

## РОЗДІЛ 10 СУДОУСТРІЙ; ПРОКУРАТУРА ТА АДВОКАТУРА

UDC 342.56

### ETHICS OF PROSECUTORS: INTERNATIONAL INSTRUMENTS AND THE EXPERIENCE OF EUROPEAN COUNTRIES

#### ЕТИКА ПРОКУРОРІВ: МІЖНАРОДНІ АКТИ ТА ДОСВІД ЄВРОПЕЙСЬКИХ КРАЇН

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In the article the author examines the international acts in which recommended standards of moral and ethical conduct of prosecutors. For a clear understanding of the implementation of the norms of these acts to the legal framework registration States, the author offers for consideration examples of regulatory ethical rules of conduct for prosecutors in certain European countries. The author gives an interpretation of the concept of "ethics" and describes its individual components. Also the author reveals the content of the concept of "professional ethics of a Prosecutor" who argues on the importance of regulation of service and off-duty conduct of prosecutors. In the end, the author proposes in the development of legislation on moral and ethical rules of conduct for prosecutors to follow the example of those countries that we are in the European integration process.

**Key words:** ethics, professional ethics, codes of conduct, ethics of prosecutors, international standards, code of ethics, European experience.

У статті автор досліджує міжнародні акти, в яких рекомендовані норми стосовно моральної та етичної поведінки працівників прокуратури. Для чіткого розуміння впровадження норм цих актів у нормативно-правову базу європейських держав автор пропонує для розгляду приклади нормативного регулювання етичних правил поведінки прокурорів деяких європейських країн. Автор дає тлумачення поняття «етика» та характеризує його окремі складники. Також автор розкриває зміст поняття «професійна етика прокурора», наводить аргументи стосовно важливості регулювання службової та позаслужбової поведінки прокурора. У підсумку, автор пропонує під час розроблення актів стосовно моральних та етичних правил поведінки прокурорів брати приклад із тих країн, на які ми рівняємося в процесі євроінтеграції.

**Ключові слова:** етика, професійна етика, правила поведінки, етика працівників прокуратури, міжнародні стандарти, кодекс професійної етики, європейський досвід.

В статье автор исследует международные акты, в которых рекомендованы нормы относительно морального и этического поведения работников прокуратуры. Для четкого понимания внедрения норм этих актов в нормативно-правовую базу европейских государств автор предлагает для рассмотрения примеры нормативного регулирования этических правил поведения прокуроров некоторых европейских стран. Автор дает толкование понятия «этика» и характеризует его отдельные составляющие. Также автор раскрывает содержание понятия «профессиональная этика прокурора», приводит аргументы относительно важности регулирования служебного и внеслужебного поведения прокурора. В итоге, автор предлагает при разработке актов относительно моральных и этических правил поведения прокуроров брать пример с тех стран, на которые мы равняемся в процессе евроинтеграции.

**Ключевые слова:** этика, профессиональная этика, правила поведения, этика работников прокуратуры, международные стандарты, кодекс профессиональной этики, европейский опыт.

**Formulation of the problem.** Successful implementation faced by the bodies and institutions of Prosecutor's office of Ukraine of tasks to ensure the rule of law, unity and strengthening of legality, protection of rights and freedoms of man and citizen, and legally protected interests of society and the state can be exercised only on the basis of high professionalism, honesty and integrity of prosecutors, their independence and impartiality, the ability to resist any attempts to improperly influence the performance.

As representatives of the state, prosecutors must do everything possible to promote in society the spirit of law and justice, realizing the social importance of the Prosecutor's activities and the degree of responsibility to society and the state.

As Ukraine is rapidly adopts the experience of European countries in the reform of public bodies, it should also pay attention to the moral and professional qualities of prosecutors of Europe for the further implementation of them in Ukraine.

**The state of research.** In Ukraine private important questions of professional ethics of the Prosecutor were considered in Yu. Groshevogo, L. Gritsaenko, L. Davydenko, V. Galiana, Y. Demin, V. Zagorodniy, V. Malyarenko, P. Karkach, A. Lapkin, I. Marochkin, A. Mikhailenko, I. Ozersky, T. Pogorelova, S. Podkopayeva, Y. Polyansky, N. Rudenko, etc. However, they have not explored the possibilities of borrowing the European experience in

reforming the legal and regulatory framework ethical standards of the Prosecutor's office.

**The purpose of the article.** Analysis of the European standards of professional ethics of prosecutors, their comparison with Ukrainian and conclusion regarding the possibility of implementing separate standards in Ukraine.

**Presentation of the basic material.** Ethics in the broad sense is a theory of morality, spirituality and their role in society, as well as a system of spiritual rules and regulations behavior. The Foundation of ethics are moral relations associated with such concepts such as the confrontation between good and evil, duty, conscience, honor and dignity. Manifestation of ethics in the immediate relations between people there is etiquette that is the established rules of conduct and the rules of politeness in some society.

Ethics of human relationships has several levels: universal, particularly Christian ethics ► professional ethics ► legal ethics ► ethics, typical representatives of the private legal profession, including prosecutorial ethics. Each of the subspecies of ethics has characteristics in common with other subspecies, and individual characteristics due to specific features of one or other activities [1, p. 63–68].

Ethics of prosecutors – a kind of professional ethics, established corporate rules them model proper behavior of prosecutors in situations where legal regulations do not set specific rules for them behavior that conforms to accepted

standards of morality, as well as the best public conception of prosecutors office and its workers [2].

The Prosecutor is solely responsible for the legality or illegality of their actions and decisions, their justice or injustice, good or harm, caused by them, without the right to refer to someone else's order, instruction, order or advice. He is morally responsible before the state, society, other people and conscience.

The peculiarity of professional activity of the Prosecutor is the transparency of its implementation or results, public control, public opinion, the assessment of fairness, morality or immorality of professional activity.

The specificity of professional activity of the Prosecutor associated with particular moral situations that are not commonly found in activities of other professions, but common in the sphere of prosecutorial activity. Consequently, the professional ethics of a Prosecutor should include specific standards governing the conduct of people of this profession. Specific moral rules addressed to them, cannot be contrary to all General principles and norms of morality. They only complement and konkretisiert them with regard to the conditions of the Prosecutor's activities [3, p.156–158].

The prosecutors have very stringent moral requirements, which is explained by the special trust from the society and responsible nature of their functions. The people deciding the fate of others, which requires them to comply with the law and morality, must have not only formal, official, and moral law [4, p. 120–123].

The formation of Ukraine as a sovereign legal state needs to study a wide range of public law issues on the question of professional ethics and morality subject to the provisions of international standards and domestic state and for the purpose of legal regulation. International and national standards in this area are enshrined in international legal acts in the European legislation. To the best of their understanding and use should be analyzed the standards and norms in this field.

In 2005, Resolution of the Council of Europe № 1722 "About the performance of the duties and obligations of Ukraine", parliamentary Assembly of the Council Europe has undertaken a number of obligations of Ukraine regarding the need to change the role and functions of the Prosecutor's office to ensure their compliance European standards [5].

At the same time, one of the first European documents, determines the basic principles of ethics and conduct of prosecutors in Ukraine have become the Guiding the UN principles on the role of prosecutors adopted at the Eighth United Nations Congress in 1990, where paragraph 1 States: "persons selected as prosecutors, must have high moral character and abilities, as well as related training and qualifications" [6].

More detailed ethical requirements for prosecutors covered in the following international document Standards of professional responsibility rights and duties of prosecutors adopted by the International Association of prosecutors in 1999. In this paper the authors recommend prosecutors of all countries always maintain the honor and dignity their profession, conduct themselves professionally, in accordance with the law, rules and ethics behavior of a Prosecutor to adhere to the norms of honesty and the like. Founded in standards map standards, in fact, became the basis of the ethical requirements to the prosecutors in national legal systems of many countries, and these provisions were laid in the Foundation of further international documents on professional ethics and conduct of prosecutors [7].

So, in may 2005 in Budapest (the Hungarian Republic) by the conference of prosecutors General of Europe were adopted the European Guidelines on ethics and conduct for public prosecutors (so-called. The Budapest principles) that are codified, elaborated and supplemented previously defined by various international organizations professional and ethical requirements for prosecutorial activities. The document obliges

prosecutors: functions under national and international law, fairly, impartially and promptly, to respect, protect and uphold the dignity and human rights, aware that the work of prosecutors is carried out on behalf and in the interests of society, to try to find a fair balance between the General interests of society and the interests and rights of the individual.

In accordance with the requirements of the same international instrument for the implementation of high professional standards, the Prosecutor shall: continuously maintain the honor and dignity of their profession always conduct themselves professionally, to conform to the high principles of honesty and diligence, to perform its functions on the basis of the personal assessment of facts and in accordance with the law regardless of any disclosures, to be always well-informed, skilled at the level of the relevant developments in legal and social spheres, to try to be impartial and consistent, perform their duties fairly and without fear, greed and bias, not to give personal and private interests, public and media pressure, to respect the right of all people to be equal before the law and not grant privileges or make restrictions on the grounds of race, gender, colour, political or other belief, sexual orientation, national or social origin, associations of national minorities, property status, place of birth, state of health, disability, linguistic or other characteristics of professional secrecy, to respect the views of others, their legitimate interests and secrets, in the limits of its competence to try robeti everything that individuals were informed about their rights and legal position during the execution of the duties to be polite and respectful in communication with representatives of the court, the police and other law enforcement officials and persons with legal education, with the aim of developing international cooperation to assist prosecutors and law enforcement officials of other jurisdictions in accordance with the law, to prevent personal professional or financial interests or family, social or other relationships inappropriately affect the behavior of the Prosecutor that is not to act as prosecutors in cases in which they, their family members or work colleagues have personal, private or financial interest or dependence [8].

The provisions of the above acts became the basis for the development and adoption of national legal acts of European countries. For example, for consideration of the proposed Codes of ethical conduct of prosecutors, the UK, Latvia and Lithuania.

So, in the UK adopted a Declaration of ethical principles for prosecutors in Lithuania – the Code of conduct of the prosecutors of Lithuania, in Latvia – the Code of ethics for prosecutors of Latvia.

Each of the acts is the result of activities of the Supreme bodies of the public prosecution system. For example, in Latvia the Code was approved by the Council of the Prosecutor General, and in Lithuania the Prosecutor General of the Republic of Lithuania.

So, the corporate rules of conduct both during and outside of performing the functions determined by legislation, taking into account characteristics of the organization and functioning of the Prosecutor's office was approved by representative bodies and endorsed by heads of Prosecutor's offices, which may be indicative of real synchronization of national legislation and procedures with similar criteria of European countries.

All acts determined by the mandatory use and strict observance of requirements of the codes.

Thus, the Code of ethics for prosecutors of Latvia provides for that every day for preventing the discrediting of the prosecution. Workers should follow the basic principles and ethical standards. A Declaration of ethical principles for prosecutors in the UK establishes that, acting within the scope of their duties or in accordance with the instructions, prosecutors must at all times adhere to the highest professional standards.

Typically, the codes contain General requirements for the conduct of employees of the Prosecutor's office such as

independence, honesty, impartiality, fairness, confidentiality, and professional growth. Attracts attention and a Declaration of demands to own the mental state of the employee in the performance of his official duties, in particular the Declaration of ethical principles for prosecutors, the need to carry out their duties without fear, benefit or harm.

Separately sets forth the requirements for behavior in interaction with colleagues and outside business hours. For example, in Latvia the Prosecutor should conduct themselves outside working hours so as not to disgrace the name of the Prosecutor, not to create any doubt in the impartiality and integrity of performance of official duties. The Prosecutor does not accept any gifts, services or loans from persons who are in the spout of the Prosecutor's office at the time of the hearing of the case

An integral part of conduct are relationships between employees in the Prosecutor's office, clarity, clarity and justice that ensures the efficiency, effectiveness and discipline in sharing information and performing tasks.

For example, in Latvia the Prosecutor not to discredit or insult their colleagues, regardless of their official rank, of position, of their origin, social and property status, race, nationality, disability [9, p. 20–24].

In Ukraine, the moral and ethical standards of conduct of public prosecutors referred to in several acts.

A defining role in the ethics and morality of prosecutors plays the Law of Ukraine "On Prosecutor's office" where in the article Since it is determined that the activity of the Prosecutor's office among others is based on the principles of legality, justice, impartiality and objectivity and strict compliance with the requirements of professional ethics and conduct.

St. 19 of the Act imposes on the Prosecutor the obligation to improve their professional level and for this purpose to improve their skills. To undergo periodic training at the National Academy of prosecution of Ukraine, which should include the study of the rules of prosecutorial ethics. In addition, he must abide by the rules procurasia ethics, in particular to prevent the behavior. Which discredited him as the representative of the Prosecutor's office and could harm the authority of the Prosecutor's office.

The law (article 32) stipulates that the special training of a candidate for the position of Prosecutor in the National prosecution Academy of Ukraine, together with the knowledge and practical skills at the Prosecutor, preparation of procedural documents of the candidate for the post of the Prosecutor should learn the rules of prosecutorial ethics [10].

On the principles of non-discrimination stated in the Law of Ukraine "On principles of prevention and combating discrimination in Ukraine" in the wording, where in article 2 it is provided:

- 1) equality of the rights and freedoms of individuals and/or groups of individuals;
- 2) equality before the law, individuals and/or groups of individuals;
- 3) respect for the dignity of each person;
- 4) ensuring equal opportunities for individuals and/or groups.

The Act extends to such spheres of social relations, such as:

- public and political activity;
- the state service and service in bodies of local self-government;
- justice;
- labor relations, including the use by the employer of reasonable accommodation;
- health, education, social protection;
- housing relations, access to goods and services;
- other areas of public relations [11].

An important factor in the professional ethics of the Prosecutor is the Law of Ukraine "On corruption prevention". where in section VI set forth the Rules of ethical conduct of the relevant actors. So, officials and officers of bodies of Prosecutor's office are subjects that are covered by the Act, in accordance with article 38 of the law of the specified persons in the performance of their official authority are obliged to comply strictly with the requirements of law and universally accepted ethical norms of conduct to be polite in relations with citizens, supervisors, peers and subordinates [12].

Officials and officers of bodies of Prosecutor's office in accordance with the requirements of the above mentioned Law, act solely in the interests of the state, adhere to political neutrality, perform their duties impartially. Competently and efficiently, do not disclose information which I own, and refrain from fulfillment of illegal decisions or orders.

The main document, which concerns ethics and morality in activity of employees of the entire prosecution system of Ukraine, the Code of professional ethics and behavior of prosecutors (further – the Code), approved April 27, 2017. It defines the basic principles, moral norms and rules of prosecutorial conduct that should guide prosecutors in the exercise of their official duties and out of service [13].

The code is a systematic body of rules of ethical conduct in the exercise of functions of Prosecutor's office in relations with state authorities and bodies of local self-government, law enforcement, judicial authorities, with other participants in the proceedings, with media, with citizens, staff of prosecutors' offices, in the relations between the governing bodies of Prosecutor's office with subordinate employees. and has the goal of maintaining the authority of the prosecution and raise its image in the society.

**Conclusion.** All of the above international acts and normative acts of other countries is the reference point to which you want to move in the adoption of various acts that relate to the ethics of prosecutors. Learning from other countries or duplication of norms of international law is an excellent alternative in case of lack of experience in reforming the prosecution service. In our opinion, it is necessary to form acts, taking into account not only the mentality and experience of our country, but also gradually introduce the order of the countries that we look up to. And the basis of moral and ethical conduct of prosecutors is undoubtedly an important component of a well-coordinated and effective work of all prosecutors.

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## ЕЛЕКТРОННЕ ПРАВОСУДДЯ ЯК НОВИЙ РІВЕНЬ ДОСТУПУ ДО СУДУ

### ELECTRONIC JUDGE AS A NEW LEVEL OF ACCESS TO THE COURT

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*Державна судова адміністрація України в Сумській області*

Стаття присвячена дослідженню електронного правосуддя як нового рівня доступу до суду. Здійснено аналіз історії запровадження проекту електронного суду, сьогоденного стану роботи системи електронного судочинства. Визначено переваги функціонування електронного суду. Окреслено перспективи розвитку електронного правосуддя в подальшому.

**Ключові слова:** електронний суд, е-демократія, Єдина судова інформаційно-телекомунікаційна система, правосуддя, суд.

Статья посвящена исследованию электронного правосудия как нового уровня доступа к суду. Проанализированы история внедрения проекта электронного суда, сегодняшнее состояние работы системы электронного судопроизводства. Определены преимущества функционирования электронного суда, перспективы развития электронного правосудия в дальнейшем.

**Ключевые слова:** электронный суд, Единая судебная информационно-телекоммуникационная система, правосудие, е-демократия, суд.

The article is devoted to the study of e-justice as a new level of access to the court. It is noted that the electronic court is a system by which it is possible to electronically send documents to court, to exchange information between the court and the participant in the trial. An analysis of the history of the implementation of the E-Court project has been carried out. Thus, in 2013, the Order of the State Judicial Administration "On the implementation of the project on the exchange of electronic documents between the court and participants in the trial" introduced a procedure for the exchange of electronic documents in the part of the submission of procedural documents by the courting electronic forming parallel with the documents in paper form. It is determined that the first stage of the work of the electronic justice system is registration. It is noted that the implementation of the draft e-court program involves two stages: electronic documentation in parallel with the paper and the complete transfer of the court document to the electronic form. On the basis of familiarization with foreign experience, it was concluded that electronic justice is an alternative to traditional legal proceedings. The present state of the electronic justice system is analyzed. The advantages of the functioning of the electronic court are determined. The prospects for developing e-justice in the future are outlined.

**Key words:** electronic court, Uniform judicial information and telecommunication system, justice, e-democracy, court.

Новим рівнем доступу до суду в рамках судової реформи є проект електронного правосуддя. Запровадження підсистеми електронного суду передбачено процесуальним законодавством, Положенням про автоматизовану систему документообігу суду, а також він є складником (модулем) майбутньої Єдиної судової інформаційно-телекомунікаційної системи. Отже, актуальність даної статті зумовлена необхідністю покращення взаємодії судів із державними органами й установами, збільшення ступеня прозорості системи правосуддя, потребою популяризації означеного проекту електронного судочинства як складника електронної демократії.

Передумовою практичного застосування електронного судочинства в Україні стало вивчення та дослідження одного з напрямів інформаційно-комунікаційних технологій. Такі науковці, як Ю.С. Атаманова, О.В. Бринцев, А.П. Гетьман, К.В. Єфремова, В.С. Мілаш та інші, зверталися до проблематики електронного правосуддя, викладаючи своє бачення стосовно недоліків і переваг цього проекту, з метою його багатостороннього вивчення й аналізу.

**Метою статті** є дослідження перспектив запровадження та майбутньої реалізації проекту електронного правосуддя, розкриття його значення для забезпечення ефективності судочинства.

Одним зі способів покращення доступу до правосуддя є Електронний суд. На сьогодні цей проект запущено в роботу, окремі його елементи активно працюють вже не перший рік, хоча не всі обізнані щодо його можливостей.

Електронний суд – це електронний доступ до правосуддя. Це система, за допомогою якої можна в електронному вигляді надсилати документи до суду, здійснювати обмін інформацією між судом та учасником судового процесу.

Водночас підсистема «Електронний суд» є одним із модулів Єдиної судової інформаційно-телекомунікаційної системи, функціонування якої передбачено Законом України «Про судоустрій і статус суддів» від 2 червня 2016 р. [1].

Наступний етап нашого дослідження полягає у вивченні історії запровадження вищезгаданого проекту. Так, наказом Державної судової адміністрації України від 31 травня 2013 р. № 72 «Про реалізацію проекту щодо обміну електронними документами між судом та учасниками судового процесу» запроваджено порядок щодо обміну електронними документами в частині надсилання судом процесуальних документів в електронному вигляді, водночас це відбуватиметься паралельно з використанням документів у паперовому вигляді.