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Master thesis

**TRANSFORMATION OF THE UKRAINIAN  
PUBLIC PROSECUTION ACCORDING TO  
THE EUROPEAN DEMOCRATIC STANDARDS  
IN COMPARISON WITH THE BALTIC STATES**

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## ABSTRACT

Ukraine's foreign policy has proclaimed its direction towards European integration. The goal of this policy is to enhance the integration process and to intensify cooperation with the EU member states. Nowadays, Ukraine faces new challenges and demands on its way to real democracy and European values, strong civil society, equality, security, rule of law, and effectiveness of public services.

A significant problem in this field lies within certain obsolete elements of the justice administration, particularly, in the system of the Ukrainian prosecution service, which is not in line with democratic European norms and standards.

The central issue of the master thesis is the relations of the public prosecutor's office of Ukraine with other public authorities within the system of division of power into legislative, executive and judicial branches. The research investigates the question of functioning of the public prosecutor's office of Ukraine on the base of the principle of Rule of Law. Specifically, the issue of prosecutor's independence from the President of Ukraine and the Ukrainian parliament in connection with question of ensuring of accountability and efficiency of the public prosecutor's office of Ukraine is elaborated.

In order to address the central research question, the current investigation examines the prosecution services in Estonia, Latvia, Lithuania and Ukraine. This master thesis employs the method of qualitative comparative analysis, investigating the conditions of compliance of the mentioned member states of the Council of Europe with the European democratic requirements regarding the role and functions of the public prosecutor's office.

On the basis of the conducted analysis, some proposals concerning the improvement of the legal status and principles of activities of the public prosecutor's office of Ukraine were formulated.

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## CHAPTER I INTRODUCTION

The organizational and policy aspects of the administration of justice have not been strongly regulated by the Council of Europe (as yet). Nevertheless, there are some standard and values that all the member states are dealing with. Whilst every country has its own particular challenges, there is a lot to be learnt from each other's experience in developing of the administration of justice.

Ensuring security and freedom, safeguarding the rule of law, protecting the public against criminal violations of its rights and freedoms, ensuring the respect for the rights and freedoms of accused persons, providing properly functioning bodies responsible for the investigation and prosecution of crimes – these are the main tasks of the public prosecutor. From this point it is clear that the public prosecutors play an essential role in a criminal justice system of a democratic society.

The Public Prosecutor's Office of Ukraine is a state institution, which has no direct analogues in the countries of the European Community, North America and other developed countries of the world because it is endowed with more power than similar institutions in these countries. The Prosecutor's Office in Ukraine is an independent state-legal institution that is not a subject to any branches of state power.

According to estimations of the Venice Commission experts, certain undemocratic elements mostly represented in the existing Law of Ukraine on the Public Prosecutor's Office, which has been the subject of opinions by the Venice Commission on a number of occasions.

The Venice Commission in its previous opinions has been critical to the law concerning the public prosecutors' office in Ukraine. It has described the law as establishing the prosecutors' office as *“a very powerful institution whose functions considerably exceed the scope of functions performed by a prosecutor in a democratic, law abiding state”*. It has described the office as in effect a Soviet-style “prokuratura”<sup>1</sup>. It should be noted that, when joining the Council of Europe, Ukraine undertook the commitment that *“the role and functions of the Prosecutor's Office will change (particularly with regard to the exercise of a general control of legality), transforming this institution into a body which is in accordance with Council of Europe standards”*.

This commitment obliges Ukraine to move away from the model of the Soviet-type “prokuratura”. The “prokuratura” system in the Soviet period has been described as follows:

“The prosecution of criminal cases in court represented only one aspect of the procuracy's work, matched in significance throughout much of Soviet history by a set of supervisory functions. In a nutshell, the procuracy bore responsibility for supervising

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<sup>1</sup> Opinion of the Venice Commission CDL-AD(2006)029, at paragraphs 3 and 4.

the legality of public administration. Through the power of what was known as “general supervision”, it became the duty of the procuracy to monitor the production of laws and instructions by lower levels of government; to investigate illegal actions by any governmental body or official (and issue protests); and to receive and process complaints from citizens about such actions. In addition, the procuracy supervised the work of the police and prisons and the pre-trial phase of criminal cases, and, in particular, making decisions on such crucial matters as pretrial detention, search and seizure, and eavesdropping. Finally, the procuracy was expected to exercise scrutiny over the legality of court proceedings. Supervision of trials gave the procurators at various levels of the hierarchy the right to review the legality of any verdict, sentence, or decision that had already gone into effect (after cassation review) and, through a protest, to initiate yet another review by a court. Even more troubling, the duty to supervise the legality of trials meant that an assistant procurator, who was conducting a prosecution in a criminal case, had an added responsibility of monitoring the conduct of the judge and making protests. This power placed the procurator in the courtroom above both the defence counsel and the judge, in theory if not also in practice” (Solomon and Foglesong, 2000: 5).

Nowadays, the only model for the prosecutor’s office existing in Ukraine is the Soviet (and czarist) model of “prokuratura”. This is the reason why Ukraine, when joining the Council of Europe, had to enter into the commitment to transform this institution into a body which is in accordance with Council of Europe standards.

Therefore, it seems as though the present organizational and political system of administration of the prosecutor’s office of Ukraine does not intend to reform the present functioning of the prosecution service in Ukraine which was inherited from the Soviet “prokuratura” system. It is rather an attempt to preserve the *status quo* and to put an end to reform efforts undertaken on the basis of the 1996 Constitution of Ukraine.

Apparently, none of the major criticisms made by the Venice Commission in its earlier opinions of 2001, 2004 or 2006 have been taken on board in later political and law drafting activity. The current law on the prosecutor’s office of Ukraine (as well as draft laws) retains the features which were objected to by the Venice Commission in its earlier opinions. The prosecutor’s office would remain a very powerful and excessively centralised institution whose functions considerably exceed the scope of functions performed by a prosecutor in a democratic country. The current situation does not bring Ukraine any closer to complying with the commitment to the Council of Europe. For example, the function of so-called “general supervision” over the law observance, which was the cornerstone in criticism of the Council of Europe, still remains the same as it used to be in Soviet era.

Meanwhile, the three Baltic States – Estonia, Latvia and Lithuania have entered the European Union. The structure and functioning of prosecutor’s offices in these countries has been changed since they obtained sovereignty. Being a former part of the

collapsed Soviet Union, the Baltic States managed to reform their prosecution service according to democratic standards. Indeed, the public prosecutor's offices in these countries have not provoked any serious objections from EU's agencies. As a result, Estonia, Latvia and Lithuania are member states of European Union since 2004. Particularly that happened because the public prosecutor's offices in these countries meet democratic European standards, though the researchers put forth different additional explanations, including historical legacies, starting political and economic conditions, types of democratic breakthroughs as well as the impact of international actors in support of democratic consolidation (Bunce 2003; Ekiert and Hanson 2003). It is also important that some researchers recognize accession of the Baltic States into the European Union as a potential problem concerning that the application and enforcement of EU rules after accession will be problematic (Sedelmeier 2006). Nevertheless, it is commonly asserted that the new members, including the Baltic States, are better politically and economically developed than the other countries of the former Soviet bloc (Ekiert 2006).

Therefore, the main question for the research is:

*What are the possibilities for reforms of Ukrainian public prosecutor's office according to the principle of the Rule of Law?*

Division of power into separate branches is aimed to prevent the abuse of power with the help of the mechanism of checks and balances. If executive, legislative and judicial powers are in one hand, then it will be likely that there will be an abuse of these powers. When these powers are being separated, then they can perform a function of mutual control and prevent abusing. In Ukraine, these powers are proclaimed to be separate but in fact it can be supposed that they are dependent and controlled with the help of illegal mechanisms, such as corruption and bribery<sup>1</sup>.

According to Article 3 of the Statute of the Council of Europe, "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council..." Assessing the public prosecutor's office of Ukraine, the Council of Europe concluded that the role and functions of the Prosecutor's Office should be changed, especially with regard to the "exercise of a general control of legality", since such function of the Ukrainian prosecution contradicts the principle of the rule of law. Besides, the excessive power of the prosecutor's office was questioned. Indeed, both in theory and practice, the Prosecutor General of Ukraine and his/her office wield considerable

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<sup>1</sup>According to the Corruption Perceptions Index 2009, published by Transparency International, Ukraine's rank of perception of corruption is 146<sup>th</sup>.

power. For instance, only the Prosecutor General and the Chairman of the Supreme Court of Ukraine may file requests to the Verkhovna Rada to withhold the immunity of deputies from detainment or arrest. Therefore, beginning from the accession of Ukraine to the Council of Europe, Ukraine should have begun law-making process in order to introduce new legislation which will put more limits on power of the public prosecutor's office and implement functioning of the prosecutor's service according to the principle of the rule of Law.

In the present political conditions, the current status of the Ukrainian public prosecutor's office can impose threat on democracy. Being formally independent, the prosecution might have become the fourth column in the architecture of power separation, besides the legislative, executive and judicial branches. The Prosecutor General of Ukraine, as a presidential appointee, may underlie an influence from the President and his political party. It is commonly recognized that the current Prosecutor General of Ukraine Oleksandr Medvedko is a protégé of the current President of Ukraine Viktor Yanukovich and his Party of Regions, the major political party of the Verkhovna Rada of Ukraine. Nowadays, among all the public authorities in Ukraine, only the public prosecutor's office enjoys full scope of discretionary power in form of aforesaid "general supervision".

Therefore, the first sub-question is:

*What flaws in Ukrainian legislation hinder the public prosecutor's office of Ukraine from functioning according to democratic standards?*

Any possibility to evade the law presents hazard to the rule of law. The subject of analysis of this sub-question will be a comparison of Ukrainian legislative provisions dealing with the role and status of the public prosecutor office and relevant provisions from legislature of the Baltic countries considered to have developed democratic legal mechanisms of regulation of the public prosecutor's office. The comparison with Estonia, Latvia and Lithuania is important as these countries have the similar historical conditions, as well as the similar system of administration of justice. That that happened in the mentioned states during the last decade is a vivid demonstration how relatively slight institutional reorganizations can lead to considerable public policy changes. Indeed, until recently Estonia, Latvia and Lithuania have been managed to provide a process of reform of their public policy according to recommendations of the Council of Europe, while Ukraine, contrary to all obligations taken before the Council of Europe, has systematically and persistently been raising the Soviet type "prokuratura" from the dead. Such actions should have logical explanation. The institutional reform of the public prosecutor's office in Ukraine has not taken place in a political vacuum. It is a part of system transformation of a state machine. Apparently,

in a situation where the public prosecutor's office, being *de jure* independent, *de facto* has been under control of the executive power, the officials in power could take advantage from the formal independence of the Prosecutor General. Such powerful position might be used in order to get even with political opponents. For example, the former Prime Minister of Ukraine and presidential candidate on the elections of 2010 has always criticized the public prosecutor's office and its head as undemocratic, non-transparent and unaccountable. Once she said to mass media: "The PGO is today like a limited liability company, controlled by the Party of Regions leaders who have agreed with the president on who should be in charge."<sup>1</sup> It is noteworthy, that in June 2010, shortly after Viktor Yanukovich was inaugurated as the President of Ukraine, Yulia Tymoshenko was summoned up to the Main Investigating Department of the Prosecutor General's Office in order to receive a resolution on instituting a criminal case. According to the UNIAN information service, Yulia Tymoshenko noted in a comment to journalists that she does not know what case is in the point. According to the words of the BYUT leader, there is only a number of the case №4912-93 in summons. At the same time Yulia Tymoshenko noted that she has an information that President of Ukraine Victor Yanukovich gave instructions to institute proceedings, in this way he is about to settle a score with her<sup>2</sup>.

At present, neither a confirmation nor a disclaimer of the aforesaid information has been published. Nevertheless, such information makes one think about the reasons of the certain prosecutor's powers. For example, Article 20 of the Law of Ukraine on the Public Prosecutor's office gives the prosecutor the power to summon officials and citizens, make them give oral or written explanations concerning violations of the law. The prosecutor can interrogate any person on his or her own initiative without connection to any legal procedure. Moreover, a prosecutor is not obliged by the Law to explain to the summoned persons the reasons why such person was called to the public prosecutor's office.

Thus, some kinds of political conditions and legislative provisions which are not justified by the principle of the rule of law may cause violation of the constitutional mechanism of checks and balances which sets specific limits for political powers. Therefore, the next sub-question is:

*What position does the public prosecutor's office of Ukraine have in the State structure?*

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<sup>1</sup> [Tymoshenko promises new top cop, if elected](#), [Kyiv Post](#) (December 7, 2009).

<sup>2</sup> Tymoshenko came to Prosecutor General's Office [12.05.2010], <http://www.unian.net/eng/news/news-376447.html>



The approach to this sub-question is in a way of considering changes which were made according to the constitutional reform in provisions dealing with the mechanism of checks and balances. The main aim of the constitutional reform of 2004 was to change balance of powers between the President, the Cabinet and the Parliament. Nonetheless, these changes have touched directly the public prosecutor's office. The amendments to the Constitution of Ukraine have been taken specifically to the Chapter VII "Public Prosecution", *videlicet* the Article 121 was amended by subsection 5: "supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers".

In turn, the constitutional changes caused amends to the Law of Ukraine on the Public Prosecutor's Office. The amendments to functions of the public prosecution resulted in the reiterated objections from the Venice Commission. My aim is to analyze those changes for their subsequent effect on the public prosecutor's office in respect of its power relations with other public authorities. For analysis of this question it is also worthwhile to consider the provisions of Ukrainian legislation regarding the public prosecutor's office and its role in the mechanism of checks and balances and the similar provisions from the legislature of the Baltic countries which are referred to the countries with democratic constitution building since the collapse of the Soviet Union. Therefore, the next sub-question for the research is:

*Which democratic legislative provisions of Baltic countries could be useful for reform of Ukrainian public prosecutor's office?*

The prosecution service of Ukraine constitutes a unified system that is headed by the Prosecutor General of Ukraine.

The calling of the Public Prosecutor's Office of Ukraine is to facilitate the rule of law consolidation, favour the observance of citizens' rights and freedoms, securing of the constitutional system, sovereignty, strengthening of law and order by the prosecution in court on behalf of the State, supervision under the law observance, representation of the interests of citizen or of the State in court.

Having declared independence, Ukraine was the first among the former USSR republics which passed the Law of Ukraine on the Public prosecutor's Office. The law was put in force in December the 1<sup>st</sup>, 1991. This day is celebrated as the Professional Day of the workers the of public prosecution service.

At the time of accession into the Council of Europe, Ukraine undertook an obligation to change the role and functions of the public prosecutor's office by means of its transformation into an agency which would meet the principles of the Council of Europe (Vilchyk, 1999; p. 3).

According to the Constitution of Ukraine, activity of the public prosecutor's office is based, on the one hand, on the Chapter VII Constitution of Ukraine, and on the other hand – on the Transition Regulations of the Constitution. The Chapter VII Constitution of Ukraine contains the functions of the Public Prosecutor's Office of Ukraine, which are described above. Meanwhile, according to the Paragraph 9 Transition Regulations of the Constitution of Ukraine, the public prosecution shall, in accordance with effective laws, continue to perform the function of overseeing the observance and implementation of laws and the function of preliminary investigation, *until putting into force of laws regulating the activity of state bodies regarding control over the observance of laws, until the formation of a system of pre-trial investigation, and putting into force of laws regulating its functioning*. Those conditions have raised the critical remarks of the Council of Europe and therefore were specified as provisional. Nevertheless, they are still in force.

These antagonisms provoke the continuing discussions about non-conformity of the present model of Ukrainian public prosecutor's office to the international norms and standards relating to the role of the public prosecutor's office in the democratic society. First of all, the critical remarks are concerned about the securing of rights and freedoms of individuals and citizens, the implementation of international norms into Ukrainian laws, and the carrying out of proper changes into the functional content of prosecutor's activity outside the criminal justice field.

Taking mentioned into account, it is necessary to reform the system of public prosecution, its competences and principles of relations with judicial and other branches of state power. Such reformation faces the complex issues, in particular, the passing of new laws, the adoption of laws in new wording, including the Law of Ukraine on the Public Prosecutor's Office, in order to secure the activities of the public prosecutor's office according to the Constitution of Ukraine and the standards of the Council of Europe.

The actuality of the research topic has grown louder due to that that the public prosecutor's office of Ukraine should have been reformed according to the standards of the Council of Europe and the new realities in social and legal fields, and also should have been actively contributed into positive transformations of the Ukrainian society, strengthening lawfulness and enforcing the rule of law. Such circumstances set forth the demands of improvement of the laws and practical prosecutors' activities on the base of theoretical research in this field.

Meanwhile, it is necessary to take into account that in Ukraine the public prosecutor's office has always played an important role in the system of law-enforcement bodies aimed to protect rights and freedoms of the citizens and State, combat crimes and other infringements of the law. Therefore, the research object is the social relations regulated by the propositions of law which were occurred and implemented in the system of public authorities. The research purpose is the elaboration of proposals for

transformation of the Public Prosecutor's Office of Ukraine according to the principle of the rule of law through determination of the place and role of the public prosecutor's office of Ukraine in the system of public authorities using the comparative analysis of Ukrainian and Baltic public prosecutor's offices. Such analysis may be a basis for formulation of propositions concerning the improvement of relationship between the public prosecutor's office and other public authorities (in particular, executive) according to the democratic principles and standards.

For the realization of purpose the next goals are formulated:

to conduct the analysis of theoretical design concerning the relation of the public prosecutor's office with other public authorities, comparing it to the Baltic experience, and on this base to formulate the proper approaches to the issue of reformation of the public prosecutor's office;

to examine the components of Ukrainian public authorities in order to find out the place of the public prosecutor's office in the system of public authorities; compare it to the organizational and functional content of activities of the public prosecutor's offices in the Baltic States;

to detect the role of the public prosecutor's office of Ukraine in the system of public authorities using the comparative analysis of the functional characteristics of the public prosecutor's office according to Ukrainian and Baltic constitutions and laws;

to investigate the forms and methods of cooperation between the public prosecutor's office and legislative, executive and judicial authorities in Ukraine and Baltic States;

to conduct the comparative analysis of Baltic experience of functioning of the public prosecutor's office in the system of public power under the assumption of possibility to implement some aspects in Ukraine;

to formulate on the base of the comparative analysis the recommendations on improvement of the place and role of the public prosecutor's office of Ukraine in the State structure.

*The theoretical and practical meaning of the master thesis.* On the ground of present research a number of theoretical and practical statements and recommendations may be drawn up; the concrete proposals concerning the improvement of role and place of the public prosecutor's office in the structure of State may be formulated. The statements, conclusions and proposals of the master thesis may be embedded: 1) at the scientific process – during a teaching of study courses; 2) at the scientific research – during further scientific elaboration of this problem; 3) during the law-making process – towards the improvement of laws of Ukraine concerning the status definition of the public prosecutor's office of Ukraine.

In order to arrange the arguments and findings in substantial and coherent way, the paper is structured as follows. The chapter II outlines the theoretical framework of investigation and sets up the hypotheses for assessment. The chapter III elaborates the research strategy, develops the methodology of current study and discusses the research

design. The chapter IV expounds an appropriate description of the four studied countries, conducts the comparative analysis and interprets its findings. The Chapter V concludes this report.

## **CHAPTER II**

### **METHODOLOGY:**

#### **RESEARCH METHOD, RESEARCH DESIGN AND MEASUREMENT**

*This chapter represents the research strategy and methodology. It explains the research strategy and methodology of the present study in order to connect the research questions to methods and to discover what tools and procedures will be used in answering these questions. The chapter explains the chosen methodology of data analysis through amalgam of such methods as the legislation analysis and the accessory informational data analysis. The chapter also examines the advantageous and disadvantageous points of represented methodology. The chapter presents the way to answer the main research question, describing what kinds of information is necessary to collect for the analytical part of research, and which consecutive steps are needed to be done in order to answer the main research question.*

#### **2.1. Research method.**

*The present section elaborates the strategy and method of research, explains the approaches to investigation and choice of the research method.*

The compliance with European standards stipulates the democratic transformations of social institutions, simultaneously strengthening democratic conditionality for the State at whole. In terms of the present research, compliance of certain aspects of the administration of justice to the European standards in former Soviet Union countries has comprehensive salutary effect for the political transformation of post-totalitarian regimes from autocracy to democracy.

The issue of present research does not limit the enumeration of questions which arise in connection to the role of public prosecutor's office and its place in the State structure. Beside the mentioned ones, the research problem can raise other questions as well (for example, what measures should have been taken to ensure that the public prosecutors may perform their duties without unjustified interference and exposure to civil, penal or other liability? What measures should have been taken to ensure that the public prosecutors do not interfere with the competence of legislative and executive powers? Is the public prosecutor's office of Ukraine a part of the government or a subordinate to the government?). Therefore, the present research provides the answers which consequently lead to a number of other important questions which need to be answered. Thus, the data analysis is a systematic search for the meaning that means organizing and interrogating data in a way that allows the researchers to see patterns, identify themes, discover relationships, develop explanations, make interpretations, mount cirques, or generate theories (Hutch 2002).

Besides the comparative analysis, other common and specific scientific methods are used in the process of writing. Among the common scientific methods: the dialectical method that allowed to base the cause-effect relations; the terminological analysis, due to which the terms and their meanings were studied and the content and scope of definitions was specified; the system method let me to research the gist of status of the public prosecutor's office. Among the specific scientific methods: the method of critical analysis, which allowed completing the summing up of scientific design and formulating the conclusions and proposals; the methods of generalization, deduction and induction and so forth.

The conclusions and proposals are also based on the study of laws, departmental statutory acts and practical tendencies of organizational and administrative activity of the public prosecutor's office. During the writing of the master thesis the author had also examined the documents of the public prosecutor's office of Ukraine and the Baltic states (statutes, regulations, instructions, plans, targets, informational letters etc); the orders of the Prosecutor General of Ukraine concerning the organization and activity of the public prosecutor's offices; the statistical data about the different directions of prosecutors' activity; the laws which define the status of the public prosecutor's offices in the Baltic states. Some statements of the thesis are based on the author's personal work experience at the public prosecutor's office.

As stated earlier, the thesis hypotheses act on the premises that: 1) the Public Prosecutor's Office of Ukraine is a state institution that has no direct analogues in the countries of Western Europe and North America because it is endowed with more tasks than the similar institutions in other countries; 2) the Public Prosecutor's Office of Ukraine is an independent public authority that is not a subject to any branch of power.

In general, the present research is an investigation targeted at the clarification of context which presupposes a successful compliance of role of the public prosecutor's office with the democratic European standards. In terms of the current research such context has been examined in order to answer the main questions of possibilities for the democratic transformation of the public prosecutor's office. The theoretical hypotheses on the place of the public prosecutor's office in the State structure play the role of tools facilitating the attainment of ultimate goal. The present analysis involves "working with data, organizing them, breaking them into manageable units, synthesizing them, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others" (Bogdan & Biklen, 1992: 157). In other words, the current investigation represents the investigation of conditions facilitating the transformation of studied institution according to the democratic European standards within the theoretical framework of the concept of the rule of law.

Thus, the most appropriate method for the present study is the method of comparative analysis. Such method is the most suitable since it facilitates the complex study and simultaneously simplifies the research (Ragin, 1987). In favor of this method says the

fact that it has been often used in comparative political studies as combination of causal conditions linked to a particular outcome (Brown and Boswell 1995; Janoski & Hicks 1994, Ragin 1994).

Hence, the research is directed to verification of outcome resulted from the comparative analysis. In order to ensure the clear and valid description of investigation, the next chapter gives the characteristics of each studied country separately. These characteristics show the peculiarities of regulation of the role of public prosecutor's office in the chosen countries as the conditions of compliance (or inconsistency) with the European democratic standards. Therefore, the comparison of different conditions is directed at the revealing of characteristics of compliance which stipulate the conditionality of democratic transformations of the studied countries. Finally, such algorithm is a design for elaboration of the answer to the main research question.

Thus, the present research, utilizing mainly the data from official sources, to a certain extent employs both *qualitative and quantitative data*. The research analyses data on the assumption that the research goal is to optimize the procedure of data collection in order to reduce the research errors within available time. For this purpose the chosen method of data collection is the optimal solution. In this regard, the optimal data collection method is a combination of two or more methods of data collection that, hopefully, to some extent addresses the problem of data reliability (Leeuw 2005).

## **2.2. The research design, measurement of standards, and data collection.**

*The present subsection presents the research design, explains the choice of countries for analysis, outlines the standards for research, and describes some details and specifics inherent in the data collection. Then, it explains the criteria of data selection, why it is collected, how it should be ordered, and how the research is going to be conducted.*

The public prosecution systems in the European States are really different and consequently it would be very difficult to harmonize these structures. However, notwithstanding the variety of the public prosecution models in Europe, it is clear that the States are facing very similar difficulties and are looking for the new and improved ways to modernize their systems. Virtually all the States face the similar problems concerning the prosecution systems, even if the extent of these problems may differ.

It is necessary to emphasize that despite a relatively large number of researches in the field of advancement of the democratic norms in Eastern Europe (e.g. Kubicek 2000, 2003; Kelley 2004; Linden 2002; Pridham 2001, 2002, 2005), the system theoretical comparative studies of transitions of the post-Soviet “prokuratura” into democratic public prosecutor’s office still do not exist.

Nevertheless, the current research does not necessarily seek uniform solutions but rather solutions which work and which are based on the common standards which take account of the different traditions, cultures and legal systems of the studied States.

In order to surmount the restrictions of such investigations, the present research is limited to studied issues within the four chosen countries – Estonia, Latvia, Lithuania and Ukraine. The numbers of chosen States are not accidental or arbitrary. Such choice is made as a result of selection of the countries with similar historical background: all them used to be a part of the Soviet Union. The crucial factor here is the fact that Baltic countries at present are member states of the European Union, i.e. they succeeded to comply with the European democratic standards. From the other hand, Ukraine together with the Baltic States is the member state of the Council of Europe. Thus, the membership in the Council of Europe commits every member state to comply with the principles of pluralistic democracy, the Rule of Law and the enjoyment by all persons within their jurisdiction of human rights and fundamental freedoms.

The present study raises a number of important questions to be answered. To remind, they are as follows. What are the possibilities for reform of the Ukrainian public prosecutor’s office according to the principle of the Rule of Law? What flaws in Ukrainian legislation hinder the public prosecutor’s office of Ukraine from functioning according to democratic standards? What position does the public prosecutor’s office of Ukraine have in the State structure? Which democratic legislative provisions of the Baltic countries could be useful for reform of the Ukrainian public prosecutor’s office?



The data collection is an important part of the research. The collected data directly presupposes the consequent analysis and affects its results, addressing the questions identified for the research. The review of sources is a method for the data collection in the present research. The document review is a method of collection of descriptive information which provides a starting point for understanding of impact caused by the law provisions in the field of prosecutions service on the actual functioning of the rule of law.

In order to conduct the research properly, the necessary documents are collected for the purpose of the method of document review.

Sources of information on the prosecution service of Estonia:

- Code of Criminal Procedure of Estonia;
- Constitution of Estonia;
- Courts Act of Estonia;
- Criminal Code of Estonia;
- Penal Code of Estonia;
- Police Act of Estonia;
- Prosecutor's Office Act of Estonia.

Sources of information on the prosecution service of Latvia:

Code of Ethics for Public Prosecutors of Latvia;

- Constitution of the Republic of Latvia;
- Criminal Law of Latvia;
- Office of Prosecutor Law of Latvia.

Sources of information on the prosecution service of Lithuania:

- Code of Criminal Procedure of Lithuania;
- Constitution of the Republic of Lithuania;
- Law on the Prosecutor's Office of Lithuania.

Sources of information on the prosecution service of Lithuania:

- Constitution of Ukraine;
- Criminal Procedure Code of Ukraine;
- Law of Ukraine on the Public Prosecutor's Office.

The design of research includes verification of compliance of the role and function of the public prosecutor's offices in target countries with:

- Standard regulatory acts, e.g. treaties<sup>1</sup> (such as the European Convention on Human Rights regarding issues which may concern public prosecutors), recommendations to governments (such as Recommendation Rec(2000)19 the Committee of Ministers of the Council of Europe<sup>2</sup> on the Role of the Public Prosecution in the Criminal Justice System (hereinafter referred to as "the

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<sup>1</sup> For detailed information about the treaties of the Council of Europe see: <http://conventions.coe.int>

<sup>2</sup> For detailed information about the Committee of Ministers of the Council of Europe see <http://cm.coe.int>

Recommendation Rec(2000)19”), opinions (such as Opinion No 3(2008) of the Consultative Council of European Prosecutors on the Role of Prosecution Services outside the Criminal Law Field (hereinafter referred to as the Opinion No 3(2008)). It is worth mentioning that the European Convention on Human Rights<sup>1</sup> does not specify public prosecutors peculiarly. Nevertheless, it does include certain specific norms which may involve public prosecutors. Such norms include the activity of the Court of Human Rights directed at prevention or dealing with alleged violations of the provisions of the Convention (e.g. the right to liberty, the right to a fair trial, the right to respect for private and family life).

- Monitoring or checking that States comply with the required standards, for example, by the European Court of Human Rights, the Parliamentary Assembly, the Committee of Ministers and other bodies dealing with corruption and money laundering (such as Parliamentary Assembly Recommendation 1604(2003) on the role of the public prosecutor’s office in a democratic society governed by the rule of law).
- National legislation of the target countries (such as constitutions and laws on the public prosecutor’s office).
- The provision of technical co-operation (such as supporting member States in their efforts to modernize their prosecution systems and thereby comply with the standards of the Council of Europe).

The European Union has not developed the uniform, extensive or definitive legal standards or recommendations for the public prosecution. However, the current member states’ own varied domestic practice provides a basis for developing an objective assessment consistent with the values of the European Union. Therefore, the present research is based on the premise that the different practices of public prosecution of the EU member states, including Estonia, Latvia and Lithuania, are comply with the democratic European standards, unless there are compelling reasons to conclude otherwise.

It is complicated to examine profoundly every aspect concerning the public prosecutor’s office. Therefore, the present research is concentrated on general provisions towards the role of the public prosecutor’s office and its place in the State structure, especially in regard to the power relations of public prosecution with state power (e.g. executive public authorities) and its connections to direction at democratic transformations.

The current research does not assess democratic conditionality of every target country separately. It estimates the extent to which the public prosecution in Ukraine accords with the role of the public prosecutor’s office in a democratic society governed by the rule of law. Such estimation is conducted in comparison to the chosen Baltic countries.

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<sup>1</sup> For detailed information see [www.echr.coe.int](http://www.echr.coe.int)

Due to the aforesaid reasons, the present study is confined to analysis of a limited number of conditions of compliance of the public prosecutor's office to the European democratic standards. For the purpose of the present research, the analysis is concentrated on the next standards (formulated in the Recommendation Rec(2000)19):

- the prevention of unjustified interference and ensuring co-operation between public prosecutors and the executive and legislative powers;
- ensuring a proper relationship between public prosecutors and court judges and, in particular, respecting the independence of judges and providing the court with all relevant information;
- ensuring a proper relationship between public prosecutors and the police and, in particular, checking the lawfulness of police investigations.

So long as the present research is aimed at the analysis of possibilities of transformation of the Ukrainian prosecution, the analysis chapter examines those aspects of activities of the public prosecutor's offices in the target countries which are analogous to the tasks of the public prosecutor's office of Ukraine. To remind, such tasks are as follows (Article 121 Chapter VI Constitution of Ukraine):

- prosecution in court on behalf of the State;
- representation of the interests of a citizen or of the State in court in cases determined by law;
- supervision of the observance of laws by bodies that conduct operative investigation activity, inquiry and pre-trial investigation;
- supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens;
- supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

Besides, the Chapter VII Constitution of Ukraine establishes the provisions concerning responsibility of the Prosecutor General of Ukraine and mentions that "the public prosecution of Ukraine shall constitute a single system.

For the purpose of research, I confine the analysis to the limits of constitutional provisions concerning the prosecution of Ukraine.

In order to facilitate and uniform the analysis, there is a need for the following steps.

First step is to read through the sources of information for each country. The documents for each target country are defined above.

Second step is to compare how provisions from the sources chosen for Ukraine correspond to analogous provisions of the documents chosen for Estonia, Latvia and Lithuania.

Fourth step is to make a conclusion regarding the Ukrainian documents whether they contain provisions embedded for the "private" advantage.

The analytical chapter provides the separate narratives of the public prosecutor's offices in each target country in the following order: Estonia, Latvia, Lithuania and Ukraine. The public prosecution in each country is analyzed through the breakdown of the public prosecution into the concepts of:

- relations between the prosecution service and the police (elaborates the third constitutional task of the public prosecutor's office of Ukraine and the mechanism of the mutual power relations);
- relations of the public prosecutor's office with the executive power (elaborates the fifth constitutional task of the public prosecutor's office of Ukraine and the mechanism of the mutual power relations);
- responsibility of the Prosecutor General (elaborates the constitutional provisions concerning responsibility of the Prosecutor General of Ukraine and the mechanism of the mutual power relations);
- the place of prosecution service within the system of division of power (elaborates the constitutional provisions that the public prosecution of Ukraine shall constitute a single system and the mechanism of the mutual power relations);
- the role of public prosecutor outside the field of criminal justice (elaborates the second, the fifth constitutional task of the public prosecutor's office of Ukraine and the mechanism of the mutual power relations);
- the role of the public prosecutor in court (elaborates the first constitutional task of the public prosecutor's office of Ukraine);
- the role of the public prosecutor in relation to the execution of sanctions (elaborates the fourth constitutional task of the public prosecutor's office of Ukraine).

Arrangement of analysis in the described order provides the research with the answer to the question which flaws in the Ukrainian legislation hinder the public prosecutor's office of Ukraine from functioning according to democratic standards and what position does the public prosecutor's office of Ukraine have in the State structure.

Next to that, the comparative analysis of the gathered data is provided in form of tables. Then, a short conclusion regarding the comparison is provided below each table. Such analysis provides the research with the answer to the question *which flaws in the Ukrainian legislation hinder the public prosecutor's office of Ukraine from functioning according to the democratic standards*.

After that, the next subsection provides the research with the way of implementation of the results of comparative analysis linked to the conditions of compliance or non-compliance of the role and tasks of the public prosecutor's office with the principle of the rule of law. It allows answering the question *which democratic legislative provisions of the Baltic countries could be useful for reform of the Ukrainian public prosecutor's office*.

Ultimately, the conducted analysis provides the research with the general conclusion and answer to the central research question as *what are the possibilities for reform of the Ukrainian public prosecutor's office according to the principle of the rule of law*.

*The aforesaid description of the data collection procedure implies that data is properly collected and ordered for the purpose of the analytical part of the research.*

### **2.3. Strengths, weaknesses and restrictions of the research.**

To begin with, the strong point of comparative analysis is that it can improve the traditional analysis since it can handle a larger number of cases than typically analyzed in qualitative research (Ragin 2000). Besides, the comparative analysis tends to a systematic replicable approach to data analysis giving consideration to the matter of theoretical narratives that may have been overlooked by the shifting-through-the-data approach (Coverdill, Finlay and Martin 1994).

The comparative analysis carries rationale and empiric profundity to the examined narratives (Ragin 1987, 2000). Thus, the comparative analysis shapes certain quantitative methodological approach within the qualitative analysis framework and also adds a share of methodological discipline of quantitative analysis to qualitative analysis and some of the causal complexity and inductive sensitivity of qualitative analysis to quantitative analysis (Coverdill, Finlay and Martin 1994), balancing between generality and complexity (Ragin *et al.* 2003; Ragin and Zaret 1983). Besides, the comparative analysis gives an opportunity for the new ways of thinking by encouraging a researcher to scrutinize the meaning of particular case attributes in a way that is not required by either traditional qualitative or quantitative analysis. (Coverdill, Finlay and Martin 1994). The comparative research measures what it assumes to be a static reality in hopes of developing universal laws. The comparative research is an exploration of what is assumed to be a dynamic reality. It does not claim that what is discovered in the process is universal, and thus, replicable. (Sanghera 2003). Therefore, the comparative analysis provides a researcher with ameliorated level of data analysis and theory improving overall characteristics of a study.

From the other hand, there are certain possibility of weakness and restrictions evolving from the comparative analysis employment. The selection of cases is one of them due to restricted generalizability of findings and increased probability of random error appearance. The restriction of generalizability of the findings derives from the nature of social research, characterized by the problem of limited diversity which imposes the risk that necessary conditions may be overlooked (Ragin 2000: 115).

Besides, it is not easy to carry out a comparative research on the policy implementation conducted by institutions as the Council of Europe and the European Union in the field of public prosecution. The reasons for this are many and varied.

First, proper research is seriously complicated by language problems. Despite that the sources for the research are available in English, these documents are not original since English is not an official language in the chosen countries. Besides, the author faced the problem of terms in the Law of Ukraine on the Public Prosecutor's Office, when it is difficult to uniform the whole range of the prosecutor's tasks in different countries by its integration into common terms and analogous definitions. For example, the word "supervision", used in the thesis, stands for word "нагляд" in Ukrainian. In terms of the

present research, the latter word has no direct translation to English due to different scope of tasks of the prosecution service of Ukraine outside the field of criminal justice. Therefore, the word “нагляд” can also be translated to English also as “surveillance” or “oversight”. The language problem is exacerbated here because there is no official English translation of the Law of Ukraine on the Public Prosecutor’s Office.

Second, in quite a few member states of the Council of Europe solid research is lacking. Despite an important role of the public prosecution into protection of the human rights and strengthening of the rule of law, the scientific interest is more attentive to political and legal problems connecting to the courts. There is no solid empirical research in the field of administration of justice, let alone any empirical research in the field of public prosecution.

Third, it should also be clear that the comparative method is not in every respect a suitable instrument for overcoming potential restrictions of the research. Undoubtedly, the present investigation faces the different restrictions of conducted measurements. If there is no tradition of research on the administration of justice in a country, it is impossible for the research to make up for this deficiency. Moreover, it is difficult to design the uniform problems measurement in order to assess the progress of a certain country on the road to democracy.

Besides, the data collection is limited to gathering information for the most part from the official sources. Thus, the precise formulation of questions is not easy. Moreover, the research easily becomes outdated since the developments concerned are rapid. The public prosecutor’s office nowadays is a dynamic and complex institution, so it is complicated to give outsiders/foreigners an accurate picture of, for instance, how legislation is evolving and institutional changes are being put into effect.

In spite of different pitfalls inherent in any research, there are no stringent algorithms or demands on data processing in a research since analysis is “as much art as science” (Babbie 2007: 384).

Taking into account the aforesaid weaknesses and restrictions, the analysis of present study provides the descriptions of target countries in order to assess the empirical data, value the conditions of democratic transformations by examining what democratic standards are applied. The narratives are followed by the comparative analysis examining the hypotheses with consequent estimation of democratic institutional changes. Finally, the empirical evaluation of conditions of compliance of Ukraine with the European democratic standards will be given in order to provide the answer to the main research question.

*In conclusion, this chapter outlines the steps which are needed to be undertaken in order to complete the analytical part of the research. The chapter describes the way it*

*has to be done and defines which kinds of documents are necessary to answer the central research question and how to analyze the information.*



## **CHAPTER III**

### **THEORETICAL FRAMEWORK**

*This chapter outlines the theoretical framework for the current investigation aimed to examine the possibility for transformation of the public prosecutor's office of Ukraine according to the democratic standards. In order to arrive to the choice of the mechanism of transformation of the public prosecution under the study, the background and specific of the public prosecutor's office of Ukraine is described. In order to develop the sufficient framework for the further analysis, the present chapter substantiates relevance and applicability of the theoretical concept of rule of law for the research. The different interpretations of the rule of law presented in the contemporary academic literature are discussed. Next to that, the hypotheses based on the tendencies of legal regulation of the public prosecutor's office are designed to test the conditions for transformation of the prosecution service. The chapter also explains relevance of the concept of rule of law and how it is used in the present research. This concept gives the views on what the desired conditions for functioning of the rule of law.*

#### **3.1. The background and specific of the public prosecutor's office of Ukraine.**

The term "prosecutor" is derived from the Latin word "procurator". The Procurator in the Ancient Rome was: 1) a logistics manager; 2) an official who was responsible for collecting up the taxes; 3) a fiduciary who carried out a power of attorney at the legal cases and the estate administration; 4) a Governor-general who represented the Roman imperator in a province. None of the mentioned options meant a prosecutor in the present sense.

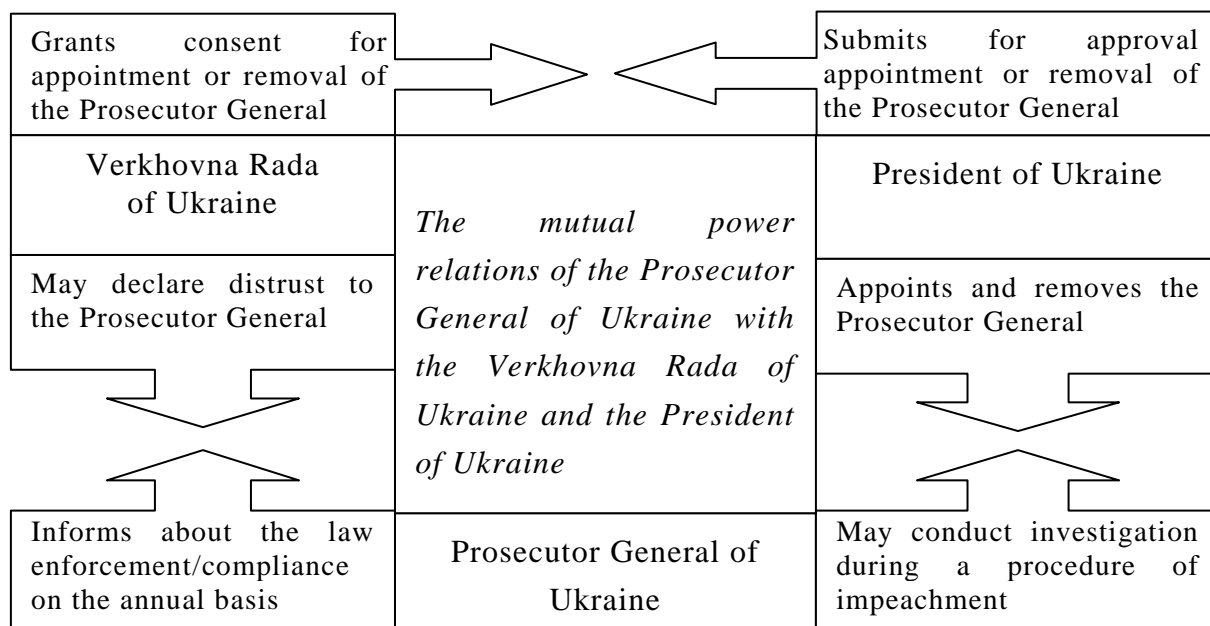
The Article 56 the Law of Ukraine on the Public Prosecutor's Office defines the term Prosecutor as: the Prosecutor General of Ukraine and his assistants, the subordinated prosecutors and their deputies, the senior assistants and assistants to a public prosecutor, the heads of directorates and sections, their deputies, the senior prosecutors and prosecutors of the directorates and sections who act according to their competence.

The role of the public prosecutor's office as a legal institution can be characterized as a constituent part of "distinct legal systems governing specific forms of social conduct within the overall legal system" (Willem & Ruiter, 2001: 71). The public prosecution service has been created in order to deal with some concrete social or political phenomena. In such a way those phenomena become institutionalized. In result of institutional changes, certain powers of the public prosecutor's office of Ukraine were embedded in the Constitution of Ukraine as an element of constitutional reform. In terms of the present research the provisions concerning the public prosecutor's office of

Ukraine caused heated debates around the reasons of such provisions and their potential possibility of shaking in the delicate balance of powers.

The mutual power relations of the Prosecutor General of Ukraine with the Verkhovna Rada of Ukraine and the President of Ukraine look as follows.

**Table 1. The mutual power relations of the Prosecutor General of Ukraine with the Verkhovna Rada of Ukraine and the President of Ukraine**



The main issue here is the question of implementation of the rule of law, which refers to the problem of functioning of the legal mechanisms of control. A government in democracies should be transparent and accountable to civil society. In order to ensure the mechanisms of transparency and accountability of a government, the institutions which apply and supervise the execution of laws must be created. Apparently, such institutions are embedded in the structure of state power divided into legislative, executive and judicial branches. The division of state power is a fundamental principle defining the institutional limits of authorities, stipulated by legislature, and first of all, by a constitution. Therefore, a constitution creates a basic mechanism for the rule of law to function. The theory of the rule of law, as a frame for analysis of the prosecution services, is elaborated in the next subsection.

The constitutional changes related to the functions of the public prosecutor's office have drawn the attention of scientists and practitioners to the question of the role of the public prosecution service in strengthening of the rule of law. Nowadays, this question has neither theoretical nor practical unambiguous resolution. The development of the scientific views concerning this subject matter testifies about the aspiration of scientists and practitioners to bind the public prosecutor's office to any of the three branches of

power. The question of place of the public prosecutor's office of Ukraine into the system of division of power to a considerable extent is determined by the functions of public prosecution.

According to the Article 121 the Constitution of Ukraine, the public prosecution of Ukraine shall constitute a single system that is entrusted with:

- prosecution in court on behalf of the State;
- representation of the interests of a citizen or of the State in court in cases determined by law;
- supervision of the observance of laws by bodies that conduct operative investigation activity, inquiry and pre-trial investigation;
- supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens;
- supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

The Article 121 the Constitution of Ukraine was amended with the paragraph 5 according to the Law No 2222-IV of 8 of December, 2004.

According to Paragraph 9 Chapter XV of Transitional Provisions of Constitution of Ukraine, the public prosecution continues to exercise, in accordance with the laws in force, the function of supervision over the observance and application of laws and the function of preliminary investigation, until the laws regulating the activity of state bodies in regard to the control over the observance of laws are put into force, and until the system of pre-trial investigation is formed and the laws regulating its operation are put into effect.

Having viewed the public prosecutor's offices in Ukraine and the Baltic States in a general and introductory way, one can notice the feature inherent in the Ukrainian public prosecutor's office and absent in the Baltic States – the function of supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers<sup>1</sup>.

The position of the public prosecutor's office in the State structure can be defined as its organizational state in the system of power on the assumption of division of power on legislative, executive and judicial branches. Similarly, the definition of role of the public prosecutor's office can be determined as functional impact of the public prosecutor's office upon other public authorities.

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<sup>1</sup> Public prosecutor's offices in Latvia and Lithuania have also some functions outside the field of criminal justice, but they generally are confined to the court proceedings. This issue has been elaborated further (see Chapter IV of the present research).

In the Russian Empire, with which Ukraine was affiliated, the public prosecutor's office was established under Peter the First in January 1722. Initially, he set up the prosecutors' posts at the Senate and collegiums.

Before establishing the public prosecutor's office in the Russian empire, Peter the First had acquainted himself with organizational and administrative experience of the public prosecutor's offices in different European countries, particularly in France. Nevertheless, when he had defined the functional tasks of the public prosecutor's office, he had done quite the contrary. Instead of the accusatory-type prosecutor's office he had established the supervisory agency known as "monarchic eye" (Zvyagintsev, Orlov, 1994).

The establishment in the Russian Empire of supervisory-type prosecutor's office was connected with a string of reasons. A one reason is that the interests of the central power which acted as a legislator had not always coincided with the interests of authorities and officials which were the objects of laws passed by the central power. Due to these circumstances the laws had often been disobeyed. There was an urgent need for an authority that would have triggered the laws of the central power and would look after their discharge. In Peter's judgment, the public prosecutor's office should have played the role of such authority (Skalenko, 2000).

Touching the question of abolition of the general supervision, an outstanding lawyer A.Kony who for a certain period of time had worked as a prosecutor's companion<sup>1</sup> on the Ukraine's territory – in Sumy and Kharkov – expressed his opinion. Being an opponent of constriction of powers of the public prosecutor's office during the judicial reform in 60s XIX century in Russia, he wrote: "Elimination of connected with it (prosecutor's position) powers and tasks of supervision over the course of non-judicial procedures should have been acknowledged as a big mistake... In rash fulfilment of the fervent desire to clear away sooner an old place for the new plantations, that has overgrown with weeds and half-decayed trees, they cut down the oak that used to stand on the watch of forest" (Kony, 1898).

The Law of Ukraine on the Public Prosecutor's Office of November the 5<sup>th</sup>, 1991, was drafted according to the Declaration of State Sovereignty of Ukraine on the base of new approach to determination of the social role of the public prosecutor's office as a public authority which has a basic task of consolidation of the rule of law in all areas of law-enforcement activity, and protection of human rights (Groshevoy, 1992).

Assessing the Law of Ukraine on the Public Prosecutor's Office of November the 5<sup>th</sup>, 1991, as an essential contribution to the institution of public prosecution, it is necessary to mention that an adoption of the Constitution of Ukraine and the ongoing process of judicial reform have set the task to transform the public prosecutor's office into a state institution which meets the standards and principles of law-governed state.

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<sup>1</sup> Analogue of the present position of assistant to public prosecutor.

### 3.2. The rule of law as a theoretical concept for research.

*The present subsection describes the principle of the rule of law as an appropriate theoretical concept for the research framing. It substantiates relevance and applicability of the theoretical concept of the rule of law to the research. The concept of the rule of law constitutes a theoretical background for understanding of the central problem of research.*

In a generalized form, the rule of law is a principle according to which no one is immune to the law, which is the “necessary relations arising from the nature of things” (Montesquieu, 1794: 1). According to the United Nations Organization, the rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency<sup>1</sup>.”

Among the different interpretations of the concept of the rule of law the present research employs the *functional* approach which is consistent with the traditional English meaning that contrasts the “rule of law” with the “rule of man” (Stephenson, 2008). The functional view of the rule of law is the most relevant one for the present investigation since the master thesis conducts the comparative analysis based mainly on the functional context of public prosecution in relation with other public authorities. According to the functional approach, a society in which government officers have a great deal of discretion has a low degree of “rule of law”, whereas a society in which government officers have little discretion has a high degree of “rule of law” (*Ibid*). From this point, the rule of law sets limits on government by imposing the effective inhibitions upon power and defending the citizens from power’s all-intrusive claims, which makes it “an unqualified human good” (Tamanaha, 2004).

Of course, the theory of rule of law has its own restrictions, as far as the rule of law is somewhat at odds with flexibility, even when flexibility may be preferable (Stephenson, 2008). Besides, in a highly complex society, it is not possible to prevent discretion. The rule of law implies here that the manner of dealing with this discretion is also important. Responsibility as a governmental virtue plays an important role in the rule of law too. Then, institutional culture and political circumstances also have to be

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<sup>1</sup> [Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies” \(2004\)](#)

considered. It makes the proponents of the rule of man claim that the rule of law is not able to react immediately and cannot ensure decision-making beforehand. Other scientists consider the Rule of Law as a meaningless phrase due to ideological abuse and general over-use (Shklar and Stanley, 1998), and that any of the existing views on the subject fail to give meaning to both the word “rule” and the word “law” in that phrase (Sienho Yee, 2004).

Another importance for the rule of law is accountability. In the law-governed state a government is limited by the law and accountable to the citizens, therefore, every person is a subject to the law. In this sense, people should be ruled by law and obey it, and the law should be such that people will be able to be guided by it. Therefore, if the law is to be obeyed, *it must be capable of guiding the behaviour of its subjects (Raz 1977, 15)*.

The basic mechanism for the rule of law is imbedded in a constitution since it stipulates the division of power, gives the rights and freedoms to citizens and puts the limits on government. However, a constitution does not ensure itself that the rule of law will dominate in society. The concrete mechanisms of functioning of the subjects of law are stipulated in the national legislation. In Ukraine, the sole legal source of functioning of the prosecution is the Law of Ukraine on the Public Prosecutor’s Office. According to the rule of law, all laws should be prospective, open and clear. An ambiguous, vague, obscure, or imprecise law is likely to mislead or confuse at least some of those who desire to be guided by it (*Ibid*).

In terms of the present research, there are some impediments to the rule of law in the field of prosecution and its relation with the executive power and president. For example, since the public prosecutor’s office of Ukraine *de jure* is not affiliated with any branch of power and therefore lies outside the mechanism of checks and balances, the current legislation does not provide clear and exhaustive mechanisms of transparency and accountability of the public prosecutor’s office. Subsequently, there is no policy tool for legal control of the public prosecution, which can lead to involvement of the prosecutor in shady deals as an opposite to open and clear power relations. As it seen from the comparative analysis, the public prosecutor’s offices in other countries have different mechanisms of accountability and another scope of powers, which in general do not go beyond the field of criminal justice, being confined to the concrete judicial procedures. Moreover, in view of the aforesaid, the informal and non-transparent character of assignment and liability of the Prosecutor General of Ukraine in relation with the President of Ukraine creates preconditions for the “rule of man” instead of the rule of law.

In support of the above-mentioned situation, the present state of the rule of law in Estonia, Latvia, Lithuania and Ukraine is as follows (according to The Worldwide Governance Indicators project<sup>1</sup>):

**Table 2. The percentile rank of the rule of law**

Country	Year	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)	Standard Error
ESTONIA	2008	84.7	+1.05	0.12
LATVIA	2008	71.3	+0.73	0.13
LITHUANIA	2008	67.5	+0.58	0.12
UKRAINE	2008	31.1	-0.62	0.12

The present theoretical framework was chosen in order to conceptualize the organizational and functional aspects of public prosecution. Thus, the present research views the issue of role of the public prosecutor's office in its relations with other public authorities through breakdown of the rule of law in the dimensions of accountability, transparency and law-obedience. In other words, the rule of law demands that the law must be prospective, well-known, and have characteristics of generality, equality, and certainty (Tamanaha 2002). The present research displays the hazards of incompatibility of the current role of public prosecutor's office with the notion of the rule of law. Particularly, the investigation examines the possibilities of use of the prosecutor's powers in the name of private interests. Therefore, the research employs the doctrine of the rule of law in order to find out an extent to which the law guides the behavior of its subjects.

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<sup>1</sup> The Worldwide Governance Indicators project, <http://info.worldbank.org/governance/wgi/index.asp>

### 3.3. Relevance of the concept of rule of law for the present research

*The present subsection contributes to the research by defining the conditions for testing whether the present Ukrainian situation in the public prosecutor's office meets the standards of the rule of law.*

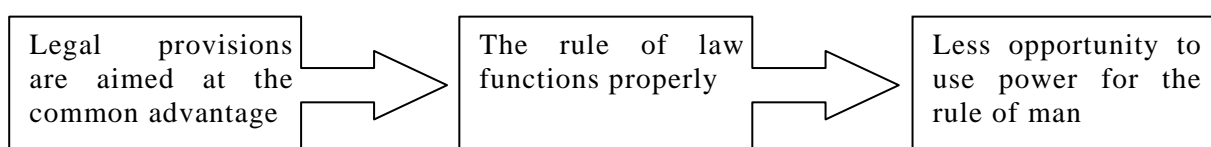
In terms of the present research, the mutual power relations between the public prosecutor's office, president, executive and other authorities are viewed through breakdown of the Rule of Law in dimensions of accountability, transparency, common advantage. According to the concept of the Rule of Law, in order to keep democratic traditions of governance, government should be limited and act only in the name of reason but not private will (the rule of man). Therefore, high range of discretionary power in relations of the public prosecutor's office with other authorities may impose threats on the rule of law.

It is necessary to define which criteria to consider assessing whether the character of power relations may result in infringements of the rule of law or not. For this purpose the research provides the comparison of legislative provisions of Ukrainian and Baltic laws regulating activity of the public prosecutor's office. The comparison is aimed to evaluate which differences between the public prosecution in Ukraine, on the one hand, and Estonia, Latvia and Lithuania, on the other hand, may be considered as those which impact the possibility of functioning of a law in the name of private interests. In other words, which law provisions are supposed to make the whole law better or worse in a varying degree? According to the contrast of the rule of law to the rule of man, the legal provisions which pursue "common advantage" instead of "private advantage" result in the "correct" law. If otherwise, the law becomes "perverted", that gives advantage to a ruler. Therefore, the provisions of law made in the name of private interests (private advantage) cause "perversion" and result in the infringement of the rule of law.

Ultimately, the research examines the character of mutual power relations of the public prosecutor's office of Ukraine with other public authorities through the lens of chosen theoretical concept. The study of possibility of transformation of Ukrainian public prosecution evaluates the law on the matter of provisions made for the benefit of either "private" or "common" advantage.

The legal provisions, amended for the "common advantage", function in compliance with the rule of law, which may look as follows:

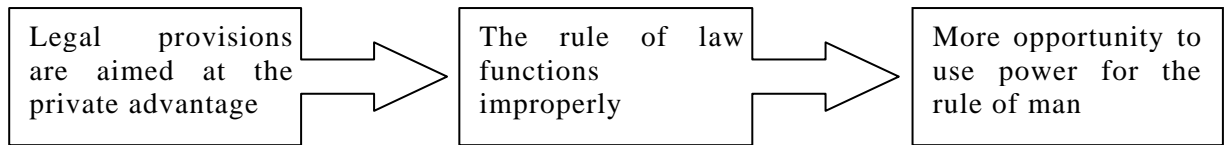
**Table 3. The legal provisions amended for the benefit of the rule of law.**





On the other hand, if the legal provisions amended for the “private advantage”, it endangers the rule of law, which may look as follows:

**Table 4. The legal provisions amended for the benefit of the rule of man.**



Thus, the present subsection explains the practical value of theoretical framework for the research by making clear its role and relevance to the examination the central research question, as well as its significance for the explanation of results obtained in the process of further analysis.

*In conclusion, this chapter puts theoretical ground for understanding of the mutual power relations of the public prosecutor’s office with other public authorities through the mechanism of legal provisions amended in the name of common or private advantage, which respectively represents compliance with the rule of law or the rule of man. Relevance of the chapter lays in possibility to answer the research questions taking into account the theoretical approach by making it clear what to understand under the mutual power relations of the public prosecutor’s office with other public authorities in the view of functioning of the rule of law.*

## CHAPTER IV

### ANALYSIS

*The present chapter finds and elaborates the conditions of compliance or non-compliance of the role of the public prosecutor's office and its position within the State structure of the four target countries of the former Soviet Union (Estonia, Latvia, Lithuania and Ukraine) to the European democratic standards. Initially, the Chapter describes narratives of each country from the point of their prosecution services conditionality by democratic standards, presenting peculiarities of characteristics of functions, tasks and powers of the prosecutors. Next, the chapter presents assessment of different characteristics according to the method of comparative analysis. Consequently, the decision concerning application of analysis has been drawn. Finally, the conducted analysis produces the answer on the central research question.*

#### **4.1. Estonia.**

The status of the prosecution service is regulated by the Prosecution Service Act (hereafter PSA) in 1993. The second version of this law was adopted in 1998 and has been amended many times, the last changes of which came into force on March 1, 2004. The year 2003 and the beginning of the year 2004 were important for the prosecution service both, from the functional and institutional side. On February 12, 2003 Parliament adopted the new Code of Criminal Procedure (hereafter CCP), which came into force on July 1, 2004 and on January 28, 2004 adopted the changes of Prosecution Service Act, which came into force on March 1, 2004. Besides that, the new General Decree of the Prosecution Service (hereafter GDPS) came into force on March 29, 2004.

*The relations between the public prosecutor and the police.*

The CCP, the PSA and the GDPS form the statutory basis of prosecution service and lay out its functions, structure, and management as well as its relationship with other institutions in the criminal justice system. The CCP gives a detailed regulation of the functions of the prosecution service and its role compared to that of the court and the police. The PSA provides general rules on functions, structure and management of prosecution service, regulations concerning the appointment to office, benefits related to office, guarantees of independence, duties of the prosecutor etc. The GDPS enacts in detail the fulfilment of the functions of the prosecution service (division between the Prosecutor General's Office and regional prosecutor's offices), the structure (that of the Prosecutor General's Office, locations of the regional prosecutor's offices) and management (the role of the Prosecutor-General and the leading prosecutors, i.e. heads of regional prosecutor's offices).

Pursuant to Sect. 1 subs. 1 PSA the prosecution service is a government agency within the area of government of the Ministry of Justice. Section 2 subs. 1 Police Act states that the police are an institution of executive power within the area of administration of the Ministry of Internal Affairs. Hence, institutionally the prosecution service and the police fall under different ministers and that affects their functional relationship to a considerable extent. The investigative apparatus is under the control of the Minister of Internal Affairs, to be even more precise under the head of the Police Board. The Police Board is responsible for the development, strategy and management of the police. The Head of the Police Board is accountable for the performance of the police to the Minister of the Interior. Below him in the hierarchy we find police managers and originally also the police officials named heads of the pre-trial investigation. According to Sect. 30 subs. 1 CCP, the prosecution service shall ensure the legality and efficiency of preliminary proceedings. Under legality is meant that the prosecutor is the official who is responsible for securing the fundamental rights and freedoms of individuals in pre-trial proceedings. Therefore, it will look through all complaints made of the actions of the police and will take a stand on the appropriateness of and conformance with statutory rules and procedures. In order to ensure legality and efficiency Sect. 213 subs. 1 CCP grants it the authority to:

- Perform procedural acts when necessary;
- Be present at the performance of procedural acts and intervene in the course thereof;
- Terminate criminal proceedings;
- Demand that the materials of a criminal file and other materials be submitted for examination and verification;
- Issue orders to investigative bodies;
- Annul and amend decrees of investigative bodies;
- Remove an official of an investigative body from a criminal proceeding;
- Alter the investigative jurisdiction over a criminal matter;
- Declare a pre-trial proceeding completed;
- Demand that an official of an investigative body submit oral or written explanations concerning the circumstances relating to a proceeding;
- Assign the head of the probation supervision department with the duty to appoint a probation officer;
- Perform other duties arising from this Code in pre-trial proceedings.

The right to intervene in the course of procedural acts (number 2) enables the prosecutor to take the position of the investigator and to control the procedural acts performed by the investigator.

The concept of the prosecutor as the master of the pre-trial procedure requires that the prosecutor is involved in criminal proceedings from the earliest stage possible. This also means that he or she takes active leadership and gives orders. Therefore, the

situation where the investigator performs procedural acts independently (Sect. 32 subs. 1 CCP) should not be seen as a rule but as an exception. Consequently, the prosecutor service dominates the proceedings.

Besides efficiency, the role of the prosecutor as a pre-trial leader is related to legality, and the supervision of adherence to the latter is the task of the prosecutor (Sect. 30 subs. 1, Sect. 213 subs. 1 CCP).

However, there is no statutory rule imposing a duty on the investigator to consult with the prosecutor before performing procedural acts. The Estonian legislator has not deemed it necessary to regulate the co-operation of the prosecutor and the investigator in criminal proceedings and has left it to the administrative authorities to decide upon.

The issue of how active the prosecutors will be in leading pre-trial procedure depends a great deal on the capacity of the prosecution service too. At the moment it is difficult to predict the future but one thing is clear that the prosecution service will not be able to perform this function in all criminal cases. Hence, a selection between the cases has to be made, in other words, procedural priorities will have to be set.

#### *The Relations between the public prosecutor's office and the executive power.*

The prosecution service is a two-level institution divided into the Prosecutor General's Office and the regional prosecutor's offices, subordinated to it (Sect. 1 subs. 2 PSA).

Hence, the prosecution service has a hierarchical structure. Recently the number of local prosecutor's offices has been reduced from sixteen to four regional prosecutor's offices, the rest will still remain subordinate offices. The four regional offices are located in Tallinn (covering the northern part), Tartu (for the southern part), Jõhvi (for the eastern part) and Pärnu (for the western part of Estonia).

This change was made in order to enable more specialisation among prosecutors and more efficient management. District units are subordinated to regional prosecutor's offices, as they are, in principle, formed according to the jurisdictions of courts of appeal. One of the main changes is that prosecution will be presented both in the 1st and 2nd instance courts by prosecutors of regional prosecutor's office (formerly only public prosecutors of the PGO participated in the hearings of the courts of appeal). This makes it possible that one prosecutor deals with the case from the beginning till the end (with the exception of the representation of the prosecution by a prosecutor of the PGO in the Supreme Court).

The prosecutors of the PGO are the Prosecutor General, leading public prosecutors and public prosecutors (Sect. 4 subs. 2 PSA). The prosecutors of the regional prosecutor's offices are leading prosecutors, senior prosecutors, special prosecutors, prosecutors and assistant prosecutors (Sect. 5 subs. 2 PSA). The head of the prosecution service and the PGO is the Prosecutor-General (Riigipeaprokurör), the head of the section of the PGO is the leading public prosecutor (juhtiv riigiprokurör). The regional prosecutor's offices

are directed by leading prosecutors (juhtivprokurör) and the departments of regional prosecutor's offices are directed by senior prosecutors (vanemprokurör).

Sect. 16 PSA deals with the appointment of public prosecutors. The Prosecutor-General is appointed to office by the Government of the Republic on the proposal of the Minister of Justice after considering the opinion of the Legal Affairs Committee of the Riigikogu. The Minister of Justice appoints leading public prosecutors and leading prosecutors to office on the proposal of the Prosecutor. Senior prosecutors are appointed to office by the Prosecutor-General on the proposal of the leading prosecutor. The Minister of Justice shall appoint public prosecutors to office on the proposal of the prosecutors' competition and evaluation committee. The Prosecutor-General appoints special prosecutors, prosecutors and assistant prosecutors to office on the proposal of the prosecutors' competition and evaluation committee.

#### *Prosecutor's independence and guidelines.*

Section 2 subs. 2 of PSA declares that prosecutors are independent in the performance of their duties and act only pursuant to law and according to their conscience. The same regulation is given in Sect. 30 subs. 2 of CCP.

However, Sect. 10 of PSA grants the Prosecutor General and leading prosecutors the right to substitute for prosecutors with good reason (right of substitution), or impose such obligation on another subordinate prosecutor (right of devolution). A substitution order shall be in writing, shall set out the extent to which one person substitutes another and shall justify the needs for substitution.

The right of substitution has been so far used only once when the Prosecutor General took over the prosecution of the former Minister of Finance from a public prosecutor of the PGO and terminated the case on the basis that there were no grounds for further criminal proceedings. The right of devolution, on the other hand, is used quite frequently, as most of the criminal cases dealt by public prosecutors of the PGO are so to say transferred to them from local prosecutor's offices when they meet the criteria of high public interest.

The Minister of Justice exercises supervisory control over the prosecution service in general. The Prosecutor General exercises supervisory control over the PGO and leading prosecutors over the regional prosecutor's offices. Pursuant to the independence of the prosecutor, the supervisory control has no right to affect his or her independence and influence the decisions made by the prosecutor performing his functions in criminal procedures (Sect. 9 of PSA). This kind of control is like an internal audit that is carried out in order to find out how the prosecution service in total, and its units individually, have performed their functions (e.g. the length of proceedings and reasons for delays).

The Ministry of Justice does not have the right of substitution or devolution and may not intervene in concrete criminal cases. On the other hand, the Ministry of Justice is answerable before the Parliament for the prosecution policy in broad terms and besides

that, there are no obstacles for the members of the Parliament to interrogate the Minister of Justice on concrete criminal cases in principle. Therefore, it may be said that the Minister of Justice has the highest authority. However, neither the PSA nor any other legal act grant him any rights to direct prosecution policy.

Section 3 subs. 1 PSA provides that the Prosecutor-General directs the prosecution service. However, the law does not specify what is meant under 'directing'. In terms of criminal procedure, neither the CCP nor the PSA provides the Prosecutor-General with the right to give general guidelines and instructions. However, this right should come from the hierarchical structure of the prosecution service and the right to direct the prosecution service. Nevertheless, it would be better when such an authority were clearly stated in the law.

German experts analysing Estonian legislation on the prosecution service reached the same conclusion: 'Herein by all means a limitation of Sect. 2 subs. 2 PSA can be seen: general guidelines and instructions can be released in order to guide the work of the prosecution service. Here in any case a legal clarification would be proper. Thereby no impression should emerge that the input requirements are released along with political tides. In that sense it is to be welcomed that this power has been limited to the Chief Public Prosecutor and that the Ministry of Justice can claim the right of initiative for itself only. Due to the independence of the prosecution service the guidelines may only be of a general nature and may not pertain to a single case' (Feltes and Putzke, 2003).

These kinds of general guidelines may also be the result of cooperation between the prosecution service and the Ministry of Justice.

So far, the PGO has given guidelines merely in the form of a recommendation on how to interpret the substantive law or to solve procedural problems. Sometimes these have been elaborated by one public prosecutor only and hence their role in unifying practice can be doubted. E.g. the PGO gave a guideline how to interpret a norm of the special part of the Penal Code regulating the consumption of alcohol by a prisoner outside prison.

#### *Prosecutor's tasks and powers.*

As mentioned above, the prosecution service shall ensure the legality and efficiency of pre-trial proceedings and represent public prosecution in court (Sect. 30 subs. 1 of CCP). Section 211 subs. 2 imposes the duty to ascertain facts, vindicating or accusing the suspect or the accused, on the prosecution service.

The main function of the prosecution service is, of course, to decide whether to prosecute or not. The prosecution service has monopoly over this procedural decision.

In using this monopoly the prosecutor has four options:

- To terminate the case on technical grounds (Sect. 200 CCP).
- To terminate the case for reasons of public interest (Sects. 201-205 CCP).

- To use out of court settlements like speedy procedure (Sects. 233 – 238 CCP), plea bargaining (Sects. 239 –250 CCP) and Strafbefehl (Sects. 251 – 256 CCP). The new CCP contains three types of so-called out of court settlements or simplified procedures with the aim to fasten criminal procedure by reducing the workload of overburdened courts. The goal is that in the future most of the cases will be solved out of court, and only in complex cases or in those having intense public interest, a trial would take place.

The regulation of Strafbefehl has been formed according to the German model. This type of procedure is allowed in offences having a pecuniary punishment as the sanction whilst at the same time the evidence about the offence is explicit.

Speedy procedure is executed only on the basis of the criminal file without summoning the witnesses or experts.

The common feature in all simplified procedures is that the prosecutor is the initiator and the judge has a passive role, deciding whether to agree with the proposed procedure or not.

- To present the prosecution in court (Sect. 226 CCP).

#### *The role of the public prosecutor in court.*

The court procedure has an accusatorial nature, as according to Sect. 14 subs. 1 of CCP the prosecution, the defense counsel and the court have different procedural tasks. Hence, the court is given a passive role, in principle, settling the dispute between the prosecution and the defense counsel.

In court procedure the aim of the prosecutor is to achieve a guilty verdict and he or she has to use all procedural possibilities to reach that goal. If there is sufficient evidence to prosecute the suspect of a certain crime the prosecutor has to present an appropriate charge and has no option to opt for a less severe charge.

Pursuant to Sect. 268 subs. 1 of CCP the court shall as a rule hear a criminal matter with regard to the accused only on the basis the statement of charges (the requirements are provided in Sect. 154 of CCP).

However, in a court hearing, the prosecutor may amend or supplement the charges until the completion of examination by court. If the charges are supplemented or substantially amended, the prosecutor shall prepare a new statement of charges. This document need not be prepared if the prosecutor amends the charges, resulting in mitigation of the situation of the accused (Sect. 268 subs. 2 of CCP).

Besides that, the prosecutor may amend legal assessment of a crime during the dispute on the basis of the same facts relating to the criminal offence, if this mitigates the situation of the accused (Sect. 268 subs. 3 of CCP). The same right is given to the court while making a judgment on the same clause (Sect. 268 subs. 4 of CCP). This is an exception as in general the court may not change or modify the charge.

The role of the prosecutor in the court is so to bring the charge and to request the court to sentence the accused for the crimes he or she has committed according to the prosecution, and also to request the sentence to be imposed. The court is not bound by that request. Although the role of the prosecutor and the court in imposing the sentence is not provided clearly in CCP, it stems from the general role of the prosecutor and the judge in criminal procedure.

*The role of the public prosecutor in relation to the execution of sanctions.*

According to CCP and CC the prosecution service has no role whatsoever in the execution of sanctions. Even with regard to the deprivation of liberty of prisoners, the CCP does not impose the duty to supervise on the prosecution service.



## 4.2. Latvia.

Latvia's public prosecutor's office belongs to the judiciary authority. Latvia's public prosecutors enjoy legally guaranteed independence equal to that of judges. Public prosecutors have authority to carry out and supervise investigations, prosecute suspected individuals and present criminal cases before the court. The *Saeima* approves the Public Prosecutor General for a five years term on the proposal of the President of the Supreme Court. The Public Prosecutor General appoints and dismisses other public prosecutors. The Public Prosecutor can be dismissed against his or her will in following cases: (1) he or she does not meet the requirements of the Civil service law; 2) he or she is a member of a political party; (3) he or she has failed to follow the restrictions of the corruption prevention law; (4) while carrying out official duties, he or she has committed an intentional violation of the law or negligence resulting in substantial negative consequences; (5) he or she has committed a shameful act that is not compatible with the office.

Public prosecutors and experts have debated about the extent to which public prosecutors should exert their own initiative in detecting and investigating crimes before particular individuals are actually prosecuted. The Public Prosecutor General's office has repeatedly carried out investigations where high level officials (members of parliament, ministers, etc.) have been suspected of illegal activity. Almost none of such investigations have resulted in real prosecutions. There appears to be no clear criteria when independent public prosecutors carry out investigations and when the police carries out this function being as a part of the executive.

Even though public prosecutors enjoy formal independence, they have admitted to political pressures with regard to investigations of possible illegalities by high-level public officials or otherwise politically influential individuals. An open conflict between the Public Prosecutor General Janis Skrastinš and a number of members of parliament ignited during the second half of 1999. Public Prosecutors investigated a complicated case about an illegal network for the sexual exploitation of underage persons. The *Saeima* member Janis Adamsons (social democrat) and some other members of parliament claimed that several ruling politicians are involved in the illegal network. They accused Skrastinš of ineffective investigation and initiated a formal procedure for his removal. This procedure failed because the Supreme Court judge designated to evaluate Skarstinš' performance did not find any grounds for his removal. However, Skrastinš resigned soon after allegedly due to the threats of amending the law so as to ease the removal of the Public Prosecutor General.

Latvia's judiciary faces many of the problems that are typical to most new democracies of Central and Eastern Europe. Though according to the law Latvia's judiciary is independent, both limited resources and insufficient political engagement have

hampered the development of a judiciary system that fully meets the requirements of a modern democratic state.

As noted by the European Commission in the report on Latvia's progress (2000), improvement of the functioning of the judicial system in Latvia has been forthcoming, albeit rather slowly. The difficulties include low salaries for judges and other court personnel, poor court infrastructure, extensive delays in court proceedings, extremely varying professional qualification among judges, and some, although not necessarily widespread, corruption.

The Open Society Institute has noted that Latvia has insufficient separation of powers: "Important elements of the separation of powers are poorly defined in the constitutional structure, or are based only on ordinary legislation." Moreover the report of the Open Society Institute states that the executive - in particular the Ministry of justice - has retained extensive authority over judicial administration, finances and career paths, exercising broad discretionary powers with numerous opportunities for improper influence on judges' decision-making.

#### *The relations between the public prosecutor and the police.*

Pre-trial investigation takes place at a police station in the context of an investigation inquiry from the moment a crime is reported until sufficient evidence has been gathered to take a decision on prosecution. After enough evidence has been collected for a particular person to be prosecuted, a case is then forwarded to the prosecutor's office. Therefore, pre-trial investigation can be divided into two main stages, the investigation inquiry by police and the criminal prosecution by the prosecutor.

Investigation inquiry powers have been granted by state law to several institutions and officials, for instance to: state police, sea captains, finance police of the State Revenue Service and the Organised Crime and Anti-corruption Office.

Investigation competences in criminal cases in the inquiry phase are determined by law, as well as by the internal organisation of the office. The pre-trial investigation at the police station or at any other office where investigation takes place is supervised by the prosecutor's office. In order to ensure supervision of all offices of pre-trial investigation and guarantee its effectiveness, the Prosecutor General has issued an order 'about supervision of public prosecutors in the processing and pre-trial investigation stage of criminal cases'. This order contains instructions about the division of supervision competences among prosecutor's offices. Police should always immediately report a case processed to the prosecutor's office. Of each case processed the police should also submit a statistic card to the prosecutor's office.

While supervising the pre-trial investigation, the public prosecutor has the right to:

- ensure legality of the cases, by examining the notifications of cases processed;
- inspect the file and to give written and oral instructions to the officers carrying out investigation. These instructions can be either about the general direction of

the investigation or about specific acts which need to be taken in the context of the investigation. When the police do not agree, these instructions or decisions can be appealed against with a superior public prosecutor;

- return the criminal case for additional investigation to the police, if there are not yet sufficient grounds for criminal prosecution;
- annul illegal decisions taken during the police inquiry;
- take part in any act of the investigation, as well as to undertake action personally;
- get acquainted with the results of criminal investigation activities and to ensure that these activities were performed in accordance with the law;
- remove any case from a police inquiry office, and to take over the investigation, or to transmit the investigation to another police inquiry office. In practice, the latter only takes place when an objective and independent investigation cannot be guaranteed by the original inquiry office;
- assess complaints about police action in a particular criminal case; and
- assess refusals to start an inquiry by police.

When the law has not been observed in the pre-trial investigation, the public prosecutor has the right to notify the head of the police inquiry office. The public prosecutor can ask the head of the inquiry to decide on a proper punishment for the officer who has failed to observe the law, or to assign him to other activities, with the goal of preventing further offences of similar nature in the future.

Criminal prosecution is an exclusive power of the public prosecutor. It is initiated at the moment he decides that a person should be regarded criminally liable. After commencing criminal prosecution, the public prosecutor continues to administrate and organise pre-trial investigation. The public prosecutor can perform necessary investigation by obtaining evidence, verifying circumstances of a criminal case, as well as by assigning the carrying out of investigation acts to the inquiry office. However, only the public prosecutor is entitled to perform investigation acts which involve the accused, such as the interrogation of the accused, or the confrontation with witnesses. The public prosecutor eventually forwards criminal cases to the court.

One of the goals of the criminal procedure is to provide just punishment for every person who has committed a criminal offence. The law sets no prosecution priorities, and the public prosecutor does not have a right to choose which offences will be prosecuted and which ones will not. The prosecutor's office cannot set priorities either. In practice, the public prosecutor and the leader of the police inquiry give information to the mass media personally or through a specialised press officer of the prosecutor's office. However, information can only be presented in such a way that it does not harm further investigation in the case.

The task of the public prosecutor in pre-trial investigation is, amongst others, to give directions to police on investigation acts when such assistance is requested. Besides, the

public prosecutor has the right to give directions at his own initiative. However, an inquiry officer can still choose to carry out other investigation acts.

In short, the public prosecutor will often direct the process of investigation and, if necessary, give advice on the use of various means of investigation.

*The structure and functions of the prosecutor's office and its relations with the executive power.*

The Prosecutor's Office Act determines that the office is an institution of the judiciary. The legal basis for the work of the prosecutor's office can be found in the Constitution, the Prosecutor's Office Act, and other laws and normative acts that regulate the prosecutor's office.

The Prosecutor's Office Act states:

- the tasks, functions, principles of operation of the prosecutor's office;
- the powers of a public prosecutor;
- the structure of the prosecutor's office;
- the methods of appointment and dismissal of a public prosecutor;
- the payment of a public prosecutor, and so forth.

The prosecutor's office is three-layered, with a Prosecutor General at its head. The institutions of the prosecutor's office are organised hierarchically and territorially. The prosecutor's office consists of the Prosecutor General's Office, the regional court prosecutor's offices and district prosecutor's offices, as well as a specialised prosecutor's offices. The district prosecutor's offices have been established according administrative territorial division of the State. The regional prosecutor's offices have been established according to the territory division of the judiciary. Thus, five regional court prosecutor's offices have been established, respectively in Riga, Kurzeme, Latgale, Zemgale and Vidzeme. Every regional court prosecutor's office supervises the operation of the district prosecutor's offices located in its territory. This is slightly complicated as the territorial division of the court regions do not always correspond to the administrative – territorial division.

The Act endows the Prosecutor General with the right to establish specialised prosecution offices. The establishment of these specialised prosecution offices is connected with the specific investigation character of several criminal offences.

*The Prosecutor General*

All prosecutors' offices are administrated and controlled by the Prosecutor General, who determines the internal structure and staff of prosecutor's offices in accordance with the allocated national budgetary funds. The Saeima appoints the Prosecutor General for five years, after a proposal of the chair-person of the Supreme Court.

The Saeima can dismiss the Prosecutor General after an especially authorised judge of the Supreme Court or the chairperson or the Supreme Court has established there is a

case, and the general meeting of the judges of the Supreme Court has agreed. The chairperson of the Supreme Court, or the Saeima by one third of its members, is empowered to initiate an impeachment procedure against the prosecutor-general.

In accordance with the law of prosecutor's office, the Prosecutor General can be dismissed when it has been ascertained that he:

- does not comply with general requirements that apply to a public prosecutor (citizenship, proficiency of the national language and such);
- is member of a party or political organisation;
- has not observed determined restrictions and prohibitions in the law as regards the prevention of a conflict of interests for a state official;
- has deliberately violated the law or been negligent whilst performing official duties as a result of which relevant destructive consequences have developed; or
- has acted dishonourably or in a manner not consistent with what is required in his position.

#### *The functions of the public prosecutor.*

When adjudicating particular cases, the public prosecutor adopts his resolutions:

- independently and individually;
- on grounds of his conviction and the law;
- by observing the equality of persons in front of the law; and
- by observing the presumption of innocence.

The main functions of the public prosecutor have been established by the Prosecutor's Office Act and entail that the public prosecutor:

- supervises operational work at the inquiry offices;
- organises, directs and performs pre-trial investigation, as well as gives directions to inquiry offices;
- maintains a state charge in criminal cases in all courts;
- lodges an appeal in criminal cases of illegal or groundless judgement of court, that have not come into legal force;
- supervises execution of punishment and the places where arrested, detained and guarded persons are being kept, and participates in hearings connected to changes in the punishment term or circumstances determined earlier;
- releases from deprivation of liberty or derogation places the persons who are kept there illegally; and
- has the right to perform examination in specific cases.

As regards the latter, in the field of protection of the rights of persons or the state outside the area of criminal law, the public prosecutor, when receiving an information of violation of the law which has no indications of a criminal offence, has the right to perform an examination if:

- the rights of acting disabled persons, invalids, minors, prisoners or any other similar persons, who have limited possibilities to protect their interests, have been violated;
- the rights of the state or a local authority have been violated;
- the Prosecutor – General or chief prosecutor find it necessary;
- there is evidence about a violation of the law by the president of the State, Saeima or the Cabinet of Ministers.

In addition, the public prosecutor can voice a protest in a civil case or an administrative case in which there has been an illegal or groundless judgment of court. This only if it has not yet come into force and the public prosecutor participates as one of the parties in the case. Entering a protest is a ground for proceedings at the higher authority.

The Prosecutor General has to be politically neutral. The post of Prosecutor General is not consistent with party membership or membership of a political organisation. Qualification ranks are granted to public prosecutors in compliance with judge qualification grades. The qualification rank of the public prosecutor is granted in compliance with the post held, professional knowledge, qualifications and working experience.

#### *The prosecutor's office and Saeima.*

The Prosecutor General can be appointed and dismissed by the Saeima. The main function of Saeima is legislative. It passes laws, among them laws which regulate criminal prosecution, and determines the range of those offences that are considered to be criminal. The adopted laws are leading for officials during all phases of the criminal procedure (inquiry office, the prosecutor's office, and the court). Saeima cannot give direction to the investigation in any particular case.

In the investigation of particularly important matters Saeima can establish a parliamentary investigation committee which will consist of deputies. The judicial basis for the work of the parliamentary investigation committee is regulated by a special law. After the proposal of the parliamentary investigation committee, the Prosecutor General can request the public prosecutor to participate in its meetings. The task of the authorised public prosecutor is then to examine whether the existing information at the disposal of the parliamentary investigation committee does not contain indications of committed or planned criminal offences. The Prosecutor General has a right to inform the committee of the results of the pre-trial investigation in a particular case to the extent to which he believes this is possible without jeopardising the interests of the investigation.

#### *The prosecutor's office and the executive power.*

The prosecutor's office is an independent institution which has not been made subject to the control of any of the institutions of the executive. The prosecutor's office independence from the executive power is ensured through its budget. The budget

proposal of the prosecutor's office is presented by the Prosecutor General to the Ministry of Finance. The Ministry of Finance, which prepares the annual law section of the state budget, submits it for consideration by the Cabinet of Ministers. Without the agreement of the prosecutor's office the budget cannot be altered.

As far as decision making processes on laws and regulations which fall within the competence of the executive are concerned, the Prosecutor General and chief prosecutors of the Prosecutor General's Office have a right to express their opinion on laws and regulations to be discussed in the meetings of the Cabinet of Ministers.

When the Prosecutor General is of the opinion that there is an incompliance of the laws and regulations issued by the Cabinet of Ministers with the Constitution and earlier laws, he has the right to turn to the constitutional court, with an application for invalidating them.

#### *The role of the prosecutor in court.*

The public prosecutor's task in trial is to guarantee a state charge in all criminal cases except private complaints, which are being processed by the judge. Criminal offences that are to be examined after private complaints are for example, deliberate light bodily injuries, defamation, and bringing into disrepute. To produce a charge is the exclusive duty of the public prosecutor. Trial investigation constitutes an examining of the evidence collected during the pre-trial investigation by the court. According to the principle of immediacy as expressed in the CCP, at the court of first instance the circumstances of the case should be investigated directly, this means that victims and witnesses should be interrogated, material evidence should be examined, and protocols and other documents should be read.

In his closing speech the public prosecutor presents his arguments, states his conclusions, and formulates his proposals on how the case should be dealt with by the court.

#### *The role of the prosecutor's office in relation to the execution of sanctions.*

Supervision over execution of sanctions that entail a deprivation of liberty is the independent task of the prosecutor's office. This forms the exception to the general principle set out above. The public prosecutor has the right to take steps immediately when supervising a punishment of deprivation of liberty, including the right to release someone from a place of deprivation or derogation when the person has been illegally kept there.

In every office that deprives liberty there is an administrative committee, which in the cases determined by law, examines commutation of punishment conditions or its reinforcement to the sentenced person. In its decisions this committee takes behaviour of the sentenced person into account. The public prosecutor participates in the meetings

of administrative committee. The public prosecutor can voice protest against the decision of administrative committee, which is then examined by a court.

In addition, the public prosecutor participates in the process of execution of punishment in every case where the court decides upon questions which are connected with the execution of a sentence or the legal outcomes of a sentence.

The participation of the public prosecutor in the hearing where questions connected with sentence execution are examined is mandatory. The public prosecutor has the right to appeal against an illegal or groundless judgment of a court, when the latter is examining questions connected with execution of a judgement.

Amnesty of persons, complete or partial release of the sentenced person from criminal punishment, commutation of punishment conditions or removal of criminal liability is an exclusive right of the president of the State. The prosecutor's office does not supervise the process of amnesty.



### **4.3. Lithuania.**

The organisation of the prosecutor's office and the procedure of its activities have been established by the Law on the Prosecutor's Office which came into force on August 27, 1990. This legislation was the first of its kind in the history of the national prosecutor's office. Currently, the new Law on the Prosecutor's Office, a revised version adopted by the Seimas (Parliament) on April 22, 2003, is in operation.

Among the functions of the prosecutor's office that are specified by law, the most important one is the prosecutor's office as a national institution, which assists in ensuring justice and aids the court in administering justice.

All basic principles can be found in national criminal laws and national law is complemented by the laws of the European Union. Prosecutors take an active part in co-operation with their foreign colleagues and participate in international trainings.

#### *The relation between the public prosecutor and the police.*

On May 1, 2003, the new Code of Criminal Procedure (hereafter referred to as CCP) came into operation, bringing back the number of institutions obliged to initiate criminal prosecution and to solve a crime.

Sect. 2 CCP prescribes that the prosecutor and the pre-trial investigation institution investigate criminal acts. That is, whenever elements of a criminal act are reported, the prosecutor and the institutions of pre-trial investigation must, within the limits of their competence, take all measures provided by the law so that an investigation is conducted and the commission of a criminal act be established within the shortest time possible. None of these institutions have been granted the right to set priorities as to the initiation of investigation of criminal acts.

Having assessed the duties of the prosecutor and the pre-trial investigation institution officer as specified by CCP, in his Guidelines for the prosecutor's activities while organising and supervising the pre-trial investigation, the Prosecutor General pointed out that both the prosecutor who organises and supervises the pre-trial investigation, and the pre-trial investigation institution shall be held liable for the results of pre-trial investigation.

The following pre-trial investigation institutions are currently to be identified: police, national border security service, special investigation service, military police, national security department, financial crimes investigation service, customs department, fire security and rescue department. They investigate criminal acts in the course of their direct duties determined by the laws regulating their activities. The prosecutor is not obliged to commission the pre-trial investigation institutions to investigate crimes pursuant to the guidelines relating to their competencies. However, if, in the opinion of the prosecutor, it is beneficial to make use of investigating power of a pre-trial

investigation institution which is not usually attributed to that particular institution, he may commission such institution to act.

The prosecutor is entitled to conduct the whole pre-trial investigation or separate acts thereof himself. If the pre-trial investigation is conducted by a pre-trial investigation institution officer, the prosecutor who supervises and presides over him may conduct separate acts of investigation himself. In such case, the pre-trial investigation officer and the prosecutor professionally interact. For an investigation to be conducted effectively, it ought to be accepted that the pre-trial investigation officer is not just a procedural tool of the prosecutor, but rather an independent officer with a challenging mission. The more freedom a pre-trial investigation officer enjoys (without violating the limits of professional competence), the more responsibility for the performance of individual acts, as well as for the results of the full investigation, he has to take on. On the other hand, the prosecutor may adjust the investigation plan and instruct the officer who is actively engaged in the work accordingly.

Having commissioned the pre-trial investigation officers to conduct pre-trial investigation or individual investigative acts, the prosecutor is obliged to ensure that his commands are properly executed. The prosecutor may achieve this objective by supervising and controlling the work of pre-trial investigation officers. This controlling power is derived from the constitutional functions allocated to prosecutors, that is, organisation of pre-trial investigation and supervision thereof. The prosecutor must not only decide who is to conduct the pre-trial investigation, and decide upon particular pre-trial investigation acts that ought to be performed, but should remain informed about the way the investigation develops and about the outcome of the pre-trial investigation.

All instructions (both written and verbal), given by a prosecutor to the pre-trial investigation officers during a pre-trial investigation with regard to carrying it out, are binding. Appeal against such instructions or grounds for refusing to execute them are not even provided for by law. The pre-trial investigation officer, when disagreeing with the prosecutor's instructions, may address the chief of the pre-trial investigation institution or a superior prosecutor on this issue and indicate the problems arising from his relations with the prosecutor.

The relations of the prosecutor with the pre-trial investigation institutions are very much dependent upon the criminal act which is under pre-trial investigation. In standard cases when less serious offences are being investigated the prosecutorial supervision of the pre-trial investigation as well as the supervision of the acts carried out during the said investigation may be less intensive. In complicated cases, the prosecutor is obliged to closely observe the development of the pre-trial investigation, to examine how every important act of pre-trial investigation is carried out, and to check the outcome.

The prosecutor is entitled to annul any decision made by a pre-trial investigation officer during the pre-trial investigation, or to give binding instructions to the pre-trial investigation officer with regard to rendering a legitimate and grounded decision.

*The relation between the public prosecutor's office and the executive power.*

The Prosecutor's Office is an independent national institution, which performs the functions provided for in the Constitution, the Law on the Prosecutor's Office, international treaties as well as other legislation. The Law on the Prosecutor's Office (in force since May 1, 2003) establishes the structure (organisation), status, functions, basic principles and control of activities, and basic principles of work organisation of the prosecutor's office, as well as the status of the prosecutors, their competence, rights and duties, course of service, conditions for providing them with incentives and their official liability conditions, social guarantees, and so forth.

*The organisation of the prosecution service.*

All prosecutors are organised into a centralised hierarchical system of the prosecutor's office, consisting of the Prosecutor General's Office and territorial offices: five regional prosecutor's offices and 51 district prosecutor's office. The Prosecutor General is appointed for a term of seven years by the President with the approval of the Seimas (Parliament).

*Tasks and duties of the prosecutor.*

Sect. 118 Constitution establishes the main functions of the prosecutor, namely: 'Public prosecutors shall prosecute criminal cases on behalf of the State, shall carry out criminal prosecutions, and shall supervise the activities of the interrogative bodies'. Furthermore, the Law on the Prosecutor's Office provides a relatively thorough account of the main functions and powers of the prosecutor's office. According to this provision, the prosecutor's office shall:

- organise and direct pre-trial investigation;
- conduct pre-trial investigation or individual actions of pre-trial investigation;
- control the activities of pre-trial investigation officers in criminal proceedings;
- prosecute on behalf of the State;
- supervise the submission of the judgments for execution and the execution thereof;
- co-ordinate the actions of the pre-trial investigation bodies pertaining to investigation of criminal acts;
- protect the public interest;
- examine, within its competence, petitions, applications and complaints submitted by individuals;
- take part in the drawing up and implementation of national and international criminal acts prevention programmes;

- take part in the legislative process; and
- fulfil other functions prescribed by law; for instance, supervise the way central or competent institutions co-operate with institutions of foreign countries and international organisations on mutual assistance in criminal cases concerning extradition and the European Arrest Warrant.

The provisions of the CCP regulate the status of a prosecutor during criminal proceedings. Lawful demands and decisions of the prosecutor shall be binding on all state and municipal institutions and establishments, their officials, public servants and employees, natural and legal persons and must be complied with within the entire territory. Failure to comply with the demands and decisions of the prosecutor shall make the above listed entities liable under law.

#### *Accountability.*

According to the legislation, the prosecutor's office is directly accountable to the President and Seimas. The Prosecutor General shall be accountable for the activities of the prosecutor's office to the President and the Seimas once a year. None of the other institutions of the State shall be politically or in any other way accountable for the policy of the prosecutor's office. Seimas, having evaluated the account of the activities of the prosecutor's office, the current state of crime in the country and any other facts important for society, shall establish the priorities in the activities of the prosecutor's office, taking into account which criminal acts are deemed to be important issues for society at that time in respect of which it is crucial to take immediate measures and to implement them decisively.

By analyzing the annual account of the Prosecutor General's Office's work against indicated priorities, and then evaluating what has been found, Seimas exercises parliamentary control over the activities of the prosecutor's office. However, by evaluating and assessing prosecution of criminal acts which have been given priority, Seimas does not imply that the prosecutor is entitled not to investigate other offences. Further to the CCP (sect. 2), whenever elements of a criminal act are discovered, prosecutors or pre-trial investigation institutions are obliged, within the limits of their competences, to take all measures provided by law to conduct an investigation, and to establish that a criminal act has been committed.

#### *The role of the public prosecutor in court.*

Where the prosecutor is satisfied that sufficient information has been gathered during the pre-trial investigation in evidence of the culpability of the suspect for committing a criminal act, he drafts the indictment (sect. 218 CCP) which is addressed to the court. The indictment should state the exact data about the suspect, a brief description of the criminal act committed by him, and the basic information on which the charges are based. In addition, the indictment shall provide the prosecutor's position in the criminal

procedure. Following the principle of rapidity of the proceedings, the prosecutor is obliged to transfer a criminal case to the court as soon as the indictment is drafted. The prosecutor has to hand over only these parts of material which may be necessary for making a procedural decision in the court.

The provisions of the CCP and the Law on the Prosecutor's Office also regulate the prosecutor's functions, while he acts as a public prosecutor in court, and provide him a relatively wide range of powers. The prosecutor is independent in court and may, with regard to the circumstances of the case, address the court with a proposal to change the charges brought, to permit to provide additional data on the case, or to allow to hand over the case to the prosecutor to supplement the pre-trial investigation at his own discretion. The court may satisfy the prosecutor's requests, however, it is not obliged to do that, thus the prosecutor's rights are restricted in such cases.

*The role of the public prosecutor in relation to the execution of sanctions.*

Sect. 346 subs. 3 CCP stipulates that the prosecutor supervises the submission of the judgment to be executed and the execution thereof. In other words the prosecutor is obliged to ensure that the court submit the judgment to the appropriate institutions for execution within the period set by law. The prosecutor supervises the execution of the judgment only insofar as it is related to the settlement of issues that arise while executing the judgment (difficulties in executing the judgment, conditional release of a convicted person, change of the type of penalty, and so forth). The prosecutor is obliged to participate in the court session in which the issues of the execution of the judgment are being dealt with. However, the prosecutor does not directly supervise the activities of the institutions executing the sentence.

#### 4.4. Ukraine

According to the Article 121 Constitution of Ukraine, the public prosecutor's office of Ukraine executes five constitutional functions. The scientific researchers analyze these functions in more detail. At the same time, there are two functions in generalized form: the supervision over the observance of law and the criminal proceedings against the persons committed crime (Davydenko, 1993). Thus, the supervision is the main public prosecutor's office function in relations with the public authorities. Respectively, according to the Constitution of Ukraine the supervision functions are:

- supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation;
- supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens;
- supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

The separation of the supervisory activity of prosecutors in the field of crackdown on crime is uppermost stipulated by importance of investigation and search operations activity. In the conditions then organized crime endangers the fundamentals of constitutional order, the law-enforcement activity is an important task of all the law-enforcement machinery and the public prosecutor's office in particular.

The Article 227 of Criminal Procedure Code of Ukraine determines the prosecutor's powers in the field of supervision over the observance of law by the agencies conducting detective and search activity, inquiry and pre-trial investigation.

According to the Paragraph 9 Transitional Provisions of the Constitution of Ukraine, the public prosecution continues to exercise, in accordance with the laws in force, the function of supervision over the observance and application of laws and the function of preliminary investigation, until the laws regulating the activity of state bodies in regard to the control over the observance of laws are put into force, and until the system of pre-trial investigation is formed and the laws regulating its operation are put into effect. According to subsection 5 Article 121 of Constitution of Ukraine, which was amended 8 December 2004, the prosecutor's office of Ukraine conducts supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

This amendment endows the public prosecutor's office with a function that is called, sometimes with a negative tinge, the "general supervision".

According to Article 1 the Law of Ukraine on the Public Prosecutor's Office, the Prosecutor General of Ukraine and subordinate public prosecutors shall exercise the

supervision of adherence to and correct application of laws by the Cabinet of Ministers of Ukraine, ministries and other central executive agencies, public and economic administration and control bodies, the Council of Ministries of the Autonomous Republic of Crimea, local councils, their executive bodies, military units, political parties, non-governmental organizations, popular movements, enterprises, institutions and organizations irrespective of their ownership, subordination and affiliation, officials and citizens.

The objectives of the prosecutor's supervision over adherence to laws are:

- independence of the Republic, social and public order, political and economic systems, rights of national groups and territorial units as secured with the Constitution of Ukraine;
- social and economic, political, individual human and citizen's rights and freedoms as granted by the Constitution of Ukraine, other laws of Ukraine and international legal acts;
- democratic principles of the public administration, legal status of local councils, self-organization bodies of the population.

Thus, the prosecutor's supervision has focused on the most important spheres of social life. This function is also the most controversial point. From the very beginning of independent Ukraine the heated debates about pros and cons of this kind of surveillance still stand. Many researchers continue stressing on its elimination as a rudiment of totalitarian regime and administrative command system.

For instance, according to Shumskiy, "the general supervision activity in the field of business legal relationships does not accord with the public prosecutor's office nature and goes beyond the limits of its real competences. Moreover, it gradually ruins confidence of administrative and control structures in their own potential ability to improve their organization" (Shumskiy 1998: 202).

On the other hand, as Mychko assures, "those who on this basis propose to eliminate the general supervision, resemble the healers who struggle against dandruff using a guillotine" (Mychko, 2002; p. 32).

In contrast to debates between politicians and scientists, the Prosecutor General's Office has always upheld necessity of retention of the supervision over the law observance and implementation, even using eloquent rhetoric. For instance, according to the official website of the Prosecutor General's Office, "There are various reasons behind the intentions to weaken the public prosecutor's office and deprive it of certain important functions. These are ambitious, egoistic endeavors of some politicians, first of all the members of the parliament, to put themselves above the law, in special conditions of inaccessibility regarding the responsibility for committed unlawful acts. On the other hand, under the pharisaic slogans of immediate democratization of society they pursue the aim to reduce the public prosecutor's office to collateral level, to make the public prosecutor's office to incapable institution in order to free their hands and

subsequently rob unrestrictedly their people and country. The passions around the question of status of the public prosecutor's office have turned from legal into political sphere, and from the early years of formation and functioning of the public prosecutor's office in the independent Ukraine they have furthered a great deal of conceptual mistakes relating the role and meaning of the public prosecutor's office in the system of public authorities. The erroneous views, being held even by some executives at the Prosecutor General's Office, have led to the considerable oversights in organizational and personnel work, engendering among the staff of the public prosecutor's office the uncertainty about the future of the higher supervisory authority, and causing the decay of prosecutor's activity and decrease of its efficiency. Prestige of the public prosecutor's office sank in the eyes of society".

Besides, the Prosecutor General's Office of Ukraine approaches creatively to the issue of settlement of the long-time dispute around the supervision over the law observance. They cut the Gordian knot by aligning the "dissidents" to the "law breakers and criminals" rank. Thus, the Prosecutor General's official website informs: "Retention of the mentioned functions of the public prosecutor's office is a matter of principle and there is something behind the heated discussions relating this problem. The underlying reason of this question is clear: an effective supervision over the observance of law and pre-trial investigation, conducted on a high professional level by an authority that accumulated enormous investigation experience of the most dangerous and grave crimes, does not suit only the law breakers and criminals. For the conscientious citizens and State interests, such prosecutor's functions are important and necessary".

There are the next arguments for retention of the prosecutor's supervision over the law observance:

- the supervisory activity of the public prosecutor's office is a base for protection of the social relations as the essence of constitutional order;
- the present system of control agencies cannot substitute the supervisory activity of the public prosecutor's office;
- the significance of the public prosecutor's office has increased due to the spread of the law infringements in the field of economy and management, because of the squandering of the state property, abuse of power and corruption, especially in regards to the investment and banking areas, foreign economic activity, energy sector, privatization, etc.

It is interesting that there is no current statistic confirmation of efficiency of the prosecutor's supervision on the official website of the Prosecutor General's Office. The statistic data are only available for 2007. It makes impossible the comparison and analysis of the quantitative indices of activity of the public prosecutor's office. According to the available data, in 2007 "in result of the supervisory activity 15 thousands criminal cases were brought, among them 11 thousands were submitted to the



court. 118 thousands officials were brought to responsibility and 2,6 billion grivnas were made up according to the acts of prosecutor's reaction".

On the basis of mentioned reasons, it is impossible to make a conclusion about the qualitative characteristics of reaction of the public prosecutor's office on the defiance of law by the public authorities. Besides, this information contains a terminological shortcoming: the Law of Ukraine on the Public Prosecutor's Office has no mentions about the "acts of prosecutor's reaction"; the phrase "documents of prosecutor's reaction" is used instead of it (Article 25).

The specific forms and methods of activity are inherent in the public prosecutor's office in relation with the public authorities. The questions of forms and methods of the public prosecutor's office in relations with the legislative, executive and judicial authorities are the ones of the least elaborated in the public administration, and in the same time they are very important from the position of their practical significance. The Constitution of Ukraine only determines the order of appointment and dismissal of the Prosecutor General. Other questions of relations of the public prosecutor's office with the legislative and executive branches of power are still insufficiently regulated. It has a negative effect on the prosecution practice. Such a negative example can be an occurrence then according to the Decree of the President of Ukraine of 14.10.2005 No 1441/2005 "On Dismissal of S.Piskun from the Position of Prosecutor General of Ukraine", Svyatoslav Piskun was dismissed from the office. Lately, according to the Ruling of the Shevchenkivskiy District Court of Kiev No 2-12238/05 of 18.11.2005, he was reinstated in the office. Nevertheless, the President of Ukraine reinstated Piskun in the office only half a year later, by issuing the Decree of 26.04.2007 № 357/2007 called "The Question of S.Piskun".

Unfortunately, it is still undetermined whether the President of Ukraine should issue a decree about dismissal of the Prosecutor General of Ukraine from the office in case of discredit pronounced to him or her by the Verkhovna Rada of Ukraine.

Obviously, such uncertainty shortcomings endanger the possibility of manipulation with the Prosecutor General position in political struggle.

The question of interaction between the Prosecutor General's Office and the Verkhovna Rada of Ukraine are considered by the Statute of Organization of Interaction between the Prosecutor General's Office and the Verkhovna Rada of Ukraine approved by the Order of the Prosecutor General of Ukraine of 24.01.2006 No 1/4 ГН.

According to the Paragraph 6 of the Statute, the interaction between the Prosecutor General's Office and the Verkhovna Rada of Ukraine shall be based on such directions:

- interaction concerning the parliamentary law-making activity;
- interaction in the sector of implementation of the parliamentary control functions;
- assistance in the issues related to the interpellations and addresses submitted by the Members of Parliament.

In order to ensure an efficient fulfillment of the tasks of the public prosecution, the law provides the public prosecutor's office with the guarantees of independence and powers which make this public agency considerably different from the other law-enforcement agencies.

According to the Article 7 the Law of Ukraine on the Public Prosecutor's Office, the public authorities and local self-government bodies, officials, mass media, civil and political organizations (movements) and representatives thereof cannot interfere into activities undertaken by the public prosecution service for supervision of adherence to the law or investigation into acts having elements of crime.

Any influence exerted upon an official of the public prosecution service with the aim to prevent discharging of his/her duties or make him/her adopt an unjustified resolution shall entail liability as provided by the law.

Appeals of public agents, other officers and officials to a public prosecutor concerning specific cases and materials handled by the public prosecution service, shall not bear any instructions or ordinances as to outcomes of solving such cases.

Nobody shall have the right to disclose information on investigations and preliminary trial prior to completion thereof without consent of a public prosecutor or an investigator.

Thereby, it is worth mentioning the Decision of the Constitutional Court of Ukraine of 11.04.2000 in the Case of the Interpellations of the Members of Parliament to the Public Prosecutor's Office. The Decision points out that any propositions, instructions and demands of the members of parliament to the prosecutors relating the questions of prosecution in court on behalf of the State, supervision of the observance of laws by bodies that conduct detective and search activity, inquiry and pre-trial investigation, supervision of the observance of laws in the execution of judicial decisions in criminal cases, and also in the application of other measures of coercion related to the restraint of personal liberty of citizens; and to the investigators of the public prosecutor's office relating to the issues of pre-trial investigation in concrete criminal cases are unlawful.

This Decision of the Constitutional Court of Ukraine has an important conclusion that the Constitution of Ukraine does not allow the control over the prosecutor's activity, and the Verkhovna Rada has no right to provide itself with any additional concrete powers by passing any laws.

Nobody can divulge without prosecutor's permission the information about checkups and pre-trial investigations before their completion (Article 7 the Law of Ukraine on the Public Prosecutor's Office). At ones, the prosecutor's demands which accord to the current legislation are obligatory for all the agencies, enterprises, institutions, organizations, officials and citizens and should be executed exigently or during the term specified by law or determined by prosecutor. A non-compliance with lawful prosecutor's demand with no reasonable excuse has the consequence of provided with law responsibility (Article 8 of the Law).

The specified by law prosecutor's authority to take part in meetings of legislative and executive authorities is a one of the most important aspects of the special status of the public prosecutor's office in conducting of surveillance functions.

The Prosecutor General of Ukraine informs the Verkhovna Rada of Ukraine on the law enforcement and compliance at least on the annual basis.

According to Article 11 the Law of Ukraine on the Public Prosecutor's Office, the Prosecutor General of Ukraine shall have the direct access to the Chairman of Verkhovna Rada of Ukraine, the President of Ukraine, and the Prime Minister of Ukraine. All other public prosecutors also have direct access to heads, other officials of the respective public authorities and enterprises, institutions and organization.

The special form of the public prosecutors' activity outside the criminal law field is the coordination of combating crime. The legal relations in this field are organizational and law enforcement in essence, directed to design and implementation of joint actions towards crime combating and prevention. The Prosecutor General of Ukraine and other public prosecutors coordinate combating crime by interior agencies, bodies of the State Security Service, tax authorities, customs and other law-enforcement bodies.

For the purpose of coordination of the law-enforcement agencies a public prosecutor can convoke coordination meetings, organize task forces, demand statistics and other data, and also can take part in organization of meetings of the Coordination Committee on Combating Organized Crime and Corruption established under the President of Ukraine.

Relating to the coordination of activity of the law-enforcement agencies, it is worth to mention the Decision of the Constitutional Court of Ukraine in Case of Constitutional Submission of 46 Members of Parliament Concerning Accordance to the Constitution of Ukraine (Constitutionality) of Article 1, First Section of Article 7, Articles 8, 9, 10, Forth Section of Article 14, Article 17, Section First of Article 20, Section Third of Article 29 of the Law of Ukraine on the Public Prosecutor's Office (the Case about the Powers of the Public Prosecutor's Office's According to the Paragraph 9 the Chapter XV the Transitional Regulations of the Constitution of Ukraine) of 10.09.2008 No 15-пп/2008.

Claiming unconstitutionality of certain provisions of the Law (Article 1, First Section of Article 7, Articles 8, 9, 10, Forth Section of Article 14, Article 17, Section First of Article 20, Section Third of Article 29), the members of parliament stated that according to the contested norms "the public prosecutor's office has accumulated superpower that is very hazardous for development of democratic country".

Having doubted the provisions of the Law which in addition to Paragraphs 3, 5 Article 121 the Constitution of Ukraine regulate the general supervision of the public prosecutor's office, the MPs also made references to the non-obedience of these provisions with both the special Resolution No 1244 (2001) of the Parliamentary Assembly of the Council of Europe and the recommendations of the Venice

Commission. They criticize the shortcomings of contested provisions of the Law, concerning them as imperfect from the point of law-making technique and considering the lack of necessary rationale for those norms. The Members of Parliament of Ukraine have also argued that instead of coordination, the public prosecutor's office in fact conducts direct guidance of the law-enforcement agencies.

In result of hearing of the mentioned constitutional submission, the Constitutional Court of Ukraine recognized that the provisions of the Article 17 the Law of Ukraine on the Public Prosecutor's Office of the 5 of November, 1991, No 1789-XII, conform to the Constitution of Ukraine, *ad interim* during the validity of the Paragraph 9 the Chapter XV "Transitional Regulations" of the Constitution of Ukraine concerning the continuation of the functions of the public prosecutor's office of preliminary investigation until formation of pre-trial investigation system and putting in force of laws which regulate its functioning.

There are next forms of interaction between the public prosecutor's office and the court:

- mutual control;
- cooperation of the prosecutor's supervision and the judicial control on the stage of pre-trial investigation;
- cooperation of the public prosecutor's office and the court in the field of human rights protection;
- cooperation of the public prosecutor's office and the court during crime prevention (Mychko, 1999).

The court's control over the lawfulness of decisions and actions of the public prosecutor's office's is a form of realization of a basic goal of judicial reform – approval of the judiciary as a leading guarantor of the citizens' rights and freedoms, and spread of the courts' jurisdiction over the legal relationships on the territory of Ukraine (*Ibid*).

The most significant display of this form of interaction is the field of criminal legal proceeding. During a hearing of criminal case, a court in fact controls the lawfulness of prosecutor's decisions taken at the stage of pre-trial investigation. A court can make amends in charges, dismiss charges, acquit of charges, and also can state a violation of law and point out the concrete officials, including the officials of the public prosecutor's office, who committed infringement of law. Those forms of court control over the decisions taken by the public prosecutor's office at the stage of pre-trial investigation are inherent in the court's jurisdiction.

The function of control to a certain extent is executed by all the branches of power: legislative, executive and judicial. For the majority of public authorities, control is a collateral and subsidiary function. Meanwhile, primarily in the system of executive power, some public agencies perform control as a main or basic function. For example, such agencies in Ukraine are: the State Control Auditing Service; the State Tax

Administration; the State Inspectorate on Price Control; the State Sanitary-Hygienic Service; the State Ecology Inspectorate; the Inspectorate on the State Energy Supervision; the State Inspectorate on the Supervision over Nuclear and Radiation Safety; the State Committee on the Supervision over Labour Protection; the State Inspectorate on the Register and Safety of River Boating; the State Inspectorate on Fish Protection, etc. According to estimations, there are more than 50 control agencies in Ukraine (Rudenko 1996).

Thus, the researches deem that due to the supervisory functions the public prosecutor's office is a part of system of the "control power". Some of them claim the necessity of separation of the control power on the legislative level (Tatsiy, Groshoviy 1999), some also suggest concerning the control power as a theoretical abstraction.

As an example of legal act which determines the elements of interaction between the public prosecutor's office and the executive power agencies which particularly have control authorities, it is possible to examine the Order of Interaction between the Agencies of the Control Auditing Service and the Public Prosecutor's Office, the Ministry of Interior, and the Secret Service of Ukraine, approved by the common Order of mentioned public authorities 19.10.2006, No 346/1025/685/53, and registered in the Ministry of Justice of Ukraine 25.10.2006, No 1166/13040.

That Order is directed on the ensuring of efficient interaction between the agencies of the State Control Auditing Service and the mentioned agencies concerning the issues of consideration of the law-enforcement agencies' addresses; the setting, organization and carrying out of inspections; the submission of materials of inspections by initiative of the agencies of State Control Auditing Service; the order of informing about the results of consideration of the submitted materials and experts assignments; other issues which arise during the activity of the agencies of the State Control Auditing Service and the law-enforcement agencies.

According to Article 46 the Law of Ukraine on Public Prosecutor's Office, prosecutors and investigators may be Ukrainian citizens who have higher legal education, necessary business skills and moral traits. The persons who are appointed for posts in the General Prosecutor's Office for the first time shall swear "Oath of General Prosecutor's Office Worker". Text of the oath shall be approved by the Verkhovna Rada of Ukraine. The procedure of its swearing shall be determined by the General Prosecutor of Ukraine. Part-time service in General Prosecutor's Office is not permitted except for combining it with scientific and pedagogical activity.

The analysis of mentioned article testifies that demands to personal characteristics of the prosecutor's office staff is defined quite vaguely, and its designation to office has no transparent, just and unprejudiced procedure mentioned in the Recommendation (2000) 19 of the Committee of Ministers to the Member States of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System.

Besides, knowledge, skills and experience play very important role and are inherent characteristics of one's ability to certain occupation (Klimov, 2001).

Therefore, it would be reasonable to implement the prosecution staff selection on a competitive basis. Firstly, it would facilitate transparency of staff selection, secondly, it would allow identifying those candidates who have the most appropriate vocational aptitude.

#### **4.5. Tendencies of legal regulation of the public prosecutor's office.**

The vesting of the public prosecutor's office with the status of independent public institution has stipulated the different points of view concerning the role and position of the public prosecution in the system of public authorities.

Some researchers reckon that the public prosecutor's office should be in the system of legislative power. Their point is that the Ukrainian public prosecutor's office is an agency that supervises the observance of laws passed by the legislature – the Verkhovna Rada of Ukraine. Besides, it acts on the base of authorities received from the legislature. They indicate that without the public prosecutor's office the legislative power would be, in fact, powerless due to absence of an agency that would control the taken decisions (Bandurka, 1995). For instance, Lomovsky takes it that the prosecutor's supervision is an extension of the legislative power. He cites Montesquieu's expression that power in a free state has the right and is obliged to observe the accomplishment of laws (Lomovsky, 1987). According to Dolezhan, the prosecutor is an authorized power's representative who acts by power's orders and under its control (Dolezhan, 1998). Klochkov and Ryabtsev assert that the public prosecutor's office acts on behalf of a legislature and it "should be fixed in Constitution and legalized" (Klochkov, Ryabtsev, 1989; 41). Nonetheless, these views were not supported in the sequel.

Therefore, the points of view concerning the role and position of the public prosecution in the system of public authorities presuppose formulation of hypotheses:

*Hypothesis 1.* The democratic transformation of the public prosecutor's office will be ensured by attributing it to the legislative power.

To other's opinion, the public prosecutor's office should be included into the system of executive power since implementation of the laws is a one of its functions, and control together with supervision are the means of solution for this task. The most active proponents of this stand see the public prosecutor's office in the structure of the ministry of justice, making reference to experience of the USA, pre-revolutionary Russia and other countries there the Prosecutor General and the Minister of Justice are united in one person. Therefore,

*Hypothesis 2.* The democratic transformation of the public prosecutor's office will be ensured by its inclusion in the executive power.

Some researchers believe that the public prosecutor's office should be turned back to "its natural state of the element of justice" (Mychko 2002, 7). In other words, the representatives of this approach see the public prosecutor's office in the system of judicial power. They deem that the public prosecutor's office should become an independent public authority in the judiciary that *intra vires* ensures the judicial protection of human and citizen rights and legitimate interests of society and the State.

It is also declared that attributing to the judicial power will be a considerable contribution to reformation of the public prosecutor's office. Their point is that such a step would secure independence of the public prosecutor's office, prevent it from politicization, and meet the most up-to-date standards related to the role of the public prosecutor's office in democratic society. Meanwhile, they emphasized affinity of the judge's and prosecutor's activity since the prosecution is directly connected to the administration of justice. On the other hand, they argue, the intentions to imbed the public prosecutor's office into the executive or legislative power in conditions of formation of democracy would make the prosecutor politicized, dependent on the parliament's majority and would lead to intervention of the executive power into the public prosecutor's activity. It is interesting that they were also making the attempts to label the public prosecutor's office as a part of the judiciary on the law-making level. For instance, in the draft of the Constitution of Ukraine that was brought up for the nationwide discussion by the Verkhovna Rada's resolution of June the 1<sup>st</sup>, 1992, the section about the public prosecutor's office was attributed to the Chapter 21 called the Judiciary. Therefore,

*Hypothesis 3.* The democratic transformation of the public prosecutor's office will be ensured by its inclusion into the judiciary.

Besides, there is a view that along with the legislative, executive and judicial power it is legally acceptable to acknowledge the control (supervisory) power that comprises the Constitutional Court, the Ombudsperson, the Chamber of Accounts, and the Public Prosecutor's Office (Tatsiy, Groshoviy, 1999). According to Berezovskaya, the first who based this point was Petrov in 1940, who views the state activity as the united action of for independent forms: legislative, executive-regulatory, judicial, and prosecutor's supervision (Berezovskaya 1959, 15). Thus, the proponents of the latter point deem that the best decision will be taken by accepting the prosecutor's activity as a separate (forth) branch of power:

*Hypothesis 3.* The democratic transformation of the public prosecutor's office will be ensured by admission that it is a part of the separate control (supervisory) power.

Finally, there is another point of view that the public prosecutor's office is an independent state institution. The supporters of this approach state that the public prosecutor's office, standing out of the branches of power, has been actively cooperating with all of them, which allows it to carry out its law-enforcement functions in full (Davydenko 1993). The adherents of this view state that the public prosecutor's office of Ukraine stays outside the state power branches and acts as an independent kind and form of state activity. They argue that the public prosecutor's office should not be attributed to any (even "control/supervisory") branch of power, because it means



elimination of the public prosecutor's office as a single and independent state institution conducting supervision over the law observance (Malyuga, 2002):

*Hypothesis 4.* The democratic transformation of the public prosecutor's office will be ensured in condition of its non-affiliation with any branch of power.

Thus, the most proximate to reality approach is the one according to which the public prosecutor's office is not attributed to any of the branches of power, being formally independent. This view is fixed in the Chapter VII the Constitution of Ukraine called the Prosecution of Ukraine.

The Law of Ukraine on the Public Prosecutor's Office of 5 November 1991 is a one of first laws of independent Ukraine. Many significant structural, political and legislative changes have happened since the last 19 years. At present, the Law of Ukraine on the Public Prosecutor's Office requires not just its amending but adoption in a new version. This version should determine the fundamentals of work of the public prosecutor's office of Ukraine, the aspects of administration of the prosecutor's activity directed towards the ensuring of efficiency of the prosecutor's work.

In the light of tendencies of legal regulation of the public prosecution, it is possible to point out two basic issues:

- the position of the Prosecutor General can be a powerful figure in political confrontation. It makes the confronting political powers possible to take advantages of the public prosecutor's office in their own interests during power struggle;
- the systemic crisis in all important areas of social relations conspicuously testifies for inability to provide the prosecutor's activity with the legislative realization of its status according to the principle of rule of law and high democratic standards without the complex reform of administration of justice.

Taking into account those factors, it is possible to describe the tendencies of legal regulation of the status of the public prosecutor's office in Ukraine.

For example, the National Academy of the Public Prosecutor's Office of Ukraine through its official website informs that they have drafted the amendments to the Constitution of Ukraine concerning the status of the public prosecutor's office. It is stated that this draft was approved by the experts of the Venice Commission and "the proper structures of Council of Europe". They declare that the public prosecutor's office should be an independent public agency within the system of judiciary. It should have the task of ensuring proper court protection of human and citizen rights, legitimate interests of state and society. They also state that the inclusion of the public prosecutor's office into the judiciary will be a significant step on the way of its reformation which will insure independence and non-politicization of the public prosecutor's office.

In addition to the mentioned draft, the scientists of the Academy of the Public Prosecutor's Office of Ukraine drafted a new version of the Law of Ukraine on the Public Prosecutor's Office.

There are also some drafts concerning the public prosecutor's office. For example, the draft version of the Law of Ukraine on the Public Prosecutor's Service (register No 2491, June the 16<sup>th</sup>, 2008), submitted to the Verkhovna Rada of Ukraine by the Members of Parliament Shvets, Procopchuk and Sivkovych. According to its initiators, the draft's goal is the legislative ensuring of the prosecutor's activity according to the norms of the Constitution of Ukraine and present social relations.

Unfortunately, this one and other similar drafts are not perfect in terms of drafting technique and law-making standards. For instance, the articles from 35 to 39 of the mentioned draft which determine the prosecutor's powers during the court hearings, almost word for word reproduce the analogous provisions of the Criminal Procedural Code of Ukraine. Besides, the paragraphs from two to five of the Article 80, concerning the ranks awarding to the personnel of the public prosecutor's office and additional payments for the ranks, are not a subject of regulation of the Law of Ukraine on the Public Prosecutor's Office. Such provisions are regulated by the relevant acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

Furthermore, some draft's provisions disagree with the Constitution of Ukraine and other Ukrainian laws.

For example, the Section Two Article 57 of the draft defines that in the cases specified by legislation the Prosecutor General's Office is the central public authority responsible for execution of the international treaties. Such formulating is incorrect because according to the Section One Article 17 the Law of Ukraine on International Treaties of Ukraine, the general supervision over observance of the international treaties of Ukraine exercises the Ministry of Foreign Affairs of Ukraine.

One more example is the Section Six Article 27 of the draft that states that from a moment when the Verkhovna Rada of Ukraine pronounces discredit to the Prosecutor General of Ukraine until the President of Ukraine will issue an appropriate decree the First Deputy Prosecutor General acts for him, and in case of his absence the Prosecutor General's duties carries out one of his deputies assigned by the President of Ukraine. Meanwhile, the section four of this article defines that in case of resignation of the Prosecutor General of Ukraine his or her deputies also must resign. Thus, there is no public official who acts for the Prosecutor General of Ukraine in case of his or her resignation and resignation of his or her deputies.

#### 4.5. Analysis

*This subsection provides comparative analysis of the data gathered in order to answer the main research question. This investigation comprises the algorithm described in the Methodology chapter. In terms of research all the configurations presented in the form of tables.*

**Table 5. Characteristics of relations between prosecution service and the police**

Country	Prosecutor's authorities to give guidelines/instructions to the police	Prosecutor's authorities to direct pre-trial procedure	Character of relations
Estonia	Prosecutor <i>has the right</i> to give instructions, and to annul and amend decrees of investigative authorities. The law <i>does not specify</i> which type of instruction can be given (sect. 213 CCP).	Prosecutor <i>does not intervene</i> in police investigations.	No supervisory power.
Latvia	A public prosecutor <i>has the right</i> to give <i>mandatory</i> guidelines to police regarding the process of investigation.	A public prosecutor <i>has the right</i> to carry out investigation himself.	Supervision.
Lithuania	The prosecutor <i>must</i> give directions to the police and reverse unlawful or unfounded decisions (sect. 170 CCP)	Pre-trial investigation <i>must be organized and led</i> by the prosecutor (sect. 164 CCP). The prosecutor is <i>obliged to supervise</i> the course of the pre-trial investigation.	Supervision.
Ukraine	A public prosecutor has the right to give mandatory guidelines to police concerning investigation of criminal cases (sect. 227 CPC).	A public prosecutor has the right to carry out investigation himself (sect. 227 CPC).	Supervision.

Among the target countries only the Estonian prosecution service is not involved directly in the supervision over pre-trial investigation. Nonetheless, the Estonian prosecution has the right to give instruction to the police. Thus, the prosecutor's supervision over the police, and particularly the agencies engaged in pre-trial investigation, is a condition that lies within the European democratic standards.

**Table 6. Power relations with executive and legislative power**

<b>Country</b>	<b>Right of executive power to give instructions to prosecution</b>	<b>Possibility of influence through appointment</b>
Estonia	No.	Prosecutor General is appointed by the Government on the proposal of the Minister of Justice, after considering the opinion of the Legal Affairs Committee of the Parliament.
Latvia	No.	The Saeima approves the Public Prosecutor General on the proposal of the President of the Supreme Court.
Lithuania	No. Nonetheless, The Seimas sets the priorities for activities of the prosecutor's office and exercises parliamentary control over its activities (sect. 4 Law on the Prosecutor's Office).	The Prosecutor General is appointed by the president of State with the approval of the Seimas.
Ukraine	No.	Prosecutor General is appointed to office with consent of Verkhovna Rada, and dismissed from office by President of Ukraine (art. 122 Constitution of Ukraine).

The example of Baltic States shows that there is a slight possibility to influence prosecution policy through the Prosecutor General by appointing a candidate favoured by the executive. Nevertheless, it is unlikely since an appointment of the Prosecutor General is executed within developed mechanism of check and balances.

The procedure of appointment in Ukraine raises more questions. Unfortunately, it is still undetermined whether President of Ukraine should issue an appropriate decree about dismissal of Prosecutor General from the office in case of discredit pronounced to him or her by Verkhovna Rada of Ukraine (for appropriate case see the analysis of Ukrainian public prosecution, subsection 4.4 of the present thesis). Therefore, such uncertainty creates the possibility of influence on the Prosecutor General.

**Table 7. Responsibility of Prosecutor General**

<b>Country</b>	<b>Kind of responsibility</b>	<b>Grounds of responsibility</b>
Estonia	The Government shall decide on release	Disciplinary offence committed by

	of Prosecutor General from office as a disciplinary punishment within one month of a proposal Minister of Justice (sect. 34 PSA).	Prosecutor General. The list of offences is regulated by sect 84 PSA.
Latvia	The powers of Prosecutor General are terminated by Saeima on a proposition of Chief Justice of the Supreme Court.	Disciplinary offences specified by Office of the Prosecutor Act. Judgement of conviction came into effect.
Lithuania	Prosecutor General shall be dismissed from office by the President upon the nomination of the Seimas.	Breach of the oath. Entry into force of a judgment of conviction.
Ukraine	Verkhovna Rada may express distrust to Prosecutor General that results in his/her resignation from office.	N/a

The main problem with the Prosecutor General of Ukraine is that the law does not mention the order of his or her designation from office if the Verkhovna Rada expresses distrust to him or her. Nor it mentions the grounds for expression of distrust. Therefore, the Verkhovna Rada can use its power to discharge the Prosecutor General arbitrarily. Simultaneously, the President of Ukraine can remove the Prosecutor General from the office without a clear reason. Despite the principle of the rule of law, the Constitution of Ukraine does not contain clear provisions concerning the dismissal of the Prosecutor General. It makes possible to take advantage of the public prosecutor's office for the benefit of private interests. Such circumstance endangers independence of the Prosecutor General and contradicts the principle of the rule of law.

**Table 8. The place of prosecution service within the system of division of power**

<b>Country</b>	<b>Place in State structure</b>	<b>Law provision</b>
Estonia	Executive.	Sect. 1 subs. 1 PSA – the prosecution service is a government agency within the area of government of the Ministry of Justice.
Latvia	Judiciary.	Sect. 1 OPA – Office of the Prosecutor is an institution of judicial power, which independently carries out supervision of the observance of law within the scope of the competence determined by this law.
Lithuania	Not affiliated to any branch of power.	Sect. 1 Art. 2 LPO – the prosecutor's office is a state institution performing the functions established by the Constitution of the Republic of Lithuania, this Law or other laws. The prosecutor's

		office helps to ensure lawfulness and assists courts in the administration of justice.
Ukraine	Not affiliated to any branch of power.	The public prosecution of Ukraine shall constitute a single system

Thus, there is no universal model of a place of a public prosecutor's office within the State structure. Nevertheless, the independence of prosecutors is guaranteed by the national law. The example of Lithuania is particularly interesting since the Lithuanian public prosecutor's office, being not affiliated to any branch of power, is controllable to a certain extent by Seimas which sets the priorities for activities of the prosecutor's office and exercises parliamentary control over its activities (sect. 4 Law on the Prosecutor's Office). From the other hand, there is no analogous mechanism of control over the Ukrainian public prosecutor's office. According to paragraph 1 Article 2 the Law on the Public Prosecutor's Office of Ukraine, the Prosecutor General of Ukraine shall inform the Verkhovna Rada of Ukraine on the law enforcement and compliance at least on the annual basis. Even so, the Verkhovna Rada is not empowered to formulate priorities for activities of the Public Prosecutor's Office of Ukraine. Besides, the issue of the place of prosecution service within the system of division of power was elaborated by the Decision of of the Constitutional Court of Ukraine of 11.04.2000 in the Case of the Interpellations of the Members of Parliament to the Public Prosecutor's Office. This decision is very important for the formal position of the public prosecution within the division of the state power, since the decision establishes that the Constitution of Ukraine does not allow the control over the prosecutor's activity.

**Table 9. The role of the public prosecutor outside the field of criminal justice**

<b>Country</b>	<b>Execution of tasks outside the field of criminal justice</b>	<b>Description of tasks</b>
Estonia	No.	N/a
Latvia	Yes.	Protection of the rights and lawful interests of persons and the State in accordance with the procedures prescribed by law. Submission of a complaint or submission to a court in cases provided for by law. Participation in the adjudication of matters by a court in cases

		provided for by law.
Lithuania	Yes.	Upon establishing a violation of the rights and lawful interests of a person, society or the State, the prosecutors shall protect the public interest in the cases and according to the procedure provided for by laws upon the notification, proposal application or complaint filed by the preso, state or municipal institution or agency, or on their own initiative as well as in cases when the officers, employees of other institutions or persons having equivalent status, who are under the obligation to protect the said interest, failed to take any measures to rectify the violation.
Ukraine	Yes.	Representation of the interests of a citizen or of the State in court in cases determined by law. Supervision over the observance of human and civil rights and freedoms and over the observance of laws regulating these issues by executive power bodies, by local self-government bodies, their officials, and officers.

Therefore, the prosecution services in majority of the target countries (Latvia, Lithuania, Ukraine) have at least some tasks and functions outside the criminal law field. The areas of competence are varied and include civil, family, labour, administrative, electoral, law as well as the protection of the environmental, social rights and the rights of vulnerable groups such as minors, disabled persons and persons with very low income. In Estonia the prosecution services do not have non-penal competencies. It can be concluded that the tasks and workload of prosecutors in this field may even prevail over the role of public prosecution in the criminal justice system.

As it seen from the table, the powers of the Public Prosecutor's Office of Ukraine outside the field of criminal justice has no direct analogues in the Baltic States (and countries of Western Europe and North America as well), because it is endowed with more power than similar institutions in these countries. The content of so-called "general prosecutor's supervision" is "supervision of adherence to and correct application of laws by the Cabinet of Ministers of Ukraine, ministries and other central executive agencies, public and economic administration and control bodies, the Council of Ministries of the Autonomous Republic of Crimea, local councils, their executive bodies, military units, political parties, non-governmental organizations, popular movements, enterprises, institutions and organizations irrespective of their ownership, subordination and affiliation, officials and citizens" (Art. 1 the Law on the Public Prosecutor's Office of Ukraine). In its resolution 1244 (2001) on the Honouring of Ukraine's Obligations and Commitments, the Parliamentary Assembly of the Council of Europe invoked the commitment of the Ukrainian authorities to change the law

pertaining to the role and functioning of the public prosecutor's office. The Law of Ukraine of 1991 on the Public Prosecutor's Office of Ukraine in its basic construction is a throwback to resolutions known from the period of the Soviet state. Although this law had been repeatedly modified, its essence, especially as regards the retention of the general supervision exercised by the public prosecutor's office, evoked serious reservations.

It should be noted that existing European standards of law-abiding states regulating the public prosecutor's office do not accept a uniform model. For that reason, individual states have greater leeway in regulating both the situation as well as the prerogatives of the public prosecutor. The prosecutor's office may therefore be closely tied to the executive branch of power or even be an integral part of it (Estonia), alternatively, it can be completely separated from the branches of power (Lithuania), or, together with the judiciary, constitute a joint magistrate (Latvia).

Hence, evaluation of a concrete state must also take into account the 'environment' in which a public prosecution service exists. In the course of evaluating new legal solutions in states emerging after the collapse of the Soviet Union it may be noted that they must be appraised in their concrete legal environment. Undoubtedly, the analysis of a concrete public prosecution service may not be detached from the institutional tradition in a concrete country.

The comparative analysis of the target countries testifies the legal possibility to detach the public prosecutor's office from the executive or another branch of power in compliance with European democratic standards. The Paragraph 2 Article 6 the Law of Ukraine on the Public Prosecutor's Office states that one of the organisational principles of the Public Prosecutor's Office is "exercise of its authorities in compliance with the Constitution of Ukraine and laws valid on the territory of the Republic, independently from any public authorities, officials, and resolutions of public associations or bodies". Nevertheless, the essence of Ukrainian mode of the public prosecutor's office neither constitutes a cohesive construction nor clearly specifies what model of public prosecution is involved. It should be noted that the facile and formal detaching of the public prosecutor's office from the executive or another branch of power does not automatically guarantee the creation of efficient and effective prosecution service consistent with the challenges of law-obedient state.

It should be pointed out that a creation of the separate system of prosecution service has been a one of the cornerstones of the political system of the Soviet Union. That separation, extensive prerogatives and lack of judicial control made the prosecutor's office a one of the principal instruments of repression.

Therefore, the function of supervision over the law observance raises the central point of contention in the present research. In fact, the prosecutor's supervision over the law observance, which in its simplified form is a supervision of the way other Ukrainian public authorities and even private persons execute the law, is a substitution both to the



administrative judiciary and the ombudsperson, which role is still insignificant in Ukraine. The extensive range of powers of the public prosecutor's office is the contrary to the democratic European standards of a law-abiding state. The scope of supervision of the public prosecutor's office of Ukraine over adherence to and application of laws is indeed unlimited: "compliance of acts issued by all bodies, enterprises, institutions, organizations and officials, with requirements of the Constitution of Ukraine and the current laws; adherence to the laws on personal immunity, social and economic, political, personal rights and freedoms of citizens, protection of their honor and dignity, unless the law provides for another procedure for protection of such rights; adherence to the laws on economic, international relations, environmental protection, customs and foreign economic activities" (Article 19 the Law of Ukraine on the Public Prosecutor's Office). The supervisory authorities of the Public Prosecutor's Office of Ukraine against the background of exhaustive corruption<sup>1</sup> and unstable political situation may cause abuses of law, decay of civil society, economical recession, decline of efficiency of public administration and so forth.

When executing supervision of adherence to and application of laws, a public prosecutor shall have the right to: enter premises of public authorities and local self-government bodies, associations of citizens, enterprises, institutions and organizations of all forms of ownership, subordination and affiliation, military units, institutions without the special access regime upon presentation of an officer's certificate; have access to papers and materials as required for verification, including those obtained on a written request and those containing commercial classified information or confidential data; file written requests for the said documents and materials certificates and statements, including those concerning transactions and accounts of legal entities and other organizations to be checked by the public prosecution services in the course of verification (Article 20 the Law of Ukraine on the Public Prosecutor's Office). Thus, the prosecutor has the right to interfere in businesses and access classified information or confidential data by his or her initiative. The shortcoming of the Law in this regard is the absence of obligation of prosecutors to reason their actions and to make these reasons open for persons or institutions involved. Besides, the Law does not oblige a prosecutor to confine his or her supervisory activity to concrete legal proceeding. Besides, according to Article 22 the Law of Ukraine on the Public Prosecutor's Office, a public prosecutor, a deputy public prosecutor shall file a written ordinance on elimination of violations with an infringing body or an official, or with the supreme body or an official authorized to eliminate the violation. A written ordinance shall be issued in case of flat violations, which may significantly undermine interests of the State, the enterprise, institution, organization and citizens unless immediately

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<sup>1</sup> According to the Corruption Perceptions Index 2009, published by the Transparency International, Ukraine's rank is 146<sup>th</sup>.

eliminated. An ordinance shall be fulfilled without delay, and a public prosecutor shall be informed on its fulfillment.

In this case, a prosecutor takes the single-handed decisions, defining the law violations, the persons who violate law, and the measures which should be taken in order to eliminate violation. Such law provision endows a prosecutor with a privileged position and creates a possibility to violate the principle of binding force of the final court decisions (*res judicata*), since an ordinance shall be fulfilled without delay. Unfortunately, the latter provision makes difficulties for lodging a complaint against allegedly unlawful decisions of a prosecutor. As far as the Law of Ukraine on the Public Prosecutor's Office does not stipulate clearly the terms and conditions of fulfillment of an ordinance, it is vague whether a person should fulfil allegedly unlawful ordinance in case if a person appeals against it in court.

#### **4.6. The implementation of results.**

*According to the analysis, the mechanism of appointment and dismissal of the Prosecutor General, the character of mutual power relations and the content of tasks of the public prosecutor's office outside the field of criminal justice have the significant discrepancies in Ukraine in comparison to the chosen Baltic States. The provided analysis allows to conclude about the possibility to use some powers of the public prosecutor's office for the benefit of private interests, which is the contrary to the principle of the rule of law. Besides, this subsection provides the answers to the sub-questions and the central research question.*

The analysis of the four target countries (Estonia, Latvia, Lithuania, Ukraine) resulted in the conditions of compliance or non-compliance of the role of the public prosecutor's office with the rule law.

The analysis allowed defining of:

- the position of the public prosecutor's office of Ukraine in the structure of public authorities according to the principle of division of power into legislative, executive and judicial branches;
- the role of the public prosecutor's office of Ukraine in the State in terms of mutual influence between the public prosecution and the executive public authorities.
- the special destination of the public prosecution office should be the promotion of the law application while ensuring the respect of legality, of the fundamental rights and of equality in front of the law;
- the main function of the public prosecutor's office should be the public prosecution.

The analysis confirms the approach that the public prosecutor's office is not formally included into any of branches of power. The public prosecutor's office of Ukraine independently exercises constitutionally assigned functions. Therefore, the public prosecutor's office is an independent institution in the structure of State. Simultaneously, being a part of the State, the public prosecutor's office has sustainable (formal and informal) interrelations with other public authorities. The content of such relations is stipulated by the place of authorities in the power hierarchy together with the formal and informal methods of institutional activity.

The principle of separation of powers should be respected in connection with the prosecutors' tasks and activities outside the criminal law field and the role of courts to protect human rights. A public prosecutor should take part in the court proceedings with due regard for the principle of independence of the judiciary and subordination to the law, shall contribute to fulfillment of the law on full-scale, comprehensive and unbiased consideration of cases and issuance of lawful court decisions.

Unfortunately, the provisions of the Constitution of Ukraine concerning the public prosecution, and the Law of Ukraine on the Public Prosecutor's Office contain a possibility to use the public prosecutor's office in political struggle and to influence the Prosecutor General, getting the "private advantage" in violation of the principle of the rule of law. In contradiction to the principle of the rule of law, some provisions of the mentioned documents are not clear and not prospective. The shortcomings in the system of public prosecution are avoided (in a varying degree) in Estonia, Latvia and Lithuania by means of thoroughly and carefully written mechanism of tasks of public prosecution and mutual power relations of the public prosecutor's office with another public authorities. Besides the present research, such implication is also confirmed by opinions of the Council of Europe. According to the theoretical framework, the flaws of Ukrainian legislative provisions concerning the public prosecutor's office threaten the supremacy of the rule of law in Ukraine.

Finally, the analysis provides the research with the answers to the sub-questions, which are as follows.

*What flaws in Ukrainian legislation hinder the public prosecutor's office of Ukraine from functioning according to democratic standards?* The provisions of the Constitution of Ukraine (Article 121, Paragraph 9 of Transitional Provisions) and of the Law of Ukraine on the Public Prosecutor's Office (Articles 1-2, 20-23) which regulate power relation of the Prosecutor General another public authorities and the tasks of the public prosecutor's office outside the field of criminal justice. According to the analysis implication, the mentioned provisions contain a possibility to use the public prosecutor's office in political struggle and to influence the Prosecutor General, getting the "private advantage" in violation of the principle of the rule of law. Besides, some provisions of the mentioned documents are not clear and not prospective in contradiction to the principle of the rule of law.

*What position does the public prosecutor's office of Ukraine have in the State structure?* Formally, the public prosecutor's office is not included into any of branches of power being an independent institution is the structure of the State. Factually, due to unclear legislation, the parliament, the executive power and the president can influence the public prosecutor's office through the vague mechanisms of appointment, dismissal and responsibility of the Prosecutor General of Ukraine.

*Which democratic legislative provisions of Baltic countries could be useful for reform of Ukrainian public prosecutor's office?* As the analysis confirms, it is possible to use the legislative mechanisms of Estonia, Latvia and Lithuania which elaborate in a clear and unequivocal way the tasks of public prosecution outside the criminal law field and mutual power relations of the public prosecutor's office with another public authorities, including the order of appointment, dismissal and reasons of responsibility of the Prosecutor General in the target countries. The opinions of the Council of Europe, standard regulatory acts, such as the European Convention on Human Rights, recommendations to governments, such as Recommendation Rec(2000)19 the Committee of Ministers of the Council of Europe

should also be a supplementary source of information for the transformation of the public prosecutor's office according to the European democratic principles.

As analysis shows, the prosecutor's supervision over the law observance in its present view does not comply with the European democratic standards. Therefore, it is necessary to review this function in order to exclude undemocratic elements, and such competencies of prosecutors should be regulated by law as precisely as possible. The prosecutors should enjoy the same rights and obligations as any other party and should not enjoy a privileged position. The action of prosecution services on behalf of society to defend public interest in non-criminal matters must not violate the principle of binding force of the final court decisions (*res judicata*). The obligation of prosecutors to reason their actions and to make these reasons open for persons or institutions involved or interested in the case should be prescribed by law. The right of persons or institutions, involved or interested in the civil law cases to claim against measure or default of prosecutors should be assured.

*Hence, the answer for the central research question as What are the possibilities for reforms of Ukrainian public prosecutor's office according to the principle of the Rule of Law, is as follows: a) clear definition of the position of the public prosecutor's office of Ukraine within the State structure connecting to the principle of independence of the prosecution service; b) review of the legislative provisions concerning the functions of the public prosecutor's office of Ukraine outside the criminal justice field; c) ensuring the functioning of the public prosecutor's office of Ukraine in respect with the principles of equality of arms and res judicata.*

## CHAPTER VI

### CONCLUSION

A great variety of systems exist in Europe regarding the role of the prosecution services, including outside the criminal law field, resulting from different legal and historical traditions. It is for the member states of the Council of Europe to define their legal structures and their functioning, provided that they fully respect human rights and fundamental freedoms, the principle of the rule of law and their international obligations, including those under the Convention for the Protection of Human Rights and Fundamental Freedoms. The role of public prosecution services and the extent of its competences, including the protection of human rights and public interest, are defined by the domestic legislation of member states of the Council of Europe. The presence or absence and extent of non-penal functions of public prosecutors are deeply rooted in the cultural heritage, the legal tradition and the constitutional history of nations.

It is necessary that enough institutions, public agencies, officials and non-governmental organizations tackle the issue of protection of human rights and freedoms. In the European states the role of the administrative courts is increasing. Besides, people must have the right to choose between different possible procedures for protection of their interests. Thus, during the judicial reform in Ukraine the court's role should be gradually expanded. At present, the court can cancel the prosecutor's decision on dismissal of criminal case or denial of initiation of criminal proceeding. It meets the idea of improvement of judiciary and increases the court protection of citizens' rights and freedoms.

Studying of the possibilities of transformation of the public prosecutor's office according to the European democratic standards within the bounds of the rule of law concept was chosen for this research as far as this concept emphasizes supremacy of the law above all.

It may appear that the institutional power is created on the basis of the personal preferences of those who has power to create laws. As the research shows, a dysfunction of the legal norms regulating the status and tasks of the public prosecutor's office is a problem of Ukrainian politics. It may cause harmful consequences for the process of establishing democratic practices. The research found out which measures can be taken in order to make the rule of law function in Ukrainian legislation regarding the process of mutual power relations of the public prosecutor's office with other public authorities. The results of the present investigation proved that some legislative provisions hinder the public prosecutor's office of Ukraine from functioning according to the European democratic standards. Ultimately, the research provides the possible measures to transform the Ukrainian public prosecutor's office according to the European democratic standards.

In total, the analysis of legal regulation of the public prosecutor's office in Ukraine shows that such tendencies often do not meet and sometimes even disagree with the principle of the rule of law. At present, Ukraine needs a reformation of the public

prosecutor's office along with the complex reform of the law-enforcement agencies and judiciary. Adoption of a new law regulated the public prosecutor's office without amendments to the Constitution of Ukraine and other important laws (the Criminal Procedural Code of Ukraine, the Laws of Ukraine on Militia, on Operative Investigation Activity, on Judicial System of Ukraine, on Status of Judges etc) will not make real changes in the complicated Ukrainian situation in the field of the administration of justice. Unfortunately, the current tendencies of regulation of the public prosecutor's office in Ukraine do not elaborate on the problematic issues. The close consideration of experience of other countries in the field of justice and law-enforcement is an important factor of improvement of the public prosecutor's office in Ukraine. The present research is confined to the Baltic States – Estonia, Latvia and Lithuania. The division of power and principles of its definition in the Baltic legislation regarding the place of the public prosecutor's office in the system of checks and balances play an important role in the characteristics of interaction of the public prosecutor's office with the Baltic public authorities.

On the assumption of accumulated practice of functioning of the public prosecutor's office in the system of public authorities, theoretical design and experience of the Baltic States, the directions of reformation of the public prosecutor's office can be brought to the follows:

- implementation of legal basis of organization and activity of the public prosecutor's office according to the European democratic standards, particularly, the standards of the Council of Europe.
- adoption of new version of the Law of Ukraine on the Public Prosecutor's Office with the greater detail of forms and methods of interactions of the public prosecutor's office with other public authorities, especially regarding the issue of independence of the public prosecutor's office from political influence.

In the light of tendencies of legal regulation of the public prosecution, it is possible to point out two basic issues:

- the position of the Prosecutor General can be a powerful figure in political confrontation. It makes the confronting political powers possible to take advantages of the public prosecutor's office in their own interests during power struggle;
- the systemic crisis in all important areas of social relations conspicuously testifies for necessity to transform the public prosecutor's office according to the principle of rule of law and high democratic standards as the complex reform of administration of justice.

Unfortunately, there are a lot of problems in field reformation of the public prosecutor's office according to the European standards. As mentioned in the Chapter I, according to the Paragraph VI Article 11 of the Resolution No 190 (1995) of the Parliamentary Assembly of the Council of Europe concerning the Ukraine's application for accession

to the Council of Europe, Ukraine undertook an obligation to change the role and functions of the public prosecutor's office (especially regarding "the general supervision over observance of law") by means of its transformation into institution that would meet the Council of Europe standards. In terms of studied issue, it is worth mentioning the Recommendation (2000) 19 of the Committee of Ministers to the Member States of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System. This document declares that States should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organizational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with the representatives of public prosecutors.

Ultimately, in the field of transformation of public prosecutor's office according to the Council of Europe standards, the State should take such measures:

- to arrange recruitment, promotion and transfer to another position according to fair and unprejudiced procedure which rules out representation of interest groups and discrimination;
- to ensure the prosecutors' career according to clear and objective criteria (such as competence and work experience);
- to regulate by law disciplinary penalty of prosecutors in order to ensure fair and objective assessment and decision;
- to ensure protection for prosecutors and their families if they are under a threat to their security.

As the Baltic States experience confirms, the Ukrainian prosecution service may have some tasks and functions outside the criminal law field. The areas of competence can include civil, family, labour, administrative, electoral, law as well as the protection of the environmental, social rights and the rights of vulnerable groups such as minors, disabled persons and persons with very low income. Such provisions may have been on conditions that a) such functions favor attaining the main goal of the public prosecutor's office of strengthening of the rule of law and establishing of the supremacy of law; b) they may not prevail over the role of public prosecution in the criminal justice system. In support of the latter statement testifies experience of the Baltic States there competences outside the field of criminal justice are less important.

In terms of organizational aspects, the special emphasize may be put on the necessity of structural changes in the public prosecutor's office of Ukraine, based on the needs of development. In order to streamline reformation of the public prosecutor's office in ordered and rational way, it is possible to elaborate an appropriate program (conception) of institutional changes of the prosecution service subjected to creation of independent, high-professional, open and transparent public prosecutor's office that fully respects human rights and fundamental freedoms, the rule of law principle and the



international obligations, including those under the Convention for the Protection of Human Rights and Fundamental Freedoms.

*The results of the research create wide possibility of discussion. The findings discovered by the present investigation can attract more attention on the real depth of the problem of functioning of the rule of law in Ukrainian politics, as far as Ukraine declares its way of development towards the European integration and establishing strong traditions of democracy. The process of democratization of Ukrainian public institutions, not only the public prosecutor's office, is possible provided that the European Union will apply a wide range of instruments to ensure the development of cooperation with Ukraine in the field of administration of justice, which can indirectly facilitate the democratization. Therefore, the expert advice and financial aid of the European Union to the Ukrainian democratic movements and NGOs directed to consolidation of democratic civil society can promote the democratic changes and speed up the democratic reforms in Ukraine. Ultimately, the research raises more questions which can be a subject of further research work.*

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