



UDC 340.15«1921-1931»

## NEP AND ORGANIZATION OF THE PROSECUTOR'S OFFICE SUPERVISION OVER INVESTIGATIVE AGENCIES IN UKRAINE

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### SUMMARY

The article deals with the process of evolution and organization of the Prosecutor's Office supervision over the bodies of inquiry and preliminary investigation in the center and at a local level in Ukraine at the time of the New Economic Policy. The author demonstrates relationship of the mentioned process with the political regime, which functioned in the country. The forms and methods of supervision exercised by the Prosecutor's Office are considered.

**Key words:** New Economic Policy, Prosecutor's Office supervision, investigative agencies, bodies of inquiry, preliminary investigation, political regime.

### НЭП И ОРГАНИЗАЦИЯ ПРОКУРОРСКОГО НАДЗОРА ЗА СЛЕДСТВИЕМ В УКРАИНЕ

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### АННОТАЦИЯ

В статье исследуется процесс становления и организации прокурорского надзора в центре и на местах за органами расследования и предварительного следствия в Украине в условиях новой экономической политики. Показывается связь этого процесса с действующим в стране политическим режимом. Рассматриваются формы и методы прокурорского надзора.

**Ключевые слова:** новая экономическая политика, прокурорский надзор, органы расследования, органы дознания, предварительное следствие, политический режим.

**Problem setting.** Since 2012, the new Criminal Procedure Code has been operating in Ukraine, and so a certain experience of application of the rules, embodied in the Code, including those related to the Prosecutor's Office supervision over the agencies investigating crimes has been gained by now. The practice of administering the Criminal Procedure Code of Ukraine has revealed its strengths and weaknesses, while researching into the issue supports the necessity of further reforms in the sphere of the Prosecutor's Office supervision. At the same time, it is important to take into consideration foreign historical experience of exercising control and supervision over the bodies conducting pre-trial investigation, including the time of the Soviet Union.

**State of research.** Of particular interest is the period of the New Economic Policy implementation, when the institution of the Prosecutor's Office was renewed and the foundation for the Prosecutor's Office supervision was laid. In Soviet historical and legal literature, this subject is raised in the works by Yu.A. Kalenov, V.G. Lebedinskij, V.S. Tadevosyan, V.M. Savitskij, V.N. Zhogina, and others. The researchers

mainly focused on analysis of the existing legislation while in their works very little attention was paid to the history of the Prosecutor's Office supervision over the bodies conducted pre-trial investigation in the period under examination.

In the post-soviet scientific literature a negative approach to the assessment of the legal status and activity of the Soviet investigative agencies was formed. There was a particular tendency to consider those bodies as repressive ones, which operated only for the sake of the ruling Communist Party and used as a tool to suppress any opposition. As a rule, the investigative activity of the preliminary investigation bodies, its legal basis, as well as the Prosecutor's Office supervision over their activity is not considered. Some attempts to approach the issue rationally were made only in the works by V. Sukhonos, V.G. Klochkov, V.V. Murza and a number of other Ukrainian researchers. They, however, do not view this problem as a separate scientific research. Therefore, there exists a necessity to survey the problem of the legal status and activity of those bodies by examining historical records

and normative legal acts, which were in force at that time, which is **the purpose** of this article.

**Basic material.** Bodies conducted pre-trial investigations were referred to as bodies of preliminary investigation in the first Soviet Criminal Code of Ukraine of 1922 and in its further versions. This term included both inquiry and preliminary investigation.

The Criminal Procedure Code of Ukrainian SSR of 1922 defined militia and crime detection as the bodies of inquiry and, in particular cases, various inspections, governmental institutions, and officials as well [1]. In accordance with the Provision on Judicial System of the Ukrainian SSR of 1922, people's investigators in investigation areas, senior investigators in provincial courts, and Superior Case Investigators in the Supreme Court and the People's Commissariat of Justice of the Ukrainian SSR were the main agencies conducting preliminary investigation [2]. Since the Prosecutor's Office of the Ukrainian SSR was established, it was charged with a responsibility to exercise supervision over the bodies of inquiry and preliminary investigation that was embodied in the provision on the



Prosecutor's Office supervision adopted on June 28, 1922 [3].

According to the Provision on the People's Commissariat of Justice of the Ukrainian SSR of August 1, 1923, supervision over investigation and inquiry was imposed on the 3d subdivision of the Prosecutor's Office of the Ukrainian SSR. This subdivision was responsible for exercising direct supervision over crime detection activities of investigators, over militia and Criminal Investigation Department in the field of crime detection and inquiry. The subdivision took steps to raise the level of its officers' skills, set up unified reporting forms, and dealt with complaints about illegal acts of investigation or inquiry bodies, slow pace of proceedings, and violation of time constrains [4].

Under the Decree of the Central Executive Committee of the Ukrainian SSR of November 21, 1923, the 4th independent subdivision exercising supervision over the General Prosecutor's Office bodies was detached from the 3d one [5]. The subdivision was responsible for supervision over activities of the General Prosecutor's Office in the sphere of crime detection, established unified forms for reports by the bodies of the General Prosecutor's Office and considered complaints about illegal acts of this department officers, slow proceeding, violation of time constrains for bringing charges, etc. The 4th subdivision had to carry out this work both directly and through the province Prosecutor's Offices (later on – districts) [4].

By the beginning of the year 1924, the main organizational issues had been solved, the functions of the bodies of the General Prosecutor's Office had been defined, and the Prosecutor's Office supervising responsibilities had been specified. The legislative embodiment of this period is reflected in the secret decree of VUTSIK "On relationship of the GPU and the bodies of the Prosecutor's Office exercising supervision" of September 20, 1923 [6]. Since then inquiry conducted by the bodies of the GPU in counter-revolution crimes and military espionage was equated with preliminary investigation. Supervision by the Prosecutor's Office regarding those cases could be carried out only from the point when a retrieval operation was finished and a formal investigation started. Officers conducted cases were obliged to follow a prosecutor's directions to fulfill requirements of the criminal procedure legislation when instituting criminal proceeding, bringing charges, making arrests, searches and seizures, as well as

to observe time limits within which investigation had to be conducted.

According to the decree of VUTSIK of December 6, 1922, those officers had the right to conduct preliminary investigation into the cases of banditry, robbery and plundering committed by a repeated criminal or a gang. It was set by the decree of September 20, 1923, that supervision over such cases must be exercised by the Prosecutor's Office on the same grounds and in the same order as in case of supervision over the inquiry bodies [6].

Prosecutors' instructions were recorded in supervisory proceedings, which were instituted in the cases investigated by the preliminary investigation bodies [7]. Copies of investigators' orders as to the beginning of the criminal prosecution proceeding against an accused person, choosing a measure of restriction, terminating of the preliminary investigation and other sufficient case materials were also entered upon the record. By the end of the year 1923, some district prosecutor's offices began to initiate supervisory proceedings too [8].

Since December 1923, the 4th subdivision started to exercise supervision over the movement of arrested persons who were under authority of the State Political Department [4, p. 17]. In the same month, instructing the provincial prosecutor's offices as to the supervision over the local bodies of the GPU begins [4, p. 17]. Five of the sixty-three circulars issued in 1923 by the Prosecution Department were devoted to the supervision over the GPU (concerning the issues of sending cases of counterrevolutionary crimes, appealing to the Prosecutor's Office of the Republic in all cases of disagreement between a province prosecutor and the GPU, etc.) [4, p. 6]. The General Prosecutor's Office of the Ukrainian SSR, in its turn, had to submit all its orders concerning the investigative procedure improvement to the 4th subdivision for approval [4, p. 16].

In 1923, it was set that province prosecutors were required to submit periodic (every three months) and annual reports of supervision over the GPU with an attached statistical statement to the Prosecutor's Office Department of the People's Commissariat of Justice. In the first reports province prosecutors provided a variety of information, at the same time, though often keeping silent about the main and essential one [9]. This circumstance induced the Prosecutor of the Ukrainian SSR to entrust the general subdivision with the task of working out the schemes of prosecutors' reports and think

over the introduction of monthly reports instead of reporting once every three months. The subdivision developed the scheme of such reporting in the form of "coupon A", and by the end of February 1924, having summarized the work on supervision over the preliminary investigation bodies, set the main forms of supervision [4, p. 6].

When the organizational work was completed, the Prosecutor's Office focused its attention on the essence of conducting criminal cases, and primarily on differentiation of investigation and inquiry. During 1924, prosecutors of the subdivision had to get rid of the following shortcomings: a) conduct of investigation in a variety of cases without a sufficient ground; b) focusing of investigators on obtaining confession instead of collecting objective evidence; c) long investigation; d) unjustified application of custody as a restriction measure [10].

It was rather difficult to deal with those shortcomings. The Prosecutor's Office often faced with low level of proficiency of its workers at the local level, and sometimes even with their absolute professional impropriety. It was far more difficult to overcome conservative thinking and the desire of individual investigators to act according to the rules of wartime, getting rid of "red terror" inertia and observing that the activities of the investigative bodies complied with the requirements of the new legislation. During 1924, the Prosecutor's Office Department issued sixty circulars on the activities of the GPU bodies and their supervision [10, p. 227, 129]. This work gave positive results. Instead of great number of conflicts between the Prosecutor's Office and the GPU, which took place in 1923 at the periphery and required intervention by the centre, in 1924 there were only five of them. Yet they were a matter of principle [10, p. 228].

Supervision over the activities of provincial court investigators, people's investigators and local bodies of inquiry was exercised by province Prosecutor's Offices, which were obliged to submit quarterly and annual reports to the Prosecutor's Office of the Ukrainian SSR [4, p. 3, 9]. The rights of the prosecutor, supervising over investigation and inquiry, were the following: at any time, he could get acquainted with all the materials of the inquiry and preliminary investigation acts, give instructions for specific cases, propose to carry out certain procedural actions. For each newly initiated case, the prosecutor was given copies of the decision provided for by Articles 112,



131, 163, 207 of the Criminal Procedure Code of the Ukrainian SSR, which were entered upon the supervisory proceedings. The prosecutor approved institution of the prosecution and a restriction measure. At the end of the investigation the prosecutor made decision as to dismissal of the case, its referral to court or return for further investigation. Furthermore, complaints were lodged with a prosecutor against acts of the bodies of inquiry and preliminary investigation, which had been authorized by a prosecutor himself [11].

Establishing of the Prosecutor's Office supervision over the investigation and inquiry went faster in the centre. At the local level, as one can see from the governors' reports [4, p. 195–200], prosecutor's supervision in this realm had become noticeable only by the end of the year 1923. In their reports province prosecutors pointed out such difficulties as staff deficiency, low level of proficiency of the workers of the Prosecutor's Office, and absence of the established system of supervision.

Gradually, in the process of practical activity related to supervision over the bodies of preliminary investigation and inquiry, experience accumulated and sustainable forms of supervision developed. Those forms were: 1) periodic reports by investigators and workers of the inquiry bodies; 2) periodic prosecutor's visits to the bodies of inquiry and investigation with the purpose of hearing reports on the cases they investigate, as well as on particular questions; 3) request by a prosecutor to survey particular cases and documents personally; 4) prosecutor's visits to remand homes and questioning of prisoners; 5) consideration of complaints and applications lodged by prisoners and their relatives [12, p. 17].

As the Communist Party was pursuing the New Economic Policy, the role of the Prosecutor's Office was constantly growing. By the year of 1925, its influence had greatly increased. By that time, relying on the Party bodies' support, it has already exercised quite effective supervision over the bodies of preliminary investigation and inquiry. But when there could be observed a departure from the principles of NEP, the tasks of the Prosecutor's Office began to change. And, as it was correctly noted by a researcher I.B. Usenko, now the Party bodies directed it to give support to the agencies of the GPU rather than to exercise control over their activities [13, p. 48]. At the same time, the Communist Party did not entirely rely on the Prosecutor's Office

and duplicated its functions. Twice a month the GPU of the Ukrainian SSR had to send special reports with respect to combating crime activities and state of public opinion to the Central Committee of the Communist Party of the Bolsheviks of Ukraine [14]. Bringing New Economic Policy to the end was also indicated in the resolutions of VUTSIK and the Council of People's Commissars of the Ukrainian SSR of June 9, 1926 and of October 10, 1928, which sufficiently extended competence of the State Political Directorate's agencies. According to these normative acts, the GPU, as it was already mentioned, was empowered to hold investigation in cases of malfeasance, economic, property, and other crimes. Inquiry and preliminary investigation in given cases had to be carried out under the direct supervision by the Prosecutor's Office. Being guided by the resolution of 1926, persons exercising prosecutor's supervision could acknowledge that inquiries were quite complete and send cases back to the bodies of the GPU, which carried out those inquiries, to perform only the most necessary investigative activities. An investigator from the GPU could limit himself to bringing accusation, questioning a suspect and drawing an indictment (Art. 3). In the resolution of 1928, the legislature went even farther allowing the prosecutors to send any case to the bodies of the State Political Directorate (Art. 2). Those measures should be considered as an attempt to simplify and accelerate procedure rather than as an extension of powers of the Prosecutor's Office [15].

Under the resolution of 1926 persons exercising supervision, having received a case from the GPU, could dismiss it, send to a judicial body (Art. 4), or send back for additional investigation (Art. 6). The prosecutor had to act in exactly the same way in conformity with the regulation of 1928 (Art. 4, 5). Moreover, custody period for the persons, who were under investigation in the State Political Directorate could be extended by a prosecutor for one month. In case of a district prosecutor's refuse to approve custody period extension, the submission of the body of the GPU for extension of this restraint was sent to the Prosecutor's Office Department in the People's Commissariat of Justice of the Ukrainian SSR for final decision. It was considered, that custody period was extended until receiving of the decision. Further extension of custody period was allowed only with permission by the Prosecutor General of the Ukrainian SSR or his deputy (Art. 6). The measure of restric-

tion, applied to the persons who were under investigation of Special meeting at the Board of the GPU of the Ukrainian SSR, could be changed or remitted only by the meeting itself or by the Prosecutor's Office Department in the People's Commissariat of Justice of the Ukrainian SSR (Art. 7) [15].

Simultaneously with the resolution of October 10, 1928, which made the responsibilities of the GPU and the Prosecutor's Office more accurate, VUTSIK and SNK of the Ukrainian SSR adopted secret resolution "On interrelation between the bodies of the GPU of the Ukrainian SSR, the Prosecutor's Office supervision, and judiciary". It repealed the secret resolution of September 20, 1923, but completely reserved its principles [6].

Therefore, in **conclusion** it should be mentioned that in 1928 the central and local bodies of the Prosecutor's Office supervision possessed almost the same rights as in previous years. However, understanding of those rights was limited by narrow bounds of the Bolshevik doctrine. The Prosecutor's Office, being an integral part of the soviet party-state system, based its activity, as it was required by changes, which took place in the party line.

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#### ИНФОРМАЦИЯ ОБ АВТОРЕ

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УДК 34(09):001.102-057.72(477)«19»

## ВКЛАД ПРЕДСТАВИТЕЛЕЙ ЭМИГРАЦИИ МЕЖВОЕННОГО ПЕРИОДА В РАЗВИТИЕ УКРАИНСКОЙ ИСТОРИКО-ПРАВОВОЙ НАУКИ

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#### АННОТАЦИЯ

Статья посвящена исследованию государственно-правовой мысли в среде украинской эмиграции межвоенного периода. Проанализированы взгляды украинских юристов, научные достижения которых посвящены правовому положению украинского государства в разные исторические периоды. Определена центральная идея в творческих поисках украинской эмиграции 20–30-х гг. XX в., а именно существование полноценного, отдельного народа, который должен иметь собственное государство и стать субъектом международного права.

**Ключевые слова:** нация, государство, государственность, суверенитет, правовой обычай, международное право.

## THE CONCEPT OF STATEHOOD IN SCIENTIFIC ACHIEVEMENTS OF THE UKRAINIAN EMIGRATION IN THE 20-30TH YEARS OF THE XX CENTURY

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#### SUMMARY

Article is devoted to a research of a state and legal thought in the environment of the Ukrainian emigration of the interwar period. Views of the Ukrainian lawyers, which scientific achievements devoted to a legal status of the Ukrainian state during the different historical periods are analyzed. The central idea in creative search of the Ukrainian emigration of the 20–30th of the XX century defined, namely existence of the full-fledged, separate people who must have own state and become the subject of international law.

**Key words:** nation, state, statehood, sovereignty, customary law, international law.

**Постановка проблемы.** Государственно-правовые идеи украинской эмиграции 20–30-х гг. XX в. продолжают быть актуальными в наше время. Творческие достижения известных ученых, таких как: А. Бочковский, С. Днистрянский, А. Эйхельман, Р. Лашенко, В. Старосольский, С. Шелухин, способны служить ориентирами для общества в преодолении проблем, которые уже имели место в истории и были осмыслены юристами. Многие их выводы относительно утверждения Украины как независимого государства сохранили свое значение, вызывая интерес у современных ученых.

**Состояние исследования.** Научным достижениям представителей эмиграции межвоенного периода посвятили свои труды такие ученые, как: Б. Андрусин, М. Кармазина, В. Ковальчук, А. Мироненко, А. Мошак, Т. Осташко, В. Потульницький, Ю. Терещенко, А. Токарчук, Я. Турчин и др.

**Цель статьи.** Целью статьи является исследование вклада представителей украинской эмиграции межвоенного периода в развитие историко-правовой науки, анализ идей украинских юристов и общественно-политических деятелей относительно правового состояния украинской государственности и политических отношений.