National Aviation University

Educational and Research Institute of Law

Department of Criminal Law and Process

**SUPPORTED LECTURING CONCEPT**

on the discipline «**Procurator's Supervision**»

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Lecture 1. Prosecutorial supervision as an independent branch of state activity

Prosecutor's Supervision is a specific activity of state prosecutor's offices, which is carried out on behalf of Ukraine, and is to verify the accuracy of observance of the Constitution of Ukraine and the enforcement of laws in force in its territory.

The content of this activity is:

1. Identification of violations of the Constitution and the requirements of laws.

2. Establishing the perpetrators of the offenses.

3. Take measures to eliminate violations of the law and renew the violated rights.

4. Investigation of the persons who violated the law in the manner prescribed by law.

From this we can conclude that:

1. Prosecutor's oversight is a specific type of state-owned activity that, other than the prosecutor's office, can not be carried out by other state bodies, organizations, institutions or officials.

2. Prosecutorial supervision is carried out on behalf of the state - Ukraine. The prosecutor, exercising supervision, detects the offense, takes measures to eliminate them and punish the perpetrators not on behalf of the executive or the judiciary, but on behalf of the state.

3. Prosecutorial supervision is an independent form of state activity. Its distinction from the activities of other state bodies is determined by the specifics of its content. This is an examination of the accuracy of compliance with the requirements of the Constitution of Ukraine, laws, the compliance of other legal acts of the law, the implementation of measures to eliminate identified violations by means that are provided by law exclusively to the prosecutor's office.

The public prosecutor's offices occupy a special place in the system of state power of Ukraine. They do not belong to any branch of government.

In addition, it should be borne in mind that the term "prosecution supervision" means:

a) a specific type of public activity;

b) an independent branch of legal science;

c) educational discipline.

Consider the content of these definitions of prosecutorial oversight.

There are concepts in relation to various types of state activity, which require an explanation of their content and purpose. In this regard, it is advisable to consider the basic concepts of prosecutor's oversight as a form of public activity.

First of all, it is necessary to define the term "prosecutor".

The prosecutor is a natural person who is in permanent or temporary service in the prosecutor's office, is taken into service in accordance with the Law "On Prosecutor's Office" and performs official duties provided for by the same law and orders of the high prosecutor. In Art. 56 of the Law of Ukraine "On Prosecutor's Office" clarifies the concept of "prosecutor", which is used in the law.

"Prosecutor" - the concept of generalization. In the narrow sense, these are the heads of the public prosecutor's offices: Prosecutor General of Ukraine, prosecutors of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol, prosecutor of the city, district, specialized prosecutor's office.

In the broad sense, it is not only the aforementioned prosecutors, but also their deputies, heads of departments and departments, assistants and senior assistants of prosecutors, prosecutors and criminologists.

Prosecutorial supervision as a form of public activity of the prosecutor is to conduct inspections of observance and application of the Constitution of Ukraine and all laws in force in Ukraine.

Prosecution supervision as a branch of legal science means the amount of knowledge about the legislation regulating the activities of prosecutors on the supervision, its forms, means and methods, problems of ensuring the effectiveness of this activity. As science, prosecutorial supervision is closely linked to criminal, civil, economic, criminalistics and other branches of legal science.

Prosecution supervision as a discipline is part of the educational program of higher and secondary legal education institutions. By content it is divided into General and Special parts. The General part deals with the tasks, functions, principles of prosecutorial supervision, the system of prosecutor's offices, the powers of prosecutors, etc.

The special part deals with the peculiarities of the implementation of prosecutorial supervision in the performance of functions, the specifics of the response of prosecutors to various types of offenses.

The subject of prosecutorial supervision as a form of state activity should include the observance and application of the Constitution and laws by legal and physical (official) persons. In the practical

it is important to clearly understand that such object and subject of prosecutorial supervision.

The object of the prosecutor's oversight is the enterprises, organizations, institutions and other legal entities, which carry out prosecutor's audits of observance and application of laws.

The subject of the prosecutor's supervision are the members of the prosecutorial and supervisory activities - the prosecutors conducting the verification of observance and enforcement of laws at the objects of supervision.

To perform the prosecutorial and supervisory functions, the prosecutor has certain powers.

The powers of the prosecutor are the amount of rights and obligations that the prosecutor obtains for supervisory functions.

The Law "On Prosecutor's Office" provides for a significant amount of such powers. A number of powers of the prosecutor is also established by the norms of the CPC, the CPC, the GPC, the Law "On Operational and Investigative Activities," and others.

The legal means of prosecutorial supervision are closely linked to the powers of the prosecutor. In the literature and in practice, without sufficient reason, they are understood as synonymous concepts.

Legal means are of procedural significance and are used to identify and eliminate offenses. This is the essence of the prosecutor's oversight. The legal means of prosecutorial supervision in their content can be divided into means of detecting offenses, the reasons and conditions that promote them; means of elimination and prevention of violations; means aimed at bringing violators of the law to liability, as well as compensation for material losses.

The activities of prosecutors are widely used to respond to detected violations. The act of the prosecutor's response is the decision of the prosecutor fixed in the special document, by which he responds to the violations discovered as a result of the application of legal supervision measures. Response acts may include: protests, prescriptions, submissions, rulings, lawsuits and applications to the court, written instructions, requirements, minutes on administrative offenses.

So, having found an illegal legal act, the prosecutor applies a legal remedy such as protest. The material expression of this legal remedy is a protest, which states that the act does not comply with the law (which is specifically), and outlines the requirement of the prosecutor to abolish the unlawful act.

Different methods of prosecutorial supervision and legal means, provided by the Law of Ukraine "On Prosecutor's Office" and others, are used. The law does not provide mandatory recommendations on which of these means and in what specific cases it is necessary to apply to identify and eliminate different types of offenses. Such recommendations are worked out by scientists and

practices. Therefore, a set of scientifically substantiated and tested in practice methods and methods of applying legal means and make up the procedure of prosecutorial supervision.

Concept of "tactics of prosecutorial supervision". At the decision of the prosecutor's office, including the detection and elimination of violations of laws, the prosecutor applies various legal measures. Each of them can be applied using various methods, methods, techniques. The methods and methods of using the same legal remedy may vary depending on the type of objects, the nature of the offenses, the specific situation, the experience of the prosecutor and other factors.

In the theory and practice of the prosecutor's oversight, a set of methods and methods of applying legal means to address the tasks of the prosecutor's oversight. The combination of methods and methods of applying each legal instrument is the tactic of prosecutorial supervision.

Lecture 2. Organization of work in the organs of the prosecutor's office

Local prosecutors have a special place in the system of prosecutor's offices of Ukraine. This is the main link of the prosecutor's system, which accounts for almost 70 percent of all employees of the prosecutor's office in Ukraine.

Organization of work in the organs of the prosecutor's office of Ukraine, including in the local prosecutor's offices, has always been at the heart of the attention of the Prosecutor General of Ukraine, as evidenced by orders that regulate the activities of the prosecutor's office in all areas when performing their functions.

The forms and methods of exercising the powers of the prosecutors of cities and rayons for the performance of the functions of the prosecutor's office within the limits established by the Constitution of Ukraine and the laws of Ukraine are also regulated by orders and orders of the Prosecutor General of Ukraine, prosecutors of the regional level, decisions of the colleges and operational meetings, the instruction on office work in the organs of the prosecutor's office of Ukraine.

A characteristic feature of departmental normative acts is their focus on creating an optimal organizational order of activity that would ensure full and timely use by prosecutors of their powers, prompt and real elimination of violations of the law, strengthening of law and order, restoration of violated constitutional rights and freedoms of citizens, bringing the perpetrators to the statutory responsibility.

To ensure the successful accomplishment of tasks solved by the prosecutor's office, the law guarantees its independence in the exercise of its powers. Public authorities and local self-government bodies and officials are prohibited from interfering with the activities of the prosecutor's office.

The prosecutor's office can not belong to any political party or movement. The Office of Public Prosecutor can not rely on the exercise of functions not specified by the Constitution and the Law of Ukraine "On Prosecutor's Office". The requirements of the prosecutor, which are in accordance with the current legislation, are mandatory for all enterprises, institutions, organizations, officials and citizens and are executed promptly or in accordance with the terms provided by law or determined by the prosecutor. The decision of the city prosecutor (district) may be appealed to the higher prosecutor or the court.

Successful implementation of tasks defined in Art. 4 of the Law of Ukraine "On Prosecutor's Office", is possible provided that the organization of work in the prosecutor's office of the city and district is properly organized.

Prosecutor's oversight of the observance and application of laws is a type of activity of specially authorized state authorities exercised on behalf of the state, using the powers and legal means established by law to verify compliance with the Constitution of Ukraine and laws, to take measures to eliminate violations of the law, to bring them in accordance with the procedure established by law to the responsibility of the persons who committed these violations. This function is specified in Art. 1 of the Law of Ukraine "On Prosecutor's Office", according to which the Prosecutor General of Ukraine and his subordinate prosecutors supervise the observance and correct application of laws by the Cabinet of Ministers of Ukraine, ministries and other central executive authorities, state and economic management and control bodies, the Council of Ministers of the Autonomous Republic Crimea, local councils, their executive bodies, military units, political parties, public organizations, regardless of ownership, are subordinated STI and affiliation, officials and citizens.

The task of the prosecutor's supervision is formulated in Art. 4 of the Law of Ukraine "On Prosecutor's Office" and defines the activity of the prosecutor's office, which is aimed at the comprehensive approval of the rule of law, and the strengthening of the rule of law.

The tasks of supervising the observance and application of laws are specified in the order of the Prosecutor General. In the supervisory activity for observing and applying the laws, the main tasks are the protection of the rights and freedoms guaranteed by the Constitution of Ukraine, as well as the protection of the interests of the state.

Along with the protection of the rights and freedoms of citizens, it is necessary to pay attention to the supervisory activity of observance of legality in certain branches of economy, industry, agro-industrial complex, financial system.

According to Part 1 of Art. 19 of the Law of Ukraine "On Prosecutor's Office" is subject to supervision over observance and application of laws:

- compliance of acts issued by all bodies, enterprises, institutions, organizations and officials, requirements of the Constitution of Ukraine and current laws.

Among the legal acts are orders, instructions, resolutions, orders, rules, statutes, regulations, etc. issued by both officials and bodies.

The legality of normative acts that do not comply with the requirements of the law violate the rights of individuals and legal entities, the prosecutor must check in the first priority, based on their compliance with the Constitution of Ukraine and laws;

- the maintenance of laws on the inviolability of persons, socio-economic, political, personal rights and freedoms of citizens, the protection of their honor and dignity, unless the law provides otherwise for the protection of these rights.

The Constitution of Ukraine guarantees everyone the inviolability of a person, no one may be arrested or detained in any other way, except as a reasoned decision of the court and only on the grounds and in the manner prescribed by law. Prosecutor's oversight of law enforcement is one of the guarantees of ensuring the integrity of the individual and protecting the constitutional rights of citizens;

- compliance with laws relating to economic, interethnic relations, environmental protection, customs and foreign trade activities.

The prosecutor's office should supervise the observance of laws in the field of economic relations, laws aimed at the implementation of economic reform and market relations.

According to Art. 24 of the Constitution of Ukraine, citizens of Ukraine of different nationalities have equal rights, prosecutor's offices should take measures to exclude their discrimination on the basis of nationality and the emergence of conflicts on this basis.

In addition, the prosecutor's offices are obliged to supervise the observance of laws on environmental protection, as well as compliance with legislation on foreign economic and customs activities.

When exercising supervision, the public prosecutor's office takes measures to protect public interests.

The limits of supervision over observance and application of laws are determined:

- by the range of acts under observation - by the Constitution of Ukraine and the laws of Ukraine, including international legal acts ratified by the Verkhovna Rada of Ukraine;

- bodies supervised by the prosecutor's office, with the exception of the Verkhovna Rada of Ukraine, the President of Ukraine, the CCU;

- the competence of the prosecutor for the consideration of applications and complaints of citizens. Prosecutor on the basis of Part I of Art. 12 of the Law "On Prosecutor's Office" examines all applications and complaints about violations of the rights of citizens and legal entities, with the exception of those whose consideration is within the competence of the court;

- the inadmissibility of substitution by the prosecutor's office of the bodies of departmental management and control; interference in economic activity, if such activity does not contradict the current legislation (Part 2 of Article 19 of the Law of Ukraine "On Prosecutor's Office").

Prosecutorial supervision should timely and in full detect violations of laws on supervised objects, not to substitute bodies of departmental control.

The powers of the prosecutor in exercising supervision

In conducting a prosecutor's oversight of observance and application of laws, the prosecutor has the right:

1) it is unhindered by an identity certifying the position he occupies to enter the premises of state authorities and local self-government bodies, military units, enterprises, institutions and organizations, regardless of the forms of ownership without special permits, where such is introduced;

2) demand from the bodies of state power, bodies of local self-government, military units, state enterprises, institutions and organizations decisions, orders, instructions, orders and other acts and documents, receive information about the state of law and measures for its maintenance, have access to relevant information databases of state bodies;

3) require heads and collegial bodies to carry out inspections, audits of activities of subordinated and controlled enterprises, institutions, organizations irrespective of ownership forms, as well as the allocation of specialists for conducting inspections, departmental expert examinations;

4) have access to the documents and materials required for the verification, including on written request, and those containing commercial secret or restricted information. In writing, request a submission to the prosecutor's office within the reasonable time specified by them of the said documents and materials, the issuance of the necessary certificates, including on operations and accounts of legal entities and other organizations, in order to resolve issues related to verification. Receipt of information from banks containing banking secrecy is carried out in the order and amount established by the Law of Ukraine "On Banks and Banking Activity";

5) receive oral or written explanations from officials, officials and citizens, including by summoning the person concerned to the prosecutor's office.

In detecting violations of the law, the prosecutor within the scope of his competence has the right:

1) make a submission;

2) in accordance with the procedure established by law, initiate the bringing of a person to disciplinary, administrative responsibility, to draw up a protocol on an administrative offense and start a pre-trial investigation;

3) apply to the court in cases stipulated by law.

In order to supervise the observance and application of laws, public prosecutors have broad powers, as defined in Articles 20, 44 of the Law "On the Prosecutor's Office".

Lecture 3. Work with appeals of citizens and legal entities in the prosecutor's office

Work on the consideration and resolution of applications, complaints, other appeals of citizens and reception of visitors is organized and controlled by the prosecutor-head of the prosecutor's office of the relevant level, as well as by the heads of the structural units of the prosecutor's office.

   The procedure for considering and resolving applications, complaints, and other appeals received by the public prosecutor's office is determined by the rules of the current legislation (Laws of Ukraine "On appeals of citizens", "On information", etc.), as well as by the orders of the Prosecutor General of Ukraine. In public prosecutor's offices personal reception of citizens is carried out. It is organized in such a way that citizens know when, where and from which prosecutors take visitors. At the prosecutor's offices of the regions, city, district, inter-district and similar prosecutors, reception of citizens is conducted throughout the working day in accordance with the schedule, which is posted in an accessible place. In addition, each prosecutor's office establishes a "for complaints and applications" box, from which every day correspondence is withdrawn. For each appeal to the prosecutor's office one of the following decisions may be taken: a) acceptance for consideration; b) referral to the subordinate prosecutor's office; c) referral to another agency; d) adding to the complaint received earlier or to the materials of the criminal case for a substantive decision. It should be borne in mind that the law prohibits directing complaints to bodies and officials whose decisions (actions) are being challenged. Appeals of citizens coming to the public prosecutor's office, in accordance with the general rule, should be considered and resolved by the prosecutor in time not later than a month, and those who do not need to study and verify - not later than fifteen days. Legislation provides for other terms of consideration and resolution of appeals of certain categories of citizens. Yes, the request

the people's deputy of Ukraine shall be resolved in the 15-day or other term established by the Verkhovna Rada of Ukraine; request of the deputy of the local council - within the term established by the council. The appeal of the people's deputy of Ukraine, the deputy of the local council is considered within 10 days. In the case of checking the request, the appeal is not possible within the time period established by the law, the period of verification may be extended, but no more than for up to 30 days (month), as reported by the deputy, the head of the relevant council, on the basis of the report of the performer. The decision on the application or complaint is made only after a thorough examination of the circumstances and motives. For this purpose, the necessary documents, explanations of the officials and other persons whose actions are being appealed must be required. If necessary, the relevant experts may be involved in the inspections carried out on applications and complaints on the basis of clause 20 of the Law "On the Prosecutor's Office". According to the results of the inspection, the conclusion is drawn, and if the appeals refer to the commission of a crime, a decision is made in accordance with the requirements of the criminal-procedural law (Article 97 of the CPC of Ukraine). If the applicant's claims are found to be reasonable, the application must be satisfied. At the same time, measures should be taken to restore the rights and legal interests of the applicant. The criterion for assessing the effectiveness of work in this direction is to ensure a high-quality, timely and objective solution to citizens' appeals, a real renewal of violated rights. Upon completion of the examination, the applicant, at his request, is given an opportunity to familiarize himself with the documents and materials (in particular, with closed criminal proceedings, the material on refusal to initiate a criminal case, supervision of a complaint, etc.) to the extent that this does not contradict the requirements of observance secrets protected by law. In accordance with Article 12 of the Law "On the Prosecutor's Office", appeals against violations of the rights of citizens and legal entities are resolved in the prosecutor's offices, except for complaints, which are considered to be within the competence of the court. Appeals that are under the jurisdiction of the judiciary are admitted to the Prosecutor's Office in case of necessity to protect the interests of the state and citizens who are unable due to physical or material condition to protect their impugned or disputed rights or to exercise procedural powers (Article 36-1 of the Law of Ukraine " About the Prosecutor's Office "). Prosecutors have to analyze annually the state of work with appeals of citizens, people's deputies of Ukraine, deputies of local councils, its consequences are heard in colleges and operational meetings.

Lecture 4. Supervision over observance and application of laws

In accordance with paragraph 9 of the Transitional Provisions of the Constitution of Ukraine, the Office of Public Prosecutor of Ukraine is responsible for supervising the observance and application of laws. This function is specified in Article 1 of the Law of Ukraine "On Prosecutor's Office", according to which prosecutor's supervision over observance and correct application of laws by the Cabinet of Ministers of Ukraine, ministries and other central executive authorities, state and economic management and control bodies, the Council of Ministers of the Autonomous Republic of Crimea , local councils, their executive bodies, military units, political parties, public organizations, irrespective of the forms of ownership, subordination and affiliation, the adolescents and citizens is carried out by the Prosecutor General of Ukraine and his subordinate prosecutors. Prosecutor's oversight of the observance and application of laws is essentially a type of activity of specially authorized state authorities exercised on behalf of the state through the use of powers and legal means provided by the law to ensure compliance with the Constitution of Ukraine and laws, taking measures to eliminate violations laws, bringing the perpetrators to statutory responsibility, resumption of violated rights. In general, the task of prosecutor's supervision is formulated in Article 4 of the Law "On the Prosecutor's Office". According to its provisions, the activities of the public prosecutor's office are aimed at the ultimate establishment of the rule of law, the strengthening of the rule of law and has the task of protecting against unlawful encroachments: 1) the independence of the republic, the social and state system, political and economic system, the rights of national groups and territorial entities enshrined in the Constitution of Ukraine. ; 2) guaranteed by the Constitution, other laws of Ukraine and international acts of socio-economic, political, personal rights and freedoms of man and citizen; 3) the foundations of a democratic system of state power, the legal status of local councils, bodies of self-organization of the population. The specified tasks of supervising the observance and application of laws are specified in the order of the Prosecutor General of Ukraine No. 6 dated 15.04.2004 "On the organization of supervision of the prosecutor's office in relation to the protection of the rights and freedoms of citizens and the interests of the state." In particular, taking into account the relevance of socio-legal relations that occur in certain branches of the economy

- prevention and counteraction to legalization (laundering) of proceeds from crime;

   - disclosure of corruption offenses and other corruption-related offenses;

   - protection of property, land resources and the natural environment;

   - privatization of state and communal property;

   - banking, customs and foreign economic activity;

   - Budgeting, taxation and energy saving (paragraph 2.3 of the order of the Prosecutor General of Ukraine No. 6 d.).

   The primary duty of prosecutors is the timely detection and protest of illegal legal acts, as their action simultaneously extends to a wide range of individuals. The prosecutors must pay particular attention to overseeing compliance with the laws on administrative violations by law enforcement and controlling authorities, to use in full the powers specified in art. 250 KUpAP. In this case, measures should be taken to protest illegal decisions imposing administrative fines; to react promptly to the facts of illegal use of measures of administrative coercion by citizens by the authorized bodies and their officials. To this end, prosecutors must check compliance with the law on a monthly basis: during administrative detention; at delivery of the offender; on the procedure and conditions for the detention of persons subjected to administrative arrest, in special enactments and temporary detention facilities.

Lecture 5. Prosecutor's supervision of the observance of the laws on minors

In the work of the prosecutor's office, supervision over the adherence to the laws on the rights and freedoms of minors has always been one of the main directions. This is due to the special attention given by the state to the fate of minors, as well as the fact that in the system of legal acts regulating the rights of minors, the basic constitutional requirements are laid down, and above all the Guarantees for the protection of rights and freedoms. The Constitution of Ukraine, the Convention on the Rights of the Child, approved by the session of the UN General Assembly on November 20, 1989, entered into force for Ukraine on September 27, 1991, the Law of Ukraine "On Promotion of the Special Formation and Development of Youth in Ukraine" and other normative acts stipulate not only the rights of minors , but also the duty of the state to take care of their education, health care, harmonious development, as well as the protection of rights and legitimate interests. Particular attention from the state needs orphans, children left without parental care, children who suffered as a result of the Chornobyl catastrophe. The Prosecutor General of Ukraine in Order No. 6/1 dated April 15, 2004 "On the organization of the activities of the prosecutor's office for the protection of the rights and freedoms of minors" clearly defined the main tasks of the prosecutor's office in this direction of activity:

- protection of the rights and freedoms of minors, guaranteed by the Constitution of Ukraine, the UN Convention on the Rights of the Child, the laws of Ukraine;

- supervision of observance of laws by the executive authorities and local self-government, which are assigned responsibilities for the protection of children's rights, prevention of offenses and neglect;

- supervision over observance of legality in the activity of special institutions for minors: reception-districts, refuges, general education schools, vocational schools, social rehabilitation, centers of medical and social rehabilitation.

Such a wide range of issues that the prosecutors have to deal with in the performance of certain tasks requires a comprehensive approach to their solution. Supervision over observance of laws aimed at protecting the rights and freedoms of minors is not provided in the Law "On Prosecutor's Office" as a separate function, therefore supervision measures are carried out within the limits of all functions defined in art. 5 of the Law "On Prosecutor's Office".

Prosecutors, on the basis of tasks, supervise the observance of laws:

1) on the protection of social, property and personal rights of minors;

2) on the protection of the rights of minors in the procedure of civil proceedings;

3) aimed at preventing juvenile delinquency;

4) during pre-trial investigation in criminal cases of crimes, as well as socially dangerous acts of minors, in the consideration of this category of cases in the courts;

5) when placing children and adolescents in special institutions for minors.

It is advisable to consider each direction of supervisory activity.

Lecture 6. Prosecutor's supervision of compliance with internal affairs legislation on administrative offenses

Prosecutorial supervision is one means of ensuring legality when applying measures of influence for administrative offenses. First of all, it is aimed at protecting the rights and legitimate interests of citizens - participants in administrative legal relations, ensuring timely, comprehensive, complete and objective clarification of the circumstances of the case, resolving it in strict accordance with the law, ensuring the implementation of the issued resolution, as well as identifying the causes and conditions conducive to the commission of administrative offenses, strengthening the impact of administrative liability measures on crime prevention. The authority of the law enforcement agencies to terminate the administration positive offenses are defined by pp. 1-3, 5-8,18-19, 21-22 centuries. 11 of the Law "On the Militia" and the norms of the Code of Ukraine on

-administrative offenses (hereinafter - KUpAP). Depending on the nature of these violations, the internal affairs bodies either fully carry out proceedings against them (Article 222 of the Code of Administrative Offenses), or only initiate proceedings, bringing cases before courts, administrative commissions and other bodies. By exercising supervision over compliance with the legislation on administrative offenses, the prosecutor uses the powers envisaged in Article 20 of the Law "On the Prosecutor's Office", and in cases of responding to the facts of illegal detention of citizens in an administrative procedure - the powers stipulated in Articles 44 and 45 of the Law "On rokuraturu ".Povnovazhennya prosecutor in supervising the implementation of laws in the proceedings on administrative offenses specified in st.250 Administrative Code, according to which the prosecutor (deputy) has the right: the right to institute proceedings on administrative violations; get acquainted with the materials of the case; to check the legality of the actions of the authorities (officials) in the conduct of the case; to take part in the consideration of the case; make a petition; give conclusions on issues that arise during the consideration of the case; to verify the correct application by the relevant authorities (officials) of the measures of influence for administrative violations; to challenge a resolution and a decision on a complaint in an administrative offense case; to stop the execution of the ruling, as well as to commit other acts stipulated by law. Article 290 of the KUPA provides the prosecutor with the right to challenge a ruling in a case concerning an administrative offense. The protest by the prosecutor stops the execution of the resolution to consider the protest (Part 2 of Article 291 KUpAP). In addition to the prosecutor and his deputy, actions aimed at identifying violations of the law during the proceedings on administrative violations are also entitled to an assistant prosecutor. verifications may be: statistics of courts, administrative commissions, law enforcement bodies in forms 1-AP, 1-A (semi-annual, annual) "Report on the consideration of cases of administrative offenses and persons brought to admin tratyvnoyi responsibility ", which consists of local officials, authorized to consider cases on administrative offenses in effect. The report, in particular, indicates: the name of the articles KUpAP; the number of cases reviewed by the decisions (decisions); data on the number of persons brought to administrative liability, the closure of proceedings in cases of administrative offenses; data on the number of persons against whom decisions (decisions) on the imposition of an administrative penalty have been taken: prevention, fines, confiscations, extraction of the item, deprivation of special law, correctional works, administrative arrest; application to minors aged 16 to 18 years of influence measures stipulated in Article 24-4 of the CUPA; Data on the amount of imposed and fined fine, the amount of material damage inflicted by the offense, and the amount of the damages are indicated. The analysis of these data allows us to conclude on the dynamics of administrative offenses in the region and the activities of the relevant state authorities in detecting such offenses and bringing the persons to justice; materials for analyzing the state of crime (especially pay attention to crimes that violate public safety and public order) and supervise the observance of laws for pre-trial im investigation that can make a preliminary conclusion about possible violations of laws and administrative practice - materials the prosecutor in the court cases on administrative offenses, which accounted protocols law enforcement officers. At the same time, the prosecutor may find violations of the laws that were assumed by the employees of the said bodies at the initial stages of the proceedings on administrative violations, - the materials of inspection in the administrative commission, other bodies empowered to consider cases concerning administrative violations;

- statements and complaints of citizens, media reports, etc. - direct detection by the prosecutor of violations of laws during the verification of the lawfulness of the detention of persons for administrative violations, etc.. Verification of the implementation of laws in the internal affairs bodies may be limited to clarifying the circumstances set forth in complaints of citizens ; have solid (at a certain time) or selective (according to certain types of offenses) character. In any case, when planning this work, one should proceed from the provisions of paragraph 2.4.1 of the Order of the Prosecutor General of Ukraine No. 6 dated April 15, 2004 "On the Organization of Supervisory Activities of the Prosecutor's Office on the Protection of the Rights and Freedoms of Citizens and the Interests of the State", according to which prosecutors have : 1) to pay special attention to overseeing compliance with laws on administrative violations by law enforcement and controlling bodies, using in full the powers specified in Article 250 of the KUAPAP; 2) respond promptly to the facts of illegal use by citizens of the authorized bodies and officials

Lecture 7. Supervision over observance of laws by bodies conducting operative-search activity, inquiry, pre-trial investigation

In accordance with clause 3 of Art. 5, art. Art. 29 and 30 of the Law of Ukraine "On the Prosecutor's Office" one of the branches (directions) of the prosecutorial and supervisory activities is to supervise the observance of laws by the authorities conducting operative search activity, inquiry, pre-trial investigation. It follows that this area covers the monitoring of legality in two separate, regulated by norms, different from each other, branches of law, types of law enforcement agencies: a) operatively-wanted and b) criminal procedural (inquiry and pre-trial investigation). This circumstance allows for separate consideration of the supervision of the prosecutor for operational search activities and for pre-trial investigation.

The objects of the prosecutor's oversight of the observance of laws by the bodies conducting operational-search activity are the operational units:

Ministry of Internal Affairs of Ukraine - criminal, transport and special police, special units for combating organized crime, units of internal security, judicial militia;

Security services of Ukraine - counterintelligence, military counterintelligence, special units for combating corruption and organized crime, operational-technical, internal security, documentation, fight against terrorism and protection of participants in criminal justice and law enforcement officers, protection of national statehood;

Foreign Intelligence Services of Ukraine - intelligence, operational and technical, own security;

The State Border Guard Service of Ukraine - an intelligence agency of a specially authorized central executive body on the protection of the state border (intelligence intelligence, operational and technical units, own security), operational search units, respectively, the specially authorized central executive body for the protection of the state border and its territorial bodies, units on the protection of the state border of the bodies of state border guard and Marine security, provision in the interior noyi security guarantee their security, documentation and technical and operational units;

Department of state security - units of operational security providing solely for the purpose of ensuring the safety of persons and objects that are subject to public security

Bodies of the State Tax Service - operational units of bodies that control the compliance with tax legislation;

Bodies and institutions for the execution of sentences and investigation detachments of the State Penitentiary Service of Ukraine;

The intelligence agency of the Ministry of Defense of Ukraine - operative, operational-technical, own security;

The bodies of the State Customs Service are the operational units that are engaged in the fight against smuggling.

The carrying out of operational search activities by other subdivisions of said bodies, subdivisions of other ministries, departments, public, private organizations and individuals is prohibited.

The coverage of one branch of prosecutorial supervision of the execution of the laws by the operative-search agencies and the pre-trial investigation bodies can be explained by the common objectives of criminal proceedings.

The subject of the prosecutorial oversight of the operative and investigative bodies is defined in Art. 29 of the Law of Ukraine "On Prosecutor's Office" as observance of the laws on protection of human and citizen's rights and freedoms; the established procedure for carrying out operative-investigative activities and ensuring the legality of decisions taken by them.

Operational-search activity, in accordance with the Law of Ukraine "On Operational and Investigative Activity", is a system of vowel and secret search, reconnaissance and counter-intelligence activities carried out with the use of operational and operational-technical means. This activity is based on the principles of legality, observance of the rights and freedoms of citizens and legal entities.

Article 14 of this law stipulates that the supervision of observance of laws during conducting of operational-search activity is carried out by the Prosecutor-General of Ukraine, his deputies, prosecutors of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol and prosecutors and their deputies equaled to them, and also by an authorized order The Prosecutor General of Ukraine chiefs and prosecutors of the departments, departments of the General Prosecutor's Office of Ukraine and the Prosecutor's Offices of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol.

Heads of city, district, inter-district, city district and similar prosecutors, as well as prosecutors appointed by them, supervise the observance of laws during conducting of operational and investigative activities in operational searches established by subordinate territorial operational units of law-enforcement bodies.

The prosecutor within his competence:

freely enter into all premises of the bodies conducting operational search activities;

Requests to check orders, instructions, orders and other acts related to operational activities, operational searches, registration, accounting, reporting, statistical, analytical documents and other information on the conduct of operational and investigative measures;

instructs the heads of the relevant bodies to carry out inspections in their subordinate departments in order to eliminate violations of the law;

gives written instructions on carrying out operative-search activities for the purpose of prevention and detection of crimes, the search for persons who are absconding from the bodies of pre-trial investigation, investigating judge, court, evade criminal prosecution, are not missing;

agrees to extend the term of conducting operational and investigative activities;

receives an explanation of violations of the requirements of the law from officials of the authorities conducting operational search activities;  
verifies complaints of violations of laws by the authorities conducting operative-search activities, with the opportunity to get acquainted with operative-search materials in necessary cases;

abolishes illegal decisions on the establishment or closing of an operational investigation, suspension or renewal of operational activities, or other decisions that contradict the law;

takes measures to eliminate violations of lawfulness during conducting of operational and investigative activities and to bring the perpetrators to liability established by law;

Information about persons who confidentially cooperate or collaborate with the intelligence agency of Ukraine, the belonging of specific persons to the personnel of intelligence agencies, as well as the forms, methods and means of intelligence activities and the organizational structure of intelligence agencies do not belong to the subject of prosecutorial supervision.

The prosecutorial review of the lawfulness of the execution of operational and investigative measures should provide an answer to such questions

were they aimed at achieving the goals and objectives of the Law of Ukraine "On Operational and Investigating Activities"?

were there legal reasons and reasons for their implementation?

was it possible to carry out operative-search measures into the competence of the bodies subject to inspection?

or in accordance with the law, there was a fixation and legalization of the consequences of specific cases of operational and investigative activities?

Operational and investigative measures may be conducted only for the purpose of protecting the life, health, rights and freedoms of man and citizen, property, ensuring the safety of society and the state from criminal encroachments. It is prohibited to hold such events in the interests of any political party, public and religious association.

Verification of the legality of conducting operational searches and decisions taken in this case shall be carried out on the basis of:

planned measures taking into account the state of law in this area of ​​activity;

data on the absence of positive results in the prevention, timely detection and suppression of crimes, the search for persons who are hiding from the bodies of pre-trial investigation, the court or evade criminal prosecution, as well as missing persons;

information about inadequate execution of instructions of the authorized prosecutor;

reports of operational units on the establishment or closing of an operational investigation, conducting operational searches that do not require the permission of the investigating judge or the prosecutor's decision;

communications, complaints and appeals of persons about violations of the requirements of legislation during the carrying out of operational-search activity;

information about the improper execution of orders, resolutions, decisions and other binding decisions of the investigator, prosecutor, investigator of a judge, court on searching for persons who are absconded from the bodies of pre-trial investigation, court or evade criminal prosecution;

initiation by the heads of relevant branch departments and departments, heads of city, district, inter-district and similar prosecutors and instructions of the authorized high-level prosecutor.

It is imperative to check compliance with the requirements of the current legislation regarding:

the establishment of operational and prosecution cases, grounds for conducting operational search activities

presence of authority in persons conducting operative-search activity;

compliance of operative-search activities with the goals and tasks of operative-investigative activity, observance of the conditions and procedure for carrying out operative-search activities established by the legislation, as well as involving citizens in their implementation on a confidential basis and on the basis of voluntariness;

the application of individual restrictions on human rights and freedoms, the justification of petitions to the court to grant permission to conduct operational-search activities, in particular those related to interference with private communication;

the timely submission of information about the criminal activity of individuals who were obtained during the operational-search activity, to the bodies of pre-trial investigation to initiate and conduct pre-trial investigation;

the justification for the continuation, termination, renewal of the calculation of terms of conduct of operational and prosecution cases and their closure, as well as the use of the results of operational and investigative activities;

timely notification of the establishment and closure of operational and prosecution cases;

compliance with departmental orders, instructions, orders and other legal acts on conducting operational and investigative activities of the Constitution of Ukraine and other laws of Ukraine.

Authorized prosecutors must fully exercise their rights regarding the conduct of inspections, elimination of violations committed in conducting investigative activities, restoration of violated rights and freedoms of citizens, for this purpose:

To get acquainted with the originals of operational search documents and the relevant logs of their registration and accounting, following the results of the inspection to compile a certificate in accordance with the rules of secret records. Take measures to eliminate identified shortcomings and violations of laws.

Require written explanations from the heads of operational units and those carrying out operative and investigative activities regarding the violations of the law and their causes.

Provide written instructions on carrying out operational-search activities for the purpose of prevention and detection of crimes, the search for persons who are hiding from the bodies of pre-trial investigation, the court, evade criminal prosecution, and persons who are not missing.

To check the legality of the establishment of operational and prosecutorial cases within 5 days from the day of receipt of notification of their establishment in order to timely respond to unlawful decisions on the establishment of such cases.

To check the timeliness and validity of the submission by the operational units of materials, which contain actual data on unlawful acts of individuals and groups, the responsibility for which is provided for by the Criminal Code of Ukraine, to the body of pre-trial investigation for the pre-trial investigation, or relevant reports to the bodies of pre-trial investigation, the prosecutor in case of impossibility the sending of such materials in connection with the carrying out of operational and investigative measures that continue and the termination of which may be negative about influencing the results of criminal proceedings.

In each case, the resolution of the issue on the approval of the decision to extend the term of the operational investigation, the relevant prosecutors must verify the validity of such decisions and their compliance with the materials of the case. When establishing the facts of violating the requirements of the law in the conduct of operational and prosecutorial cases to decide on the responsibility of guilty workers.

In addition, prosecutors must verify the legality of closing operational cases within 10 days of receiving notice of their closure in order to respond promptly to unlawful decisions to close such cases. The decision to cancel the decisions on the closure of the operational investigation, in the presence of legitimate grounds for this, shall be taken within the same period. In the case of agreement with the closure of the operational search file - to provide a statement of the validity of the decision.

Instructing heads of law enforcement agencies to carry out inspections in subordinate operational units, resolutions and written instructions on carrying out operational-search activities for the purpose of prevention and detection of crimes, the search for persons who are hiding from the bodies of pre-trial investigation, investigators of the judge, the court, evade the serving of criminal punishment, it is necessary to sign the heads of the public prosecutor's offices, heads of structural units and employees, authorized by order of the General okurora Ukraine, heads of local, regional, inter-regional and other prosecutors equal to them.

The main criteria for assessing the effectiveness of prosecutorial oversight of compliance with laws in carrying out operational-search activities are:

observance of human rights and citizens, including privacy, housing and correspondence, telephone conversations, telegraph correspondence and other forms of private communication, bank deposits and accounts, urgent measures to restore violated rights and bring perpetrators to statutory responsibility ;

timely response to violations of law in the conduct of operational and investigative activities.

Lecture 8. Participation of prosecutor's offices in international cooperation

Within its competence, the Office of Public Prosecutor of Ukraine cooperates with specialized international organizations, prosecutors and relevant competent authorities of foreign countries, takes part in the elaboration of international treaties of Ukraine, concludes agreements on legal assistance.

Perelyum for the intergranular co-operative urea of ​​urea urea urea from the off By the way, the foreigners of the foreign countries supported the Constitution of Ukraine and the Law of Ukraine "On Procurrency" . According to Article 9 of the Constitution of Ukraine, current international treaties, the consent of which is binding on the Verkhovna Rada of Ukraine, is part of the national legislation of Ukraine. Consequently, at the constitutional level, the priority of the international treaty of Ukraine prior to the laws and other legislative acts, other than the Constitution of Ukraine, is determined. If an international treaty of Ukraine stipulates other rules than those provided for by the legislation of Ukraine, then the rules of the international treaty of Ukraine shall apply.

Article 26 of the Law of Ukraine "On Procuracy" stipulates that the Prosecutor General of Ukraine, in accordance with the intergovernmental agreements on the provision of legal assistance, shall decide on the violation and investigation of criminal cases, the extradition of offenders or persons suspected of committing crimes, sending communications about the consequences of criminal prosecution, as well as other issues stipulated by such agreements.

According to the Resolution of the Verkhovna Rada of Ukraine of November 17, 1993 No. 3611-XII, to the ratification of the relevant international agreements, the Prosecutor General of Ukraine has been granted powers to sign, on behalf of Ukraine, treaties (agreements) on admission of citizens of Ukraine sentenced by the courts of other states for service punishment on the territory of Ukraine and the transfer of citizens of foreign states convicted by the courts of Ukraine for serving punishment in the territory of these states.

The main forms of international cooperation of the Prosecutor's Office of Ukraine are:

- Legal assistance in civil, family and criminal cases;

- preparation of conclusions and proposals on the expediency of concluding new ones and joining existing legal aid agreements;

- organization of events of an international nature (negotiations, expert meetings, seminars, conferences, etc.);

- preparation of reference, analytical and informational materials and final documents on the need for international events.

The most important direction of international cooperation of the prosecutor's offices is the provision of legal assistance. The content of legal assistance in the broad sense includes the preparation and transmission to foreign law enforcement agencies and judicial institutions, as well as execution of applications (petitions, orders, requests) on their request:

- execution of procedural actions (execution of investigative actions, delivery of documents, transfer of objects, provision of documents, etc.);

- extradition (extradition) of persons;

- transfer of proceedings in criminal cases.

The amount of legal aid provided by the prosecutor's office of Ukraine is determined in a specific international legal act, the analysis of which shows that the prosecutor's office provides legal assistance, in particular:

- investigation of offenses in economic and foreign economic activity;

- environmental protection;

- compliance with laws on the state border and customs;

- Submission of materials of experimental examination or criminal case;

- initiation of criminal cases and investigation of crimes;

- execution of separate requests for criminal, civil, economic affairs;

- Searching for suspects, accused persons, as well as sending stage of arrested and convicted persons;

- extradition of persons who have committed a crime;

- Search for missing persons;

- the search for stolen property and the return of illegally acquired items and values;

- use of archive materials that are not related to state secrets;

- rehabilitation of victims of political repressions;

- execution of sentences concerning persons convicted by courts of other states.

The prosecutor's office has significant powers to oversee compliance with the provisions of international treaties of Ukraine when providing legal assistance. The prosecutor's office supervises the observance of laws when executing orders to search for persons or property, investigative actions, especially those requiring sanction of the prosecutor, the detention and detention of persons issued to another state, their release from custody, if the demand their extradition was not received within the period stipulated by the legislation. The General Prosecutor's Office of Ukraine also resolves the issue of delaying the extradition of a person if he is prosecuted or sentenced for another crime, to terminate a criminal prosecution, execution of a sentence or to release from punishment.

According to domestic law of Ukraine, the prosecutor's offices conduct criminal prosecution of citizens of Ukraine suspected of committing a crime on the territory of another state.

In order to ensure the proper organization of international cooperation of the prosecutor's offices in the Law of Ukraine on the rationalization of international forensics, the General Prosecutor's Office of Ukraine The rays are referred to as the central organs, which are influenced by the influence of interactions national cooperation.

Vid¬po¬vid¬no the order of the Prosecutor General of Ukraine of 05.07.04 number 9 g. "On the organization of the prosecution Ukraine in international cooperation and legal assistance to" regulate the distribution of competences of the Prosecutor General Ukraine and subordinate prosecutors in international cooperation. The exclusive duties of the General Prosecutor's Office of Ukraine are:

- ensuring constant control over the activities of subordinate prosecutors to oversee the implementation of international treaties and their application;

- informing the Ministry of Foreign Affairs of Ukraine on the detention (arrest) of persons to be extradited from Ukraine;

- Consideration and resolution of requests for extradition of persons and for conducting procedural actions in criminal cases, except in cases when international agreements of Ukraine provide for the possibility of transferring such appeals directly to prosecutors of regional and district levels;

- consideration of petitions concerning the prosecution of criminal prosecution and requests for legal aid in criminal cases coming from the competent authorities of those states with which Ukraine has no valid international agreements or addressed to the authorities of the said states by the bodies of pre-trial investigation of Ukraine;

- consideration of materials on the compliance of decisions taken by the prosecutor's office, with the norms of international treaties of Ukraine on legal aid;

- preparation of conclusions and proposals on the expediency of concluding new ones and joining existing legal aid agreements;

- organization of international negotiations, expert meetings, seminars, conferences on international cooperation in the field of provision of legal assistance, as well as solving issues related to participation in such events by employees of the organs of the prosecutor's office.

The Office of International Relations was established within the structure of the General Prosecutor's Office of Ukraine, which includes the legal department and the department of extradition and orders.

Ensure compliance with the requirements of international treaties of Ukraine in the field of providing legal assistance, the timely and qualitative preparation of reference, analytical and information materials and final documents in the activities of subordinate prosecutors and units, as well as the initiative to inform the management of international relations on the implementation of appropriate international measures and the provision of necessary Assistance in their organization belongs to the deputies of the Prosecutor General of Ukraine, heads of departments and departments of General Proc Ukraine's prosecutors, prosecutors and prosecutors equated to them. With this purpose, specialist staff assigned to the regional apparatus and equivalent to them, the prosecutor's office oversees the observance of laws in the international legal field. If necessary, they are exempted from performing other duties.

In cases where direct involvement of regional, city, district and prosecutors equated to them in matters of international cooperation is not explicitly provided for by relevant international treaties of Ukraine, they may take measures in this area solely on the basis of the powers given to them by orders and orders of the General Urora Ukraine. These prosecutors should provide supervision over the legality of the activities of the inquiry and pre-trial investigation bodies in the exercise of powers granted to them by international treaties of Ukraine.

Thus, under the international cooperation of the organs of the public prosecutor's office it is necessary to understand the interaction between the Prosecutor General of Ukraine and his subordinate prosecutors based on international treaties and agreements with the relevant competent authorities of other states and international organizations on issues of legal assistance in extradition (extradition) of persons for criminal prosecution or execution of a sentence, transfer of proceedings in criminal cases, as well as conduct of procedural actions