it should be pointed out such a form as conducting joint secret operations. "Undercover operation" means an investigation in which undercover law enforcement agents or other persons working with law enforcement conceal their purpose of detecting a crime or obtaining evidence for the prosecution of those involved in illegal activity.

In deciding whether to use undercover law enforcement agents or undercover operations in general, the prosecutor must consider the potential advantages, including: the nature and quality of the evidence likely to be obtained; and the ability to prevent or solve crimes when obtaining reliable and admissible evidence to do so would otherwise be difficult or impossible.

In addition, the prosecutor must take into account the potential risks of using undercover law enforcement agents or undercover operations in general, in particular: bodily harm to law enforcement officers and other persons; lost opportunity in case of operation detection; unnecessary interference or interference with privacy; trapping innocent people; property damage, financial loss to individuals or businesses, damage to reputation or other damage to people; interference with a privileged or confidential communication; interference or violation of constitutionally protected rights; civil liability or other adverse effect on the government; personal responsibility of law enforcement officers; involving undercover law enforcement agents in illegal conduct or government involvement in activities that would be considered unacceptable and highly offensive to public values and that could adversely affect the jury's view of the case; the possibility that an undercover operation will inadvertently cause an increase in criminal activity.

The prosecutor coordinating the undercover investigation must: regularly consult with the relevant police or law enforcement agencies regarding the further feasibility of the operation and the legal sufficiency and quality of the evidence obtained during the operation; conduct a periodic internal review of the investigation to determine whether the benefits of the transaction continue to outweigh the risks and costs, including the extent to which: the objectives of the investigation have been achieved; there is potential for obtaining additional useful and unique information; the investigation can continue without revealing the covert operation; continuation of the investigation may cause financial or other harm to innocent parties. The prosecutor should try to avoid or minimize the risks associated with the active participation of undercover police or law enforcement agents in illegal activities and provide guidance to such agents regarding permissible participation in otherwise criminal conduct.

Therefore, analyzing the experience of the USA, one can note the broad discretionary powers of the prosecutor regarding the construction of a coordination mechanism with other bodies (primarily, law enforcement) to perform their own functions. The above, in our opinion, on the one hand improves the efficiency and effectiveness of taking certain measures to ensure the interests of the state and citizens, but also creates wide opportunities for abuse.

The provisions of Article 10 of the Law of the Republic of Poland "On the Prosecutor's Office" dated January 28, 2016 stipulate the duty of local self-government bodies and state administration bodies, as well as other state organizational units, cooperatives and their unions, professional organizations, local self-government organizations and other public organizations to assist prosecutors in the performance of their tasks.

The provisions of this act determine only the general principles of the coordination mechanism, which relate to mutual information provision. In particular, in Articles 70-71 of the specified Law, it is specified that, in the event of the need to establish significant circumstances contributing to the commission of crimes, the prosecutor's office may oblige public management and administration bodies to take appropriate measures within the established time limits. For this purpose, prosecutor's offices, on their own initiative or at the request of public authorities, provide information on the state of crime and the fight against it.

Also, in the researched context, the provisions on coordination of prosecutor's offices with public authorities and administration regarding the support of prosecutor's IT systems are interesting.



In the event of a threat to the effectiveness or continuity of the use of the IT system of the prosecutor's office to the extent necessary for the performance of the tasks of the prosecutor's office, the copyright for the computer program is granted to the State Treasury of Law by the decision of the Minister of Justice. This decision is subject to immediate execution within a specified period, the maximum of which cannot exceed 20 years [7].

More detailed is the coordination of the investigated subjects in Poland in the field of crime prevention and other offenses. In particular, the prosecutor's office is part of the Interdepartmental Group for Combating Terrorist Threats and carries out, within its limits, monitoring of terrorist threats, their analysis and assessment, development of draft procedures for combating terrorism, as well as initiation, coordination and monitoring of the activities of relevant public management and administration bodies in the field countering terrorism. Similar powers are carried out under the coordination of the Interdepartmental Group for Combating and Preventing Human Trafficking operating under the Ministry of Internal Affairs, the Interdepartmental Working Group for Combating Cigarette Smuggling, which operates within the Interdepartmental Group for Combating Violations to the Damage to the Financial Interests of the Republic of Poland, or of the European Union, as well as the Interagency Group on Preventing the Illegal Proliferation of Weapons of Mass Destruction and Implementation of the "Krakow Initiative". Also, the Polish prosecutor's office coordinates the work of the National Office for Combating Drug Addiction, which is subordinate to the Minister of Health, regarding all measures taken to reduce the demand for drugs, develops a draft of the National Program for Combating Drug Addiction, and monitors the implementation of the Program, which is the basis of activities in the field of combating drug addiction [7].

As you can see, Polish prosecutors have somewhat limited powers to coordinate with public management and administration bodies compared to the US, which can negatively affect the speed of response to extraordinary illegal events that may occur in Poland. At the same time, it should be noted the multi-subject nature of such coordination with various profile subjects, which, in our opinion, will definitely have a positive effect on the mechanism under study.

Considering the specifics of the implementation of the mechanism of coordination of activities of the prosecutor's office with public management and administration bodies, it is interesting to consider the Spanish experience. First of all, it should be noted that the outlined mechanism has clear normative principles for the proceedings, which are reflected in the profile section IV "Relations of the prosecutor's office with public authorities" of the Law of the Kingdom of Spain "On the Prosecutor's Office" dated October 9, 2007.

In contrast to the experience of previous states, Spanish legislation defines the specifics of the coordination of the prosecutor's office with the executive authorities, which are not authorized to perform law enforcement functions. In particular, at the request of the Government, the Prosecutor General may initiate a criminal case for the protection of public interests in case of positive results of consultation with the Council of Higher Prosecutors.

The Prosecutor General submits to the Government an annual review of the activities of the prosecutor's office, in which he indicates trends in crime and its prevention, as well as recommends reforms for more effective administration of justice. A copy of this act is sent to the Parliament and the General Council of Justice and will be presented to the Parliament during the next session.

The Spanish approach of coordination with public authorities at the regional level deserves special attention. In particular, the prosecutor's office cooperates with regional authorities for the effective performance of the duties of such authorities, taking into account the available material and human resources for the administration of justice. They also participate in any cooperative bodies formed by representatives and relevant authorities in such regions to analyze, discuss and conduct research on issues related to the administration of justice [5].

Thus, the Spanish experience differs from the approaches of the USA and Poland in the limitation of the subjects of coordination and the lack of clear spheres for its implementation. However, it is worth pointing out the advantages inherent in this state, namely the spread of coordination at regional levels, which, in our opinion, is the best option for states with regional crime characteristics.



The experience of developed democratic countries shows the variety of models of the organization of the prosecutor's office. In France, the prosecutor's office belongs to the executive branch of government and reports to the Ministry of Justice, while in Germany prosecutors operate at the level of general courts under the direction of the Attorney General. In Great Britain, the Prosecutor's Office functions as an independent body coordinated by the Attorney General. This experience indicates the importance of adapting the model of the prosecutor's office in accordance with national conditions and legal traditions [8].

It should be noted that over the past few years, the Republic of Bulgaria has made significant progress in the fight against crime and ensuring the rule of law as a result of effective coordination with the executive power represented by the Ministry of Internal Affairs, the State Agency for National Security, the Commission for Combating Corruption and Confiscation of Illegal Property and others institutions.

The mechanism of coordination of activities of the prosecutor's office with public management and administration bodies in this state is built on the basis of specific legislation. In particular, the Law of Ukraine "On Combating Corruption and Confiscation of Illegally Acquired Assets", which entered into force on January 23, 2019, regulates anti-corruption measures, the conditions and procedure for confiscation in favor of the state of property obtained illegally, the status and functions of the Anti-Corruption Commission and confiscation of illegal assets, as well as the specifics of coordination with the prosecutor's office and other state bodies. The law also defines the range of crimes, about which the prosecutor is obliged to immediately notify the relevant department of the Commission for conducting pre-trial proceedings. In the future, the Commission for Combating Corruption and Confiscation of Illegal Assets and other competent bodies of state power, on their part, will carry out inspections assigned to them by the Prosecutor's Office by collecting, analyzing and verifying information in cases of corruption of persons holding higher government positions.

It should be noted that the given approach of building a mechanism for coordinating the activities of prosecutor's offices with public management and administration bodies is quite effective. Thus, in recent years, as a result of the coordinated efforts of the prosecutor's office and other public authorities, lawsuits have been filed for the seizure of property in respect of which there are grounds to believe that it was acquired illegally, in the amount of 3 billion leva (about 1.5 billion euros), and this the number is constantly increasing [4].

Taking into account the above, we note the progressiveness of the Bulgarian experience of coordinating the efforts of the prosecutor's office with the bodies of public management and administration, which is quite relevant for Ukraine in the context of combating corruption.

Conclusions and suggestions. Considering the above, it can be concluded that an important aspect of the performance of the legally defined functions of the prosecutor's office in different countries is the coordination of joint efforts with public management and administration bodies. National legislative acts determine the forms, methods, methods and means of this coordination. Despite some differences caused by the specifics of legal systems, the mechanisms for coordinating the activities of the prosecutor's office and public administration bodies in different countries have a common goal - to effectively ensure the interests of the state and citizens. The analysis of foreign experience also shows that coordination should be carried out without prejudice to the honesty, independence and independence of its participants.

When proposing the implementation of foreign experience, it should be taken into account that the standards of other countries can influence the national model of coordination and displace its unique features. Therefore, despite the existing integration challenges facing Ukraine, borrowing foreign experience should be rational and conditioned by objective law enforcement reasons. In our opinion, the approaches of the USA, Poland and Bulgaria regarding coordination with a wide range of subjects to jointly solve the tasks that belong to their competence are rational. Also, given the regional peculiarities of the dynamics of crime in our country, which have significantly worsened due to the war, we consider it expedient to implement the experience of Spain in strengthening regional cooperation between prosecutor's offices and local public authorities.



Bibliography:

1. Pavlenko, D. Foreign experience in the regulating of administrative legal functions of the prosecution service. *Visegrad Journal on Human Rights*. 2023. № 5. <https://doi.org/10.61345/1339-7915.2023.5.9>.
2. Criminal Justice Standards. Prosecutorial Investigations. URL: https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pinvestigate/
3. Law Enforcement Coordinating Committee (LECC). URL: <https://www.justice.gov/usao-nv/law-enforcement-coordinating-committee-lecc>
4. Terziev Venelin, Georgiev Marin Petrov, Bankov Stefan Marinov. Interaction of the prosecutor's office with the competent state authorities for counteraction of corruption. URL: <https://www.researchgate.net/publication/343615068>
5. The prosecution service. Organic Spanish statute 09.10.2007. URL: <https://www.fiscal.es/documents/20142/147455/Spanish+Law+on+Prosecutors.pdf/d9362d59-1d2f-9659-349b-a4fe61ef5b7c?version=1.1>
6. Ustawa Prawo o prokuraturze z dnia 28.01.2016. URL: <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-o-prokuraturze-18281417>
7. Współpraca Departamentu z innymi organami państwowymi w zapobieganiu przestępczości i innym naruszeniom prawa. URL: <https://www.gov.pl/web/prokuratura-krajowa/dzialalnosc-krajowa>
8. Banah, S. V. INTERNATIONAL EXPERIENCE OF THE PROSECUTOR'S OFFICE ORGANIZATION. *The Journal of V. N. Karazin Kharkiv National University. Series Law*. 2020. № (29). pp. 276-280. <https://doi.org/10.26565/2075-1834-2020-29-37>

