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Prosecutor's supervision of detection and investigation of drug crimes: International standards and best practices

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■ **Abstract.** The rapid spread of drug addiction makes it necessary to step up counteraction to drug crimes (while the police strictly observe human rights), which is possible only if the prosecutor's supervision is effective, which determines the relevance of the study of its problems. The purpose of the study is to characterise the state of legal regulation and practical implementation of prosecutor's supervision over operational and investigative counteraction and pre-trial investigation of criminal offences in the field of drug trafficking in terms of compliance with international law, and also to formulate recommendations for borrowing positive practices of other countries in terms of such supervision. Using systematic and structural, comparative legal, and logical legal methods, a number of acts of international law and legislation of Ukraine and other states are comprehensively investigated. It is proved that the content of international standards of prosecutor's supervision over the detection and investigation of drug crimes is made up of separate provisions available in various sources of international law, recommendations are developed on the activities of national prosecutor's offices in the field of countering crime in general and the activities of state bodies on criminal law, special criminological, operational and investigative, and criminal procedural counteraction to drug-related crimes. The use of these methods and materials helped to determine that Ukraine complies with the standards under study (even at a higher level than some member states of the European Union), in particular, regarding the independence of the prosecutor's office from the executive and judicial authorities, the concentration of basic functions in the field of criminal justice, ensuring effective supervision of pre-trial investigations in the form of procedural guidance. However, in Ukraine, it is advisable to continue working on: introducing the specialisation of prosecutors in supervision of the detection and pre-trial investigation of drug crimes and the development of methods for countering drug crimes by law enforcement agencies; expanding the discretionary powers of the prosecutor and ensuring real independence and independence of their use; ensuring supervision of the police's compliance with the rule of law during the initiative detection of drug crimes. The results of the study can be used to improve the legislation of Ukraine and the practice of its application

■ **Keywords:** narcotic drugs; prosecutor's office; legality; discretionary powers; human rights; operational and investigative activities

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Introduction

An integral requirement for the practical implementation of Ukraine's course of accession to the European Union (EU), as declared in the Constitution of Ukraine[1], is to bring the legal regulation of state institutions in line with the standards of this international organisation. This applies, among other things, to the criminal justice authorities, in particular, the prosecutor's office. Similarly, the legal regulation of certain areas of law enforcement activities should be brought into line with the requirements of international laws and regulations. This, in particular, applies to countering illegal trafficking in narcotic drugs, psychotropic substances, their analogues and precursors. The above determines the need for a comprehensive assessment of the current state of legislative regulation of the status and functions of the prosecutor's office and its role and place in the fight against illegal drug trafficking – according to the criteria of effectiveness and compliance with international standards. It is necessary to establish how these standards are implemented (or not implemented) in the practice of other countries in order to suggest optimal ways to implement them in domestic legislation. An analysis of EU practices shows that deviations from certain standards due to national peculiarities can have different consequences, ranging from acceptable to extremely negative.

Thus, on May 27, 2019, the Court of Justice of the European Union (CJEU) declared the Office of the German Federal Public Prosecutor (Staatsanwaltschaft) legally incompetent to issue European Arrest Warrants (EAW) due to its lack of institutional independence[2]. As a consequence, S. Glaser & S. Hartmann (2022) raised the question of how the German criminal prosecution system differs from the approaches of other European countries that issue European Arrest Warrants, as well as the question of whether the prosecutor's office in Germany is really not sufficiently independent in this regard. According to the conclusions of B. Sramel & L. Klimek (2022), in the Slovak Republic, the prosecutor's office has a complete monopoly on prosecution, which is a negative consequence of the 1948 coup d'etat and the subsequent rise of the communist regime. This minimises the possibility for other entities (for example, the victim) to exercise their natural rights.

Ukrainian researchers have already studied both the implementation of the provisions of international agreements in the legislation of Ukraine on the prosecutor's office, and the experience of foreign countries in this area. Thus, R.M. Bilokin (2023) found that international standards in the activities of the prosecutor's office include the entire array of international legal acts regulating relations in this area and international judicial practice. The researcher investigated the standards of prosecutor's supervision over the legality of criminal proceedings and came to the conclusion that domestic legislation is more adapted to them, but implementation is still taking place today.

L.T. Riabovol (2021) considered the legal acts of the EU governing bodies as the basis for reforming the prosecutor's office in Ukraine. The researcher concludes that the specific place of the prosecutor's office in the mechanism of the state and functions in different states are not the same. However, in all European countries, prosecutors operate on the same principles consolidated in the documents of the Council of Europe. The researcher considers compliance with the requirements of these documents by Ukraine mandatory. V. Nalutsyshyn (2021), after examining the European experience of legal regulation of the status and functions of the prosecutor's office, came to the conclusion that the experience of foreign countries does not exclude the assignment of supervisory functions to the prosecutor's office, which ensure the rule of law and order in society. The researcher suggests that the general trend in the development of the prosecutor's office of Ukraine should be the expansion of its functions, non-interference of the legislative and executive authorities in the activities of the prosecutor's office. The conclusions of the above-mentioned Ukrainian researchers are to some extent debatable and subject to verification.

In parallel with these studies, research was also conducted on the introduction of international standards in Ukraine and the use of the experience of other countries in countering drug crime. Thus, the paper by V.V. Solovei (2023) is dedicated to international standards and foreign experience in countering drug crimes committed by organised groups. The researcher concludes that it is necessary to reform the national system of drug crime prevention in terms of expanding the powers of information and analytical police units to accumulate and process operational information. Consent to this conclusion automatically raises the question of the means of ensuring the rule of law in the event of the proposed expansion of powers.

V.H. Yarmaki (2021), investigating the experience of foreign countries in countering drug crimes, came to the conclusion that measures to counteract illegal drug trafficking fall within the internal competence of each individual state. However, the use of domestic means alone to combat international drug

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2] Judgment of the Court (Grand Chamber) in Joined Cases No. C508/18 and No. C82/19 PPU. (2019, May). Retrieved from https://curia.europa.eu/juris/document/document.jsf?docid=214466&doclang=en.

crimes is not always sufficient. This struggle must be international, since an individual country is not able to effectively resist transnational drug crime. T.V. Serhiieva (2020) investigated the results of the implementation of the norms of international treaties on countering drug trafficking in the legislation of Ukraine. She considers the measures taken by Ukraine to contribute to the harmonisation of Ukrainian legislation with international standards for combating illegal drug trafficking and improve the effectiveness of international cooperation in this area. The researcher suggests that further improvement of the national legislation on combating drug trafficking is necessary (but does not make specific proposals).

The above-mentioned studies on the introduction of international standards and the use of foreign experience have always been conducted separately: 1) on the activities of the prosecutor's office; 2) on countering illegal drug trafficking. So far, they have not intersected and have not been comprehensively investigated. This is an additional argument in favour of the need to conduct this study, the purpose of which was to determine the compliance of the legal regulation and the actual state of prosecutor's supervision over the detection and investigation of drug crimes in Ukraine and other countries, international standards, and to make proposals on the use of foreign experience of such supervision in Ukraine.

Materials and Methods

With the help of the logical and legal method, the concept was developed and the content of international standards in the field of legal regulation of countering drug crimes was revealed; the main international standards for the activities of the prosecutor's office on countering crimes in the field of countering illegal trafficking in narcotic drugs, psychotropic substances, precursors and their analogues were highlighted. Using the systematic and structural method, the role of the prosecutor's office in the implementation of these standards was determined, and the practical activities of the national prosecutor's office were evaluated from the standpoint of the above-mentioned standards. The comparative legal method was used in the analysis of the international experience of the prosecutor's office in countering drug crimes and determining those elements that are appropriate to use in Ukraine.

In the course of the study, the provisions of a number of international legal acts were analysed and summarised, including: the UN Guidelines on the Role of Prosecutors (Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba, August 27-September 7, 1990)[1]; Unified Convention on Narcotic Drugs No. 1137 of 30.03.1961[2]; Convention on Psychotropic Substances of 21.02.1971[3]; United Nations Convention Against Trafficking in Narcotic Drugs and Psychotropic Substances, 1988[4]; Standards of professional responsibility, a statement of the main duties and rights of prosecutors, adopted by the International Association of Prosecutors (1999); Recommendation REC (2000) 19 of the Council of Europe "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System" (Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the ministers' deputies)[5]; PACE Recommendation 1604 (2003) 11 "Role of the public prosecutor's office in a democratic society governed by the rule of law" of 27 May 2003[6]; PACE Resolution No. 1549 (2007) of April 19, 2007 "Functioning of Democratic Institutions in Ukraine"[7]; European Guidelines on ethics and conduct of public prosecutors: the Budapest Guidelines Adopted at the 6th Conference of European prosecutors General in Budapest on 31 May 2005[8]. The results of the analysis and generalisation of these documents were compared with the provisions of the Constitution of Ukraine[9], Criminal Code (CC)[10] and Criminal Procedural Code (CPC) of Ukraine[11], Laws of Ukraine "On the Prosecutor's

[1] UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf.
[2] Single Convention on Narcotic Drug. (1961, March). Retrieved from https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961_03_30.
[3] Convention on Psychotropic Substances. (1971, February). Retrieved from https://ips.ligazakon.net/document/mu71016?an=&ed=&dtm=&le=.
[4] United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_096#Text.
[5] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.
[6] PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en.
[7] Resolution of the Parliamentary Assembly of the Council of Europe No. 1549 "Functioning of Democratic Institutions in Ukraine". (2007, April). Retrieved from https://zakon.rada.gov.ua/laws/show/994_760#Text.
[8] European Guidelines on Ethics and Conduct for Public Prosecutors. (2005, May). Retrieved from https://library.nlu.edu.ua/POLN_TEXT/SENMK/pr_osn1.pdf.
[9] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[10] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[11] Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.

Office"[1], "On the Operational and Investigative Activities"[2] and other laws and regulations of Ukraine. At the next stage, according to the national legislation acts of other states and the analysis of foreign legal practice, the features of advantages and disadvantages of prosecutorial activities for detecting and investigating drug-related crimes abroad were established.

Results

International standards of prosecutor's supervision. In the theory of law and legal practice, issues of certain international standards (their concept, content, classification, forms) are most often raised in the context of human rights. The terms "international legal standards of human rights", "international human rights standards", "international standards of human and civil rights and freedoms", etc., are used. The main features of such standards are that they are: first, consolidated in acts of international law (conventions, treaties, directives, recommendations, decisions, etc.); second, that they define the minimum necessary and/or desired list of content and scope of specific human rights. According to international standards, states must guarantee and ensure: the human right to life, the right to liberty and security of person, the right to respect for dignity, the right to respect for private and family life, the inviolability of the home, the exclusion of inhuman treatment, etc.

The implementation of this task involves the introduction of appropriate standards, first of all, in the work of law enforcement agencies. These bodies, on the one hand, provide protection of the individual and society from illegal encroachments on life, personal inviolability, property, housing, etc., and on the other hand, they themselves can unjustifiably restrict human rights when it comes to detainees, arrests, suspects, accused, convicts, persons against whom compulsory medical measures are supposed to be applied, etc. Therefore, international human rights standards should be directly embodied in the activities of law enforcement agencies. In accordance with this, the activities of law enforcement agencies of individual states are also subject to international standardisation.

In the vast majority of countries of the world, the key body of the law enforcement system is the prosecutor's office, which is entrusted with the function of prosecution in criminal proceedings, and supervision of compliance with the rule of law by other law enforcement agencies (both during pre-trial investigations and during some other types of law enforcement activities). Therefore, it is quite natural that the activities of the prosecutor's office should be evaluated, among other things, from the standpoint of compliance with international standards.

Investigating the international standards of the prosecutor's supervision of compliance with the rule of law in criminal proceedings, R.M. Bilokin (2023) attributed to the sources of such standards not only the entire set of acts of international law, the subject of which is the activities of the prosecutor's office, but also the practice of the European Court of Human Rights (ECHR). In addition, the researcher agreed with the widespread view that these sources also include international legal customs. Admittedly, the decision of the ECHR is a guide for Ukrainian prosecutors, which is conditioned by the provisions of the Law of Ukraine "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights"[3], and Part 2 of Article 8, Part 5 of Article 9 of the Criminal Procedural Code of Ukraine[4], where these decisions are recognised as the source of Criminal Procedural Law. However, it is inappropriate to classify international legal customs as international standards. Ultimately, a characteristic feature of the latter is uniformity and formal certainty. The content of standards can be borrowed from customs, but the customs themselves should not be identified with standards, as evidenced by the results of research (Hrystova, 2023; Klymchuk, & Stetsyk, 2023).

In addition, considering the analysis carried out above, the provisions of international human rights instruments should also be included in the sources of international standards of prosecutorial activity. Among the key international documents that consider the main aspects of the legal status of a prosecutor in the field of criminal proceedings, the following can be distinguished:

- UN Guidelines on the Role of Prosecutors (Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. Havana, Cuba, August 27 – September 7, 1990)[5];
- Standards of professional responsibility, a statement of the main duties and rights of prosecutors, adopted by the International Association of Prosecutors (1999);
- Recommendation REC (2000) 19 of the Council of Europe "To Member States on the Role of the Public

[1] Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text.
[2] Law of Ukraine No. 2135-XII "On the Operational and Investigative Activities". (1992, February). Retrieved from http://zakon3.rada.gov.ua/laws/show/2135-12.
[3] Law of Ukraine No. 3477-IV "On the Execution of Decisions and Application of the Practice of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15#Text.
[4] Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.
[5] UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf.

Prosecutor's Office in the Criminal Justice System" (Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the ministers' deputies)[1];

- PACE Recommendation 1604 (2003) 11 "Role of the public prosecutor's office in a democratic society governed by the rule of law" of 27 May 2003[2];
- PACE Resolution No. 1549 (2007) of April 19, 2007 "Functioning of Democratic Institutions in Ukraine"[3];
- European Guidelines on Ethics and Conduct for Public Prosecutors: Budapest guidelines. Adopted at the 6th Conference of the General Prosecutors of Europe in Budapest on 31 May 2005[4].

In addition to these documents, among the sources of international standards determining the legal status of a prosecutor in the field of criminal justice, it is advisable to consider the numerous advisory opinions, reports and comments received from the European Commission for Democracy through Law (Venice Commission). It is also necessary to consider the legal positions of the ECHR, which are expressed during the consideration of individual cases. The analysis of the above-mentioned documents and the summary of their provisions allows identifying the standards of the prosecutor's activity in terms of ensuring the prosecution function that are important for this study.

The first of these standards is the introduction of specialisation of prosecutors in procedural guidance and support of public prosecution in certain categories of criminal proceedings. Such categories can be distinguished depending on the severity of the committed criminal offences, the scope of commission (banking system, foreign economic activity, road safety, functioning of computer systems, etc.), public relations that they encroach on, subjects of criminal offences, etc. The main criterion for such specialisation should be the object of criminal encroachment. This standard is introduced in Articles 7 and 8 of Council of Europe recommendation REC (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"[5].

The second standard is to assign to the competence of the prosecutor questions about the possibility of applying measures alternative to criminal punishment to a person. Among other things, these are compulsory measures of a medical and educational nature, exemption from criminal liability in connection with effective repentance or reconciliation of the guilty person with the victim, or the transfer of a person on bail, or the loss of public danger to the guilty person. The standard for such content is provided, in particular, in Articles 18 and 19 of the UUN Guidelines on the Role of Prosecutors[6], and in Article 3 of Recommendation REC (2000) 19 of the Council of Europe "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"[7].

The third standard is the independence and functional and organisational isolation of the prosecutor's office from law enforcement agencies, which are responsible for preventing, detecting, suppressing, and investigating criminal offences. This standard is contained in paragraph "I" of Article 7 of PACE Recommendation 1604 (2003) 11 of 27.05.2003.[8]. This requirement, among other things, is embodied in the fact that the prosecutor should not independently carry out measures to search for and record factual data on criminal acts of individuals, collect evidence, organise investigative search actions and generally conduct a pre-trial investigation. But the prosecutor is authorised to observe how all this is done by operational units and pre-trial investigation bodies. This gives the opportunity to impartially and objectively assess the actions of these divisions and bodies from the standpoint of compliance with the rule of law.

The fourth standard should be called rational, active and effective performance by the prosecutor of supervisory powers in terms of providing instructions to the investigator on the use of specific procedural means of collecting evidence, their scope, extending the terms of pre-trial investigation, etc. This standard is reflected in the norms of numerous international legal acts. One of these norms is contained in

[1] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.

[2] PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en.

[3] Resolution of the Parliamentary Assembly of the Council of Europe No. 1549 "Functioning of Democratic Institutions in Ukraine". (2007, April). Retrieved from https://zakon.rada.gov.ua/laws/show/994_760#Text.

[4] European Guidelines on Ethics and Conduct for Public Prosecutors. (2005, May). Retrieved from https://library.nlu.edu.ua/POLN_TEXT/SENMK/pr_osn1.pdf.

[5] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.

[6] UN Guidelines on the Role of Prosecutors Adopted by the VII UN Congress on the Prevention of Crime and the Treatment of Offenders. (1990, September). Retrieved from https://pravo.org.ua/wp-content/uploads/old/files/oon_com_split_1.pdf.

[7] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.

[8] PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en.

Paragraph "A" of Article 22 of the Council of Europe Recommendation REC (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"[1]. Among other things, it states that the government of the state should promote legal consolidation and ensure the ability of the prosecutor to give the investigative body appropriate instructions to effectively ensure the priorities of criminal policy, which mainly concerns decisions on the work of personnel, methods of collecting evidence, terms of pre-trial investigation, information that the prosecutor receives, etc.[2]

The fifth standard is the duty of the prosecutor's office to objectively assess the legality of police actions, respect for human rights when collecting information necessary to start or continue criminal prosecution. This standard is set out in Article 21 of the Council of Europe Recommendation REC (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"[3].

The last, sixth standard, is the inexpediency of assigning to the prosecutor's office any functions that do not belong to the sphere of criminal justice. The practical implementation of this requirement should be restricted to limiting the powers of the prosecutor's office only to those that are necessary for the exercise of the prosecution function, through which the tasks of protecting the interests of society and the state are performed. The requirement for such content is contained, in particular, in paragraph "C" of Article 7 of the already mentioned pace recommendation 1604 (2003) 11[4], and Article 1 of Council of Europe Recommendation REC (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System"[5].

These standards are not fully implemented in Ukrainian law enforcement practice and criminal proceedings. Among the standards already implemented, it can be noted that in functional and organisational terms, the prosecutor's office is clearly separated from supervised law enforcement agencies (in particular, pre-trial investigation bodies) by the provisions of the Constitution of Ukraine (Article 131-1)[6], the Law of Ukraine "On the Prosecutor's Office"[7], CPC of Ukraine[8]. In addition, by defining in Article 36 of the Criminal Procedural Code of Ukraine[9] the requirement for an active form of exercise of supervisory powers by the prosecutor as the procedural head of the pre-trial investigation has been implemented.

Among these powers, there are also those that allow the prosecutor, based on the results of a pre-trial investigation, if there are relevant factual grounds, to apply to the court not with an indictment, but with a request to release a person from criminal liability or with a request to apply compulsory measures of a medical or educational nature. Having deprived the prosecutor's office of the function of general supervision of compliance with laws, the domestic legislator left it certain powers that are directly unrelated to pre-trial investigation and judicial proceedings in criminal cases (representation of the interests of a citizen or the state in court in claim proceedings in cases of recognition of unjustified assets and their recovery into state income).

Ukraine has only partially introduced the principle of specialisation of prosecutors depending on the object of criminal attacks and other factors. The expediency of its introduction is fully justified by the validity of the statement that the specialisation of the prosecutor in one specific area of combating crime will lead to an increase in professionalism and improve the quality of criminal prosecution. The outlined standard is particularly relevant in the field of the subject of this study, since hypothetically the introduction of specialisation of the prosecutor in criminal proceedings related to drug crimes will contribute to the growth of the qualification of prosecutor's personnel. As of 2023, the specialisation of prosecutors has found its embodiment only at the institutional level – in the creation of a specialised anti-corruption prosecutor's office and specialised prosecutor's offices in the field of defence.

International legal standards for countering criminal offences in the sphere of trafficking in narcotic and psychotropic substances. International standards that establish requirements for prosecutor's supervision over the detection and investigation of drug crimes should include not only

[1] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.
[2] Ibidem, 2000.
[3] Ibidem, 2000.
[4] PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en.
[5] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[7] Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text.
[8] Criminal Procedural Code of Ukraine. (2013, April). Retrieved from https://zakon.rada.gov.ua/laws/main/4651-17?lang=en#Text.
[9] Ibidem, 2013 .

the requirements put forward by conventions, declarations and recommendations for the activities of the prosecutor, but also the requirements established by international laws and regulations to counteract illegal trafficking in narcotic drugs, psychotropic substances, precursors and their analogues.

Among such acts, it is worth highlighting global-level acts – United Nations documents: Unified Convention on Narcotic Drugs No. 1137 of 30.03.1961[1]; Convention on Psychotropic Substances of 21.02.1971[2]; United Nations Convention Against Trafficking in Narcotic Drugs and Psychotropic Substances, 1988[3]. The latter is the most universal act that has incorporated the conceptual provisions of previous documents. The preamble to this Convention (hereinafter – the Convention, 1988)[4] focuses attention on the special danger and criminal illegality of illegal trafficking of these funds and substances, its indissoluble connection with other forms of organised crime, cross-border nature, and the receipt of super-profits from drug trafficking by criminal formations of different countries. Such trafficking is considered a threat to the national security and sovereignty of all countries of the world.

In Article 3 of the Convention, 1988[5] minimum standards are established for the criminalisation by states parties of specific acts related to illicit trafficking in narcotic drugs and psychotropic substances, and the circumstances of their commission are determined, which must be legally normalised as aggravating penalties. In addition, it is noted that the severity of the punishment established by national legislation for a particular type of act corresponds to its public danger. This article focuses on the possibility of applying measures of influence to those responsible for committing drug crimes, which are an alternative to conviction and criminal punishment: treatment for addiction with subsequent monitoring of the patient, education and re-education, restoration of working capacity and social reintegration of the offender. Paragraph (6) of this article provides for ensuring (in accordance with their own national legislation) that the parties legally assign to the relevant law enforcement agencies such discretionary powers that will enable them to effectively prevent, detect, stop and investigate drug crimes[6].

The analysis of national legislation and the practice of its application indicates that at present the above standards have already been implemented in the legal acts of Ukraine, which means that law enforcement agencies, in particular, the prosecutor's office, adhere to them in their daily activities. The discretionary powers of the prosecutor do not allow independently making a decision on applying measures alternative to criminal punishment to the person guilty of committing a drug crime, releasing them from criminal liability or serving a sentence. These issues in Ukraine are resolved exclusively by the court, at the request of the party to the proceedings.

The same can be said about ensuring the standards of mutual (international) legal assistance, which is established by Article 7 of the 1988 Convention[7]. It provides for the delivery of international legal assistance in countering drug crimes, in particular: collecting evidence, conducting certain procedural actions (detention, inspection, search), familiarisation with the materials of criminal proceedings, and exchanging information. However, Article 9 of the 1988 Convention provides that each party develops and implements professional training programmes for law enforcement and other bodies specialising in countering drug crimes. Such programmes should include the study of: modern methods of detecting and suppressing drug crimes; routes and means used by drug criminals; organisation of operations to monitor the movement (including cross-border) of drugs and psychotropic substances; methods of tracking assets obtained from the drug business; means of conspiracy of criminal activities in the field of drug trafficking, etc.[8]

The introduction of this standard in the activities of law enforcement agencies in Ukraine today lacks attention from the legislative and executive authorities. Moreover, there is a certain regression in this issue. Thus, by the resolution of the Cabinet of Ministers of Ukraine of January 13, 2023, No. 131, the Department for Combating Drug Crimes of the National Police was liquidated as a legal entity under public law[9]. Even earlier, specialised universities of the Ministry of Internal Affairs of Ukraine stopped the work of faculties that trained specialists in the field of countering drug crime. Currently, this area

[1] Single Convention on Narcotic Drug. (1961, March). Retrieved from https://ips.ligazakon.net/document/view/mu61k02u?an=2&ed=1961_03_30.
[2] Convention on Psychotropic Substances. (1971, February). Retrieved from https://ips.ligazakon.net/document/mu71016?an=&ed=&dtm=&le=.
[3] United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_096#Text.
[4] Ibidem, 1988.
[5] Ibidem, 1988.
[6] Ibidem, 1988.
[7] Ibidem, 1988.
[8] Ibidem, 1988.
[9] Resolution of the Cabinet of Ministers of Ukraine No. 131 "On the liquidation of the territorial body of the National Police". (2023, January). Retrieved from https://zakon.rada.gov.ua/laws/show/131-2023-%D0%BF#Text.

of training is represented only by separate academic disciplines included as variable (subject of free choice), taught by future investigators and operatives of the criminal police.

The prosecutor's office of Ukraine does not specialise in overseeing the detection and investigation of drug crimes. There is also no systematic training of prosecutors in this area of countering crime. The Prosecutor General's Office is taking certain steps to remedy this situation (for example, in 2022, the Training Centre for Prosecutors of Ukraine conducted a course on "Participation of the prosecutor in criminal proceedings regarding criminal offences in the field of drug trafficking" (Participation of the prosecutor..., 2022), but they are not systematic.

UN documents on countering drug crime have also found their direct imprint in EU regulations. Thus, Article 83 of the Treaty on the functioning of the European Union states that the European Parliament and the council, through the adoption of directives under the usual legislative procedure, are authorised to establish rules for the criminalisation of certain illegal acts and the establishment of responsibility for their commission in relation to particularly serious crimes of a cross-border nature, in particular, and those related to the illegal trafficking of narcotic drugs and psychotropic substances[1].

Based on the provisions of this norm on 25.10.2004 and on the norms of the UN Convention of 1988[2], Framework Decision 2004/757/JHA of the Council of the European Union was adopted establishing minimum rules on the constituent elements of crimes and sanctions in the field of illicit drug trafficking[3]. Among other things, this regulation provides for the establishment in national legislation of liability in the form of imprisonment from 5 to 10 years if the act concerned the trafficking of a significant amount of drugs or especially dangerous drugs, or if this act caused harm to the health of several persons. If the crime was committed as part of a criminal organisation, the penalty for its commission must be at least 10 years in prison. Analysis of Article 305-320 of the Criminal Code of Ukraine[4] suggests that this standard has been observed by the domestic legislator.

Attention is drawn to the incentive provisions of Article 5 of Framework Decision 2004/757/JHA[5], which stipulates that the penalty can be significantly reduced in cases where the offender: refused criminal activities in the field of drug trafficking; provided law enforcement and judicial authorities with information about the preparation and commission of other drug crimes, which could not be obtained in any other way; assisted them in preventing or mitigating the consequences of the offence, or actively assisted in collecting evidence, identifying and bringing to justice other drug criminals. This provision was partially implemented in the norm of Part 4 of Article 307 of the Criminal Code of Ukraine[6], where it is stated that those who voluntarily handed over drugs and reported the source of their receipt (or contributed to the exposure and investigation of drug crimes) are exempt from criminal liability for their illegal production, manufacture, acquisition, storage, transportation, shipment, provided for in Part 1 of this article and Part 1 of Article 309 of this Code[7].

However, the standard provided for in Article 5 of Framework Decision 2004/757/JHA[8] deserves a wider introduction into domestic law-making and law enforcement practice. Ultimately, the legislator provided only for exemption from punishment and only in the case of committing a criminal offence (Article 309 of the Criminal Code of Ukraine[9]) and the least serious of the crimes provided for in Article 307 of the Criminal Code of Ukraine[10]. However, for real assistance in exposing and investigating any serious and especially serious drug crimes, it would be advisable to provide for a significant reduction in the penalty, up to the application of a penalty below the lower limit provided for by the sanction of the relevant Article (part of the Article of the Criminal

[1] Consolidated versions of the Treaty on the European Union and the Treaty on the Functioning of the European Union (2010/c 83/01). (2010, March). Retrieved from https://zakon.rada.gov.ua/laws/show/994_b06#Text

[2] United Nations Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1988, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_096#Text.

[3] Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitgbgifqmzy.

[4] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[5] Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitgbgifqmzy.

[6] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[7] Ibidem, 2001.

[8] Framework decision No. 2004/757 "Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking". (2004, October). Retrieved from https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vitgbgifqmzy.

[9] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[10] Ibidem, 2001.

Code of Ukraine[1]). It is necessary to legally regulate the specifics of confidential cooperation of persons against whom criminal prosecution is carried out for committing drug crimes with pre-trial investigation bodies and their conclusion of cooperation agreements with the prosecutor. Thus, opportunities for persons involved in illegal drug trafficking should relate not only to the production, manufacture, purchase, storage, transportation, transfer of narcotic drugs and psychotropic substances, but also to their smuggling, use of profits from drug trafficking, cultivation of narcotic plants, etc.

World experience of prosecutor's supervision over the detection and investigation of drug crimes. The work of law enforcement agencies in different countries to identify and investigate drug crimes, and supervision of this work, is based on the norms of substantive and procedural law of specific states. Among them are the provisions of the Constitution and special laws regulating the status of the prosecutor's office, Criminal and Criminal Procedural Codes, laws and regulations establishing the procedure for conducting operational and investigative activities. It is advisable to start the analysis of these norms with those that establish criminal liability for the commission of certain drug crimes.

As for the criminal law regulation of liability for drug crimes, there is a well-established opinion in science about the division of all states of the world into three main groups: "strict policy", "strict control" and "liberal approach" (Yarmaki, 2021; Maksymenko, 2022). The first group ("strict policy") includes countries whose legislation provides for total control over drug trafficking and the most severe types and amounts of punishment for committing drug crimes (up to the death penalty). These countries include Egypt, Iran, China, Malaysia, Pakistan, the United Arab Emirates (UAE), Turkey, Singapore, Saudi Arabia, etc.

In the UAE, drug use is punishable by imprisonment, and the death penalty is provided for their distribution. The legislation does not establish a minimum amount of narcotic drugs for the possession of which criminal liability occurs. In Saudi Arabia, a person sentenced to death for drug trafficking will be beheaded (up to 40 people can be executed in a month). The number of people who are executed annually in Iran for committing particularly serious drug crimes in some years reached 500 people (executions are usually carried out in public places). In China, people are executed, including for illegal drug trafficking, more than worldwide (more than a thousand people a year) (From fines to the death penalty..., 2017). Article 347 of the Criminal Code of the People's Republic of China establishes a penalty of 15 years' imprisonment or life imprisonment or the death penalty for the following acts: smuggling, sale, transportation and manufacture of opium in the amount of more than 1,000 g, heroin or methylphenylamine in the amount of more than 50 g, and other drugs in large quantities; leading a group that commits smuggling, sale, transportation and manufacture of narcotic drugs; armed cover for smuggling, sale, transportation, and manufacture of drugs; resisting with the use of violence the inspection, detention and arrest of persons involved in the crime drug trafficking, under aggravating circumstances; participation in organised trade in international-level narcotic drugs (Voinova & Stanich, 2021).

The second group ("strict control") includes countries where illegal production and sale of narcotic drugs are punishable by long terms of imprisonment, but the most severe types of criminal penalties for committing drug crimes are not applied. A wide range of general social and special criminological measures to counteract illegal drug trafficking has been introduced there, strict control over their legal production and use has been established, but the most severe types (sizes) of criminal penalties for committing drug crimes, as a rule, are not applied. These countries traditionally include the United States, Great Britain, France, Germany, etc. However, approaches to the problem differ significantly both within this group of countries and within individual states.

Thus, in the United States, some states are criminalised not only for possession, but also for the use and attempted purchase of drugs, and in others, the use of marijuana as a drug is normalised (Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington). A rather tough approach to responsibility for drug crimes has been applied in New York. The terms of punishment for these criminal offences range from 1 year to life imprisonment. A person who has first committed the sale of drugs of the fifth degree is sentenced to imprisonment from 1 to 2.5 years. For selling small batches of drugs on a permanent basis, a person can face a penalty of 8 to 20 years in prison (with five years of supervision after release). The minimum sentence for drug trafficking in Category I or II is 10 years. Persons who re-commit drug-related crimes are punished with imprisonment for a term of 12 to 20 years, and persons who are engaged in drug trafficking in large quantities – from 15 years with the possibility of life imprisonment (From fines to the death penalty..., 2017).

In general, the United States is actively countering illegal drug trafficking by federal and local law enforcement agencies. Today, in this country, one state body (Drug Enforcement Administration (DEA)) combines various functions related to countering drug trafficking, namely: prevention of drug crimes, their

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

detection and pre-trial investigation (in particular, criminal offences related to the forceful support and corruption cover-up of illegal drug business, the use of proceeds obtained, cross-border organised drug crime, drug trafficking and drug terrorism as part of regional and international groups, violation of the rules for the legal circulation of controlled pharmaceuticals preparation of criminal cases on these crimes for consideration in court; coordination of the activities of federal and regional law enforcement agencies through the exchange of Information, joint investigations, training, creation of target groups; interaction with other states in the field of countering drug crimes, providing mutual international legal assistance; ensuring the proper supply of narcotic drugs for legitimate medical, commercial and scientific purposes; working with communities through local partnerships for the prevention of drug addiction (Bukovskyi, 2023). In the 21st century, in countries belonging to the "strict control" group, along with strengthening control over drug trafficking, there is a tendency to legalise the use of certain types of drugs for medical purposes and decriminalise the storage of a small amount of narcotic drugs intended for personal use.

The countries of the "liberal approach" group include those where the sale of "light" drugs is de jure and/or de facto allowed, which is combined with effective state control over their accounting, distribution and sale, and over the turnover of other (more potent) drugs. The law enforcement agencies of these countries pay considerable attention to identifying and exposing persons involved in organised drug crime. If proven guilty, such persons face long prison terms. Among the most famous countries of this group are the Netherlands, Malta, and Belgium.

The policy of specific states to counteract illicit drug trafficking, among other things, is embodied in the detection and investigation of drug crimes. The public prosecution service (prosecutor's office) plays an important role in ensuring the effectiveness and legality of such activities. An analysis of the legislation of the member states of the European Union suggests that not all standards of the prosecutor's office are provided for in the recommendations REC (2000) 19 of the Council of Europe[1] and PACE Recommendations 1604 (2003)[2] were taken into account by national legislators.

In general, in the countries of the European continent, there are no common approaches to normalising the place of the prosecutor's office in the system of state bodies, its organisational structure, functions and powers in terms of ensuring the detection and investigation of criminal offences (Drach, 2020; Banakh, 2020). What is common in all EU member states is that the prosecutor's office is tasked with initiating criminal prosecution, bringing charges, presenting them during court proceedings, and filing appeals against court decisions. But there are significant differences in the legal assignment of functions to prosecutors that go beyond criminal justice. Moreover, prosecutors in different countries have excellent powers directly in the field of criminal justice.

The prosecutor's offices of France and Hungary have the widest range of powers among European countries (European Information and Research Centre, n.d.). According to French law[3,4] the prosecutor's office is entrusted with the functions of criminal prosecution at all stages of criminal proceedings, and participation in administrative and judicial proceedings and bankruptcy cases in the interests of society and the state. Directly in the field of criminal justice, French prosecutors have broader powers than prosecutors in many other EU countries. This, in particular, is manifested in the fact that they supervise the activities of the judicial police, initiate criminal prosecution on their own initiative, can independently conduct a pre-trial investigation, are authorised to participate in any investigative actions, give mandatory instructions to the pre-trial investigation body, and make decisions on choosing a preventive measure and closing criminal proceedings outside of judicial procedures. Therefore, in France, the prosecutor controls all processes that take place during the pre-trial investigation, which, according to the criminal procedural law of this state, consists of an inquiry, initiation of criminal prosecution, and preliminary investigation.

The inquiry is conducted by the judicial police. This is not only the stage of pre-trial investigation, but also a specific type of activity, which, among other things, is aimed at: urgent identification and detention of persons who have committed criminal offences in conditions of evidence; detection of previously unknown crimes, search for persons involved in their commission, obtaining evidence of their guilt, and, if necessary, establishing the location of such persons; clarification of the causes of death of a person under suspicious circumstances; search for missing persons and persons who evade investigation, trial, and serving a criminal sentence. Police officers use both

[1] Recommendation of the Committee of Ministers of the Council of Europe No. Rec (2000) 19 "To Member States on the Role of the Public Prosecutor's Office in the Criminal Justice System". (2000, October). Retrieved from https://supreme.court.gov.ua/userfiles/Rec_2000_19_2000_10_6.pdf.

[2] PACE Recommendation No. 1604 "On the Role of Public Prosecutors in a Democratic Society Based on the Rule of Law". (2003, May). Retrieved from https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=17109&lang=en.

[3] Constitution of France. (2023, December). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/.

[4] Criminal Procedural Code of France. (2020, January). Retrieved from https://legislationline.org/sites/default/files/documents/6e/France_CPC_am022020_fr.pdf.

public and secret methods, act both on their own initiative and on behalf of the investigator and only under the supervision of the prosecutor[1].

The approach in which, under the supervision of the same prosecutor, both the detection of crimes and the identification of those who committed them, the collection of evidence in criminal proceedings, is considered quite justified and relevant for the purpose of practical application in countering drug crime in Ukraine. The effectiveness of the French model is an additional confirmation of the thesis that we have justified in the past that "the detection and investigation of drug crimes are two successively located in time components (stages) of a single process that has its own characteristics due to the specifics of illegal activities. This process objectively requires external monitoring (with the possibility of intervention and adjustment) due to the high risks that its subjects (operational units and pre-trial investigation bodies) may ignore the requirements of the legislation. The role of such monitoring is theoretically and practically played only by prosecutor's supervision (Shelikhovska, 2023).

So there are significant differences in the understanding of the concept of inquiry in Ukraine and France. If in Ukraine an inquiry is a form in which a pre-trial investigation of criminal offences is carried out (according to a simplified procedure), then in France it is a search work conducted by public and secret methods. What these countries have in common is that it is conducted under the supervision of a prosecutor.

The German prosecutor's office also has a wide range of powers in the field of criminal justice. But it should mainly be considered an investigative body, whose main task is to conduct a preliminary investigation by clarifying both incriminating and exculpatory circumstances leading to the possible prosecution (Glaser & Hartmann, 2022). According to the German Code of Criminal Procedure[2], it is this body that is responsible for investigating crimes (inquiry), collecting evidence, and evaluating them. The prosecutor has the right to fully manage the course of the inquiry, determine the specifics of its organisation, and make appropriate procedural decisions. However, in practice, specific public and secret investigative search actions are carried out by the police on behalf of the prosecutor. In fact, prosecutors personally participate in the investigation of only serious and especially serious crimes. In order to resolve the issue of bringing charges, the prosecutor establishes circumstances relevant to the criminal proceedings. It can question the accused, the victim, witnesses, experts, give instructions to conduct a search, inspection, seizure, etc. (Nalutsyshyn, 2021). An inquiry under German law covers almost all actions that are carried out in Ukraine within the framework of investigative and search actions and pre-trial investigation. The German legislator does not link the inquiry with the investigation of criminal offences of a certain degree of severity, as is done in Ukraine. A judicial investigator (District Judge-Inquirer) participates in an inquiry only when making the most important decisions or deciding on the legalisation of evidence (Baranets, 2023).

In the Czech Republic, the function of public prosecution is assigned to the prosecutor's office of the republic by the provisions of Article 80 of the Constitution of this country[3] and a separate law establishing the structure, system of organisation of work and competence of this state body[4]. The Criminal Procedural Code of this state defines the main function of the prosecutor's office at the stage of pre-trial investigation as supervision of the activities of police investigators. The prosecutor is granted the right to participate in any investigations, personally conduct individual ones, independently conduct a pre-trial investigation and make any procedural decision[5]. The Prosecutor's Office of the Czech Republic has powers that go beyond the criminal justice system. They relate to civil cases in terms of establishing legal capacity; declaring a person dead, etc. (Nalutsyshyn, 2021).

The Estonian Prosecutor's Office is a government agency that is managed by the Ministry of Justice and is independent in performing its tasks arising from the law. The prosecutor's office manages pre-trial criminal proceedings, ensuring their legality and effectiveness; supports the state prosecution in court, participates in the planning of operational and investigative activities necessary for detecting, stopping, and solving crimes, gives permission to the pre-trial investigation body to conduct certain operational and investigative activities, and performs other duties assigned to the prosecutor's office by law[6]. The prosecutor has the right to give instructions to the pre-trial investigation bodies regarding the collection of evidence and, in accordance with the factual data obtained, decides to bring charges against specific persons[7].

[1] Criminal Procedural Code of France. (2020, January). Retrieved from https://legislationline.org/sites/default/files/documents/6e/France_CPC_am022020_fr.pdf.
[2] German Code of Criminal Procedure. (1987, April). Retrieved from https://www.gesetze-im-internet.de/englisch_stpo.
[3] Constitution of Czech Republic. (1992, December). Retrieved from https://bit.ly/38ZekWD.
[4] Law of the Czech Republic No. 283/1993 "On the Public Prosecutor's Office". (1993, November). Retrieved from https://bit.ly/3rLyjPc.
[5] Law of the Czech Republic No. 141/1961 "On Criminal Procedure (Criminal Procedure Code)". (1962, January) Retrieved from https://www.zakonyprolidi.cz/cs/1961-141.
[6] Law of the Estonia No. RT I 1998, 41, 625 "On the Public Prosecutor's Office". (1998, May). Retrieved from https://www.riigiteataja.ee/akt/12749278.
[7] Estonia Code of Criminal Procedure. (2004, July). Retrieved from https://www.riigiteataja.ee/akt/121122012010.

Article one of the Estonian Criminal Procedural Code not only provides that the scope of this law extends not only to pre-trial and judicial criminal proceedings (Article 1, Paragraph 1), but also defines the grounds and procedure for conducting operational and investigative activities (Article 1, Paragraph 2). This activity is regulated by a separate chapter (chapters 3-1) of this Code. The grounds for conducting it, among other things, are: the need to collect information about the preparation of a crime in order to prevent or solve it (Paragraph 1 of Article 126-2)[1] – on the one hand, the need to collect information about the crime in the framework of criminal proceedings. Thus, operational and investigative activities can not only accompany criminal proceedings, but also precede them. This activity is carried out under the supervision of the prosecutor, who not only grants the police permission to conduct certain secret actions and applies to the court with relevant petitions, but also participates in the planning of operational and investigative activities.

According to the Law of the Republic Of Moldova "On the Prosecutor's Office" of 25.02.2016[2], the competence of this "autonomous public institution" is limited only to the sphere of criminal justice. This law provides that the prosecutor: directs and carries out criminal prosecution, supports the prosecution in court (Paragraph "A" of Article 5); monitors compliance with the legislation on special search activities (paragraph "C" of Article 5); initiates disciplinary proceedings in cases of violation of the law, failure or improper performance of duties in criminal proceedings by criminal prosecution officers, employees of ascertaining bodies, employees of bodies engaged in special search activities, and employees responsible for registering messages (Paragraph "B" of Article 6). The principle of specialisation is embodied in Article 9 of the Law of the Republic Of Moldova "On the Prosecutor's Office" of 25.02.2016[3]. In particular, Moldova has introduced an anti-corruption prosecutor's office and a prosecutor's office for combating organised crime and special cases.

All the countries discussed above, including Ukraine, belong to the Romano-German legal system. Therefore, taking this experience into account is an important factor in improving prosecutor's supervision over the detection and investigation of drug crimes in Ukraine (Likhovytskyi, & Spiridonova, 2023). However, R.V. Zvarych *et al.* (2023) argue that in recent years, there has been an active mutual borrowing of the best elements (principles, legal means, methods, tools) of the Romano-Germanic and Anglo-Saxon legal families in order to protect the interests of society and the state, and ensure human rights. These trends are also evident in Ukraine, where, among other things, judicial precedents characteristic of the Anglo-Saxon legal family are widely used in law enforcement.

Consequently, international standards of prosecutor's supervision over the detection and investigation of drug crimes do not have a single source and are a purely criminological concept. Their content consists of separate norms of international legal acts, which define the minimum requirements for: the work of law enforcement agencies, ensuring human rights and freedoms, countering crimes in the field of drug trafficking, and the powers of the prosecutor's office in the field of criminal justice. Approaches to the implementation of these standards are purely individual in each state: there are various combinations that are destablished due to consideration of some requirements and recommendations and neglect of others. In a democratic society, it is advisable to introduce these standards as widely as possible.

Discussion

Problematic issues of legal regulation and the practice of prosecutor's supervision are widely discussed by researchers from different countries. Their assessments are important for this study, as they provide an insight into the advantages and disadvantages of organising and implementing prosecutor's supervision using specific examples. Some of these examples are not directly related to the detection and investigation of drug crimes, while others are directly related to this activity. However, both the former and the latter deserve attention as they analyse the prosecutor's activity in the field of criminal justice.

Researchers from the USA, S. Bonnes & S.A. Tosto (2023), examined the tactics of the prosecutor's support in court in cases of sexual violence committed by (and against) members of the armed forces of a state. Researchers have shown that in support of the charge, prosecutors actively use information that is not evidence of the actual circumstances of the crime (especially in cases where there is not enough direct evidence of the event of the crime and the guilt of the person). This refers to, in particular, data on the accused that contradict the established ideas of the US military about the standards of behaviour of soldiers and officers. In addition, prosecutors also rely on military jargon and the values of the military court to encourage jurors to find the accused guilty and convince them of the need to impose a specific

[1] Estonia Code of Criminal Procedure. (2004, July). Retrieved from https://www.riigiteataja.ee/akt/121122012010.
[2] Law of the Republic of Moldova No. 3 "On the Prosecutor Office". (2016, February). Retrieved from https://www.legis.md/cautare/getResults?doc_id=140236&lang=ro.
[3] Ibidem, 2016.

sentence. Moreover, prosecutors emphasise that the victim meets the expectations of the military and the image of an ideal serviceman. This tactic often works, as judges and jurors are themselves military personnel. This leads to the conviction of persons whose guilt has not actually been proven beyond a reasonable doubt.

There are no such problems in Ukraine, which is due, among other things, to differences in the judicial system. There are no specialised military courts in Ukraine, and in cases of sexual violence, prosecutors usually rely on direct evidence confirming the fact and circumstances of the crime. The problems of the prosecutor's use of data describing a person (information about criminal records, drug addiction, behaviour in everyday life, employment, etc.) in support of their guilt, in particular, in drug crime proceedings, should be studied separately. In the meantime, this study provides recommendations for Ukraine to borrow the best international prosecutorial practices in the field of countering drug crime.

The topic of the prosecutor's activities in criminal cases related to sexual violence is raised by researchers not onlyin terms of certain categories of accused or victims, but also in general. Thus, T. Slovinsky & S.J. Brubaker (2022) developed tactics for protecting the prosecutor from the traumatic effects of procedural and non-procedural factors, and the work to prevent secondary and repeated victimisation of victims of sexual violence. In drug crime proceedings, for the most part, there are no victims and there is no such traumatic effect. However, in Ukraine, the issues of emotional balance of the prosecutor's activities, the means of their psychological protection are currently extremely relevant for any category of criminal proceedings. Ultimately, the armed aggression of the Russian Federation has become a catalyst for polar phenomena in the prosecutor's environment: the activation of civil position against the aggressor, professional and behavioural destructions that can lead to the end of the prosecutor's career (Khotynska-Nor *et al.,* 2023).

A lot of scientific research is devoted to the psychological and moral aspects of the activities of prosecutors in UK. L. Soubise (2023) drew particular attention to the insufficiently investigated aspect of the professional identity of public prosecutors – moral legitimacy and, in particular, self-legitimacy, that is, the belief of prosecutors in their own competence to make decisions in individual cases. As a result of direct observations and interviews, a sense of loss of their own legitimacy by employees of the Crown Prosecution Service of Great Britain was revealed due to the constant monitoring of their decisions by colleagues and managers. This comprehensive managerism, according to the researcher, undermines the very legitimacy (and, consequently, transparency), the development of which the prosecutor's office has had to work hard since its inception.

This problem is certainly inherent in Ukraine. Ukrainian prosecutors must coordinate with the management almost every decision in any criminal proceedings, including cases of drug crimes. This, among other things, concerns the details of notifying a person of suspicion and the content of the indictment, determining the type of preventive measure, concluding a plea agreement, applying to the court with a request for exemption from criminal liability, etc.

In another plane, the issue of moral legitimacy and self-legitimacy of prosecutors was considered by American researchers. For the most part, such studies are directly related to the problems of illicit trafficking in narcotic drugs and psychotropic substances. In particular, this is the issue of determining by the prosecutor the expediency of criminal prosecution for possession of a small amount of drugs (for their own use). As stated by S.B. Baughman & M.S. Wright (2020), over-active criminal prosecution for these and other minor criminal offences has led to mass incarceration of people for long periods of time. This, in turn, led to a loss of confidence on the part of a significant number of the population in the courts, the prosecutor's office, and the police. These institutions have lost their moral correctness in the eyes of community residents. Most of the people who fell under the repression were descendants of immigrants from the African continent, which outraged broad segments of the US population belonging to this category (their opinion was shared by other Americans).

The consequence of these events was the emergence of a "progressive" movement in the prosecutor's environment. It consists in introducing practices aimed at preventing mass incarceration, eliminating racial inequality (racially disproportionate consequences of charges), waiving charges of committing minor drug crimes, and giving preference to the use of medical and educational measures (including compulsory ones) and social rehabilitation over criminal punishment. Thus, "progressive" prosecutors try to assert their moral authority (legitimacy) both in the eyes of their fellow citizens and in their own conviction.

Thus, A.L. Cox & C. Gripp (2022), exploring the strategies of ordinary prosecutors in Belton (USA), among other things, made the following conclusions: 1) recognising the problem of legitimacy faced by prosecutors in general, Belton prosecutors seek to dissociate themselves from their colleagues (other prosecutors, police, judges) whom they consider responsible for mass incarceration; 2) by doing so, they seek to assert their moral, intellectual, and social superiority; 3) by staying away from the police, prosecutors simultaneously demonstrate their ability to influence its decisions, stop its illegitimate activities and bring to justice officers guilty of violating

the law; 4) recognising the systemic the injustice and challenges faced by those accused of a crime, prosecutors are inclined to apply to the latter measures that are alternative to criminal prosecution.

These alternative measures are implemented under special programmes that provide for the use of special treatment, education, social rehabilitation of offenders with their involvement in socially useful work, etc. These programmes are often criticised. R.F. Wright & K.L. Levine (2022) criticise them for their lack of specific standards and established criteria. The lack of common approaches to the content and form of such programmes is due to the fact that their development and implementation are carried out by the prosecutor's offices of US states that do not have a single subordination and act independently of each other. In addition, the conflicting legislation of individual states does not contribute to the proper implementation of such programmes. E. O'brien (2020) notes that Wisconsin has a drug-related homicide act passed back in 1986. This law was intended to expose and convict drug dealers. However, its provisions made it possible to bring to justice and severely punish drug addicts who are not involved in the drug business. This refers to friends, relatives, or acquaintances of the deceased from a drug overdose, who found another dose for the victim or shared it. Thus, addicts face the possibility of being charged with murder when they call for medical attention for an overdose victim. Since 2014, another law has been in force in Wisconsin, providing such individuals with treatment for drug addiction and protecting them from prosecution. However, its implementation faces problems due to the active implementation of the provisions of the 1986 law. In connection with the above, the researcher rightly suggests adjusting both the legislation and the prosecutor's practice.

Another feature of the activities of "progressive" US prosecutors in cases of illegal drug trafficking is the active use of the Institute of plea agreements. C.A. Grodensky *et al.* (2023), investigating this issue, interviewed prosecutors who described working to achieve five major progressive goals in their plea bargain decisions: dropping charges of drug possession in small quantities; avoiding excessive punishment, especially for crimes without victims; avoiding prosecution in obviously weak cases; encouraging open communication with the defence; and promoting racial equality. Prosecutors' descriptions of how these goals were guided by case decisions show how progressive prosecution can affect the criminal justice system through plea bargaining.

However, A.M. Gershowitz (2021) points to the unjustified extension of the liberal policy of "progressive" prosecutors to numerous cases against doctors who massively prescribe narcotic drugs to patients without appropriate medical indications. Despite the fact that such doctors were deprived of their licenses due to abuse of the right to prescribe narcotic drugs to patients (proving their guilt was not complicated), prosecutors refused to prosecute them. The researcher quite justifiably compares these doctors with street drug dealers, and also rightly notes that their use of drug licenses to cover up their illegal business only increases the public danger of illegal actions committed by them.

A.M. Gershowitz (2021) argues the need for criminal prosecution of doctors who unreasonably issue prescriptions for the purchase of drugs. The practices of "progressive" US prosecutors regarding the use of their discretionary powers to avoid criminal and public prosecution in certain categories of drug crimes deserve attention, as they save state resources and comply with the principles of functioning of a democratic society.

Thus, the generalisation of the studied standards, according to the acts of these organisations, together with the analysis of the experience of developed democratic countries and the analysis of scientific literature, highlight the most useful and valuable approaches and practices in the field of prosecutor's supervision over the detection and investigation of drug crimes. Ukraine needs to follow a further course towards the introduction of effective special criminological programmes and methods of combating drug crimes with the assignment of the responsibility for their development and implementation to specially created police units (national and local levels) – with the involvement of scientific institutions. It will be effective to introduce the specialisation of prosecutors in supervising the detection and pre-trial investigation of drug crimes, followed by the support of public prosecution in court. It is important to ensure that the severity of punishment for drug crimes corresponds to their public danger through adequate, progressive use of discretionary powers in bringing and maintaining public prosecution (within the limits of the types and amounts of punishment established by the legislator). The prosecutor's competence should include resolving issues related to the application of alternative measures to criminal prosecution and prosecution in relation to persons who have committed drug crimes (treatment for addiction with subsequent monitoring of the patient, upbringing and re-education, restoration of working capacity and social reintegration of the offender). It is also necessary to ensure that the prosecutor has the discretionary power (under certain conditions) to discontinue criminal prosecution or drop charges against a person who has committed a criminal offence or a minor crime in the field of illicit drug trafficking. The prosecutor's office should be charged with ensuring the legality of the actions of law enforcement agencies to obtain the information necessary to start continuing

the criminal prosecution of a person for committing drug crimes. It is also important to ensure the moral legitimacy and self-legitimacy of prosecutors through the organisation of such conditions for their use of discretionary powers, in which individual procedural decisions and legal position do not need to be coordinated with the leadership of the prosecutor's office.

Conclusions

International standards of prosecutor's supervision over the detection and investigation of drug crimes are a set of separate provisions of various international laws and regulations, which establish minimum requirements and recommendations in terms of: rationing at the level of national legislation the activities of law enforcement agencies to counteract illegal trafficking in narcotic drugs, psychotropic substances and their analogues – on the one hand, as well as the legal status of the prosecutor's office, its functions and powers in the field of criminal justice – on the other. These standards do not have a single regulatory source and are determined based on the results of a comprehensive analysis of these provisions.

The analysis of the UN and EU regulations, as well as the practice of implementing their provisions in different countries of the world, allowed for the conclusion that there are different approaches to the implementation of provisions related to prosecutor's supervision of the detection and investigation of drug crimes. This led to the existence of various models of a special criminological system for countering drug trafficking: from the repressive role of the prosecutor's office in combining a significant excess of the recommended limits of criminal punishment (up to the death penalty) to the legalisation of drug use and possession (without the purpose of selling) in combination with rationing the prosecutor's ability to drop charges and apply measures alternative to criminal prosecution to the guilty person. Each of the models has its own disadvantages and advantages and is determined by national legal traditions. However, in order to ensure the balance of interests of a democratic society and respect for the rights and freedoms of a particular person in the fight against illegal drug trafficking, it is important that the prosecutor's supervision of the detection and investigation of drug crimes is based as the most complete consideration of international standards.

Ukraine occupies a leading position in the implementation of the standards under study, ahead of many other states, including developed democratic ones. This is due to Ukraine's political orientation and active work on joining the EU. Among other things, significant achievements of Ukraine on this path are to ensure: independence and organisational separation of the prosecutor's office from the executive branch, the court and law enforcement agencies that are entrusted with conducting criminal investigation and pre-trial investigation; giving the prosecutor the authority to conduct procedural management of inquiry and pre-trial investigation; limiting the competence of the prosecutor's office (with minor exceptions) to the sphere of criminal justice; establishing by the legislator penalties for committing drug crimes within the limits recommended by UN and EU documents.

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Conflict of Interest

None.

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Нагляд прокурора за виявленням та розслідуванням наркозлочинів: міжнародні стандарти і світовий досвід

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▪ **Анотація.** Стрімке поширення наркотизму зумовлює необхідність активізації протидії наркозлочинам (з одночасним суворим дотриманням поліцією прав людини), що можливо лише за умови ефективного прокурорського нагляду, чим і зумовлена актуальність дослідження його проблем. Мета статті – схарактеризувати стан правового регулювання та практичного здійснення прокурором нагляду за оперативно-розшуковою протидією та досудовим розслідуванням кримінальних правопорушень у сфері наркообігу в площині дотримання норм міжнародного права, а також сформулювати рекомендації щодо запозичення позитивної практики інших країн у частині такого нагляду. Послуговуючись системно-структурним, порівняльно-правовим і логіко-юридичним методами, комплексно досліджено низку актів міжнародного права та законодавства України й інших держав. Обґрунтовано, що зміст міжнародних стандартів прокурорського нагляду за виявленням і розслідуванням наркозлочинів становлять наявні в різних джерелах міжнародного права окремі положення, розроблено рекомендації щодо діяльності національних прокуратур у сфері протидії злочинності загалом і діяльності державних органів з кримінально-правової, спеціально-кримінологічної, оперативно-розшукової та кримінальної процесуальної протидії наркозлочинам. Використання зазначених методів і матеріалів надало можливість визначити, що Україна дотримується досліджуваних стандартів (навіть на вищому рівні, ніж деякі країни – члени Європейського Союзу), зокрема щодо незалежності прокуратури від виконавчої та судової влади, концентрації основних функцій у сфері кримінальної юстиції, забезпечення ефективного нагляду за досудовим розслідуванням у формі процесуального керівництва. Водночас в Україні доцільно продовжити роботу щодо: запровадження спеціалізації прокурорів на нагляді за виявленням і досудовим розслідуванням наркозлочинів, а також розробленням методик протидії наркозлочинам правоохоронними органами; розширенням дискреційних повноважень прокурора та забезпеченням реальної незалежності й самостійності їх використання; забезпеченням нагляду за дотриманням поліцією законності під час ініціативного виявлення наркозлочинів. Результати проведеного дослідження може бути використано для вдосконалення законодавства України та практики його застосування

■ **Ключові слова:** наркотичні засоби; прокуратура; законність; дискреційні повноваження; права людини; оперативно-розшукова діяльність