

## PROSECUTOR AS A PARTICIPANT IN ENFORCEMENT PROCEEDINGS IN PROPERTY AND TAX RELATIONS

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*The article provides a comprehensive scientific and legal analysis of the procedural status of the prosecutor as a participant in enforcement proceedings in property and tax relations. It is substantiated that the implementation of the representative function of the prosecutor's office is not limited to the stage of judicial review, but logically continues at the stage of compulsory execution of court decisions, which is the final phase of the mechanism for protecting the interests of the state.*

*The regulatory and legal principles of the prosecutor's participation in enforcement proceedings are studied, taking into account the provisions of the Constitution of Ukraine, the Law of Ukraine «On the Prosecutor's Office», the Law of Ukraine «On Enforcement Proceedings», procedural codes and tax legislation. It is determined that the participation of the prosecutor in enforcement proceedings is derived from his representation of the interests of the state in court and is implemented in the forms of initiating the opening of enforcement proceedings, participating in the commission of enforcement actions, appealing decisions, actions or inaction of executors.*

*Special attention is paid to the specifics of the prosecutor's participation in enforcement proceedings in the field of property relations, in particular in cases of reclaiming state and municipal property, recovery of damage caused to public interests, return of budget funds, as well as the invalidation of transactions that violate the property rights of the state. It is substantiated that the effectiveness of the prosecutor's activities at this stage directly affects the reality of restoring violated rights and replenishing the state budget.*

*The features of the prosecutor's participation in enforcement proceedings in tax relations, in par-*

*ticular in cases of collection of tax debt and other mandatory payments, are analyzed. The public-legal nature of such legal relations and the need to ensure a balance between non-interference in the discretionary powers of tax service bodies and the implementation of the constitutional function of representing the interests of the state are emphasized. It is established that the key problems of law enforcement are the unclear boundaries of the prosecutor's procedural powers in enforcement proceedings, the lack of a unified practice of interaction with state enforcement service bodies and private executors, as well as insufficient regulatory regulation of mechanisms for monitoring the actual execution of decisions.*

*The article formulates proposals for improving the legislative regulation of the prosecutor's procedural status in enforcement proceedings, in particular by clarifying his rights and obligations in the Law of Ukraine «On Enforcement Proceedings», introducing mandatory information to the prosecutor on the progress of the execution of decisions in cases where he represented, as well as strengthening electronic interdepartmental interaction.*

*It is concluded that the participation of the prosecutor in enforcement proceedings in property and tax legal relations is an important element of guaranteeing the public interest and financial security of the state, especially in conditions of martial law and post-war reconstruction, and further scientific understanding of this issue will contribute to the formation of effective law enforcement practice.*

*Keywords: prosecutor, participant, enforcement proceedings, proceedings, stage, process, property legal relations, tax legal relations, tax, representation*

The emergence of Ukraine as a legal and democratic state necessitates the need to ensure the reality of judicial protection of rights, freedoms and public interests. Recognition, observance and guarantee of the rights and legitimate interests of subjects of legal relations acquires substantive significance only under the condition of proper and timely execution of court decisions. That is why the stage of enforcement proceedings is an integral element of the mechanism of legal protection and the final phase of the implementation of the principle of the rule of law.

This issue acquires particular importance in the field of property and tax legal relations, where it is about the protection of the financial and economic interests of the state, ensuring revenues to the budgets of all levels, the return of illegally withdrawn state or municipal property, and recovery of damage caused to public interests. In conditions of martial law and post-war reconstruction, the issue of effective execution of decisions in the specified categories of cases is directly related to the financial stability of the state, the ability to implement social programs and restore infrastructure.

In this context, a special place is occupied by the prosecutor as a subject authorized to represent the interests of the state in court in exceptional cases and in accordance with the procedure established by law. At the same time, scientific attention has traditionally focused mainly on the role of the prosecutor in judicial proceedings, while his participation at the stage of compulsory execution of decisions has remained less studied. However, it is the effectiveness of the execution of a court decision that determines the real result of the prosecutor's representative activity.

The complexity of the legal regulation of the prosecutor's participation in enforcement proceedings is due to the interdisciplinary nature of the relevant legal relations. They are at the intersection of constitutional, administrative, procedural, financial and tax law. The norms that determine the powers of the prosecutor are contained in the Constitution of Ukraine, the Law of Ukraine «On the Prosecutor's Office», procedural codes and the Law of Ukraine «On Enforcement Proceedings», however, their systematic coordination

and practical implementation raise a number of debatable issues.

Among them, the following are particularly relevant: determining the procedural status of the prosecutor in enforcement proceedings; the correlation of his powers with the competence of the state enforcement service bodies and private enforcement agents; the limits of interference in the activities of bodies authorized to administer taxes; ensuring effective control over the execution of court decisions adopted on the prosecutor's claims. The lack of clear legislative guidelines in these issues negatively affects the unity of law enforcement practice and the effectiveness of protecting public interests.

Scientific research devoted to the problems of enforcement proceedings is mostly focused on the activities of enforcement bodies and the procedural status of the parties. At the same time, a comprehensive analysis of the prosecutor's participation in the sphere of property and tax legal relations requires further development, since these categories of cases have increased public-legal significance and directly affect the budget discipline and economic security of the state.

The purpose of this article is a comprehensive study of the legal status of the prosecutor as a participant in enforcement proceedings in property and tax legal relations, determining the features of his implementation of the representative function at the stage of forced execution of decisions, identifying problems of legal regulation and formulating proposals for its improvement.

To achieve the set goal, the following tasks are envisaged:

1. to analyze the regulatory and legal principles of the prosecutor's participation in enforcement proceedings;
2. to determine the features of his procedural status in property legal relations;
3. to investigate the specifics of the prosecutor's participation in cases of tax debt collection;
4. to outline problematic aspects of law enforcement practice and propose ways to overcome them.

The methodological basis of the study is general scientific and special legal methods of

cognition, in particular analysis and synthesis, formal-legal, system-structural, comparative-legal and the method of interpretation of legal norms.

According to Art. 55 of the Constitution of Ukraine (hereinafter referred to as the Constitution), the general rule of the national legal system is the guaranteed possibility for everyone to apply to the court for protection of their rights, freedoms and legitimate interests. In order to protect the rights, freedoms and interests of a person in the sphere of public legal relations, administrative courts operate (Art. 125 of the Constitution) [1].

In the national system of legal protection, a significant role is also assigned to the prosecutor's office. According to Art. 1311 of the Constitution and Art. 23 of the Law of Ukraine «On the Prosecutor's Office», the prosecutor has the right to apply to the court with a claim or to join a case initiated at the claim of another person, at any stage of the process, if this is required by the protection of citizens' rights, as well as in the case of violation or threat of violation of the interests of the state. The above norms regarding the participation of the prosecutor in the consideration of cases by the courts are of a general nature. Their provisions are specified in the relevant procedural laws (codes). Thus, according to Part 3 of Art. 53 of the Code of Administrative Offenses of Ukraine in cases specified by law, the prosecutor applies to the court with a statement of claim, participates in the consideration of cases on his claims, enters on his own initiative into a case in which proceedings have been opened at the claim of another person, before the start of consideration of the case on the merits, files an appeal, cassation complaint, an application for review of the court decision due to newly discovered or exceptional circumstances [2].

So, the first feature of the procedural status of the prosecutor in administrative proceedings is its dual regulation both at the level of special substantive norms and at the level of procedural legislation. The substantive legal personality of the prosecutor, undoubtedly, differs from the substantive legal personality of other participants in the trial, and determines the goals of his procedural ac-

tivities. At the same time, participating in the consideration of cases arising from public-law relations, the prosecutor does not exercise his power prosecutorial powers, which determine the essence of his material legal personality, but procedural legal capacity established by the norms of procedural law.

It is worth noting right away that in the new edition of the CAS of Ukraine from 2018, the legislator established the prosecutor's powers to represent the interests of the state exclusively, the prosecutor's powers to represent the interests of a citizen have not been further developed. This is fully consistent with the recommendations of the Venice Commission, according to which the representation of the interests of a person by the prosecutor's office should be minimized, and any cases of the prosecutor's office performing this function should only be auxiliary to the availability of services of legal aid centers [3].

Speaking about the prosecutor as a special participant in administrative proceedings, V. Borovsky defines his procedural position as "legal representation", based on the fact that the main tasks of the prosecutor are to protect the legitimate interests of the state, and his activities, in whatever form they manifest themselves, are always supervisory [4]. A number of authors define the prosecutor in the court of first instance as a "procedural plaintiff", who bears all the rights and obligations of an administrative plaintiff, with the exception of the right to conclude a settlement agreement (conciliation). At the same time, I. Soboleva believes that in an administrative case, along with the prosecutor, as a plaintiff with a material and legal interest, the person in whose interests the case was initiated participates [5]. Other scholars insist that the prosecutor acts as a representative of the state, since the procedural position of the prosecutor gradually approaches the status of a party to the case, acting primarily on behalf of and in favor of the state [6].

The analysis of the literature gives grounds to conclude that the status of the prosecutor in administrative proceedings is dual in nature. Thus, when filing an administrative claim, the status of the prosecutor is similar to the

status of the administrative plaintiff. When a prosecutor joins a case opened at the claim of another person, the procedural status of the prosecutor is similar to the procedural status of a representative.

This largely corresponds to the provision enshrined in Part 5 of Article 53 of the Code of Civil Procedure of Ukraine, according to which in the event of the opening of proceedings on a statement of claim filed by the prosecutor in the interests of the state in the person of a body authorized to perform the functions of the state in disputed legal relations, the specified body acquires the status of the plaintiff. In the absence of such a body or in the absence of its authority to apply to the court, the prosecutor shall indicate this in the statement of claim and in such a case the prosecutor acquires the status of the plaintiff.

At the same time, the procedural status of the prosecutor in administrative proceedings differs from the status of the representative. In some cases, the prosecutor's powers are broader, in others - narrower. Thus, according to Part 4 of Article 54 of the Code of Administrative Offenses of Ukraine, the prosecutor has the right to support the claim and demand a resolution of the dispute on the merits even after the plaintiff (a state authority authorized to perform relevant functions in disputed legal relations) has refused the claim. This provision emphasizes the independent procedural status of the prosecutor and his independence from the body he represents. At the same time, the prosecutor, unlike the representative, is not entitled to end the case by conciliation (Part 1 of Article 54 of the Code of Administrative Offenses of Ukraine). The prosecutor's lack of the right to conclude a conciliation agreement is due to the fact that this exclusive right belongs only to the parties to the case, that is, to the subjects of the disputed material legal relations. Since the prosecutor is not a subject of material legal relations, he cannot have the specified right. Therefore, in the administrative process the prosecutor has a special, special procedural status, which differs from the procedural status of the plaintiff and the representative.

According to Part 4 of Article 23 of the Law of Ukraine "On the Prosecutor's Office", the presence of grounds for representation must be substantiated by the prosecutor in court. The prosecutor represents the interests of a citizen or the state in court only after the court confirms the grounds for representation [7]. This provision is detailed in Part 4 of Article 53 of the Code of Civil Procedure of Ukraine, according to which the prosecutor who applies to the court in the interests of the state, in a claim or other statement, complaint, justifies the violation of the interests of the state, the need to protect them, the grounds determined by law for the prosecutor's application to the court, and also indicates the body authorized by the state to perform the relevant functions in the disputed legal relations. Failure to comply with these requirements shall result in the application of the provisions on leaving the statement of claim without motion (Article 169 of the Code of Civil Procedure of Ukraine).

According to Part 3, Article 23 of the Law of Ukraine "On the Prosecutor's Office", the prosecutor shall represent the legitimate interests of the state in court in the event of a violation or threat of violation of the interests of the state, if the protection of these interests is not carried out or is improperly carried out by a state authority, local government body or other subject of power, to whose competence the relevant powers are attributed, as well as in the absence of such a body.

According to the Constitution of Ukraine, the prosecutor's office shall represent the interests of the state in court in exceptional cases and in the manner prescribed by law. The Law "On the Prosecutor's Office" specifies the grounds and limits of representation, in particular, if the protection of the interests of the state is not carried out or is carried out improperly by the relevant bodies.

In enforcement proceedings, the prosecutor may acquire the status of: a collector (if he applied to the court in the interests of the state); a participant in the proceedings who initiates the opening of enforcement proceedings; a subject of appeal against decisions, actions or inaction of a state or private enforcement agent.

Thus, the participation of the prosecutor in enforcement proceedings is derived from the implementation of his representative function in the judicial process.

In the field of property relations, the prosecutor participates in enforcement proceedings mainly in cases regarding: reclaiming state or municipal property; invalidating transactions regarding state property; recovering damage caused to state interests; returning unreasonably received budget funds [8].

A feature of such proceedings is the need to ensure the actual enforcement of decisions, since the formal adoption of a court decision without its actual implementation does not ensure the restoration of violated rights.

The prosecutor has the right to: file an application to open enforcement proceedings; receive information about the progress of the decision; initiate enforcement measures (seizure of property, seizure of assets, etc.); challenge unlawful actions or inaction of the executor.

However, in practice, problems arise related to limited access to information about the debtor's assets, delay in enforcement actions, as well as the complexity of implementing decisions regarding property held by third parties or abroad [9].

In the tax sphere, the prosecutor may intervene in cases where: the State Tax Service authorities do not properly protect the interests of the state; there is a significant public interest; there are signs of violation of budget discipline.

The specificity of tax legal relations lies in the public-legal nature of obligations. Tax debt is collected both in court and in administrative proceedings. In the event of an appeal to the court and receipt of an enforcement document, the prosecutor may initiate enforcement proceedings.

The specifics of the prosecutor's participation in such cases are: the need to interact with the State Tax Service; analysis of financial documentation; control over the completeness of the measures taken by the executor; participation in appealing decisions on installment or postponement of execution.

The issue of the limits of the prosecutor's intervention in the activities of tax authorities remains problematic, so as not to replace their powers, which is expressly prohibited by current legislation.

Among the key problems can be identified: the unclear procedural status of the prosecutor in enforcement proceedings, in particular regarding the scope of his rights if he is not a formal collector; the absence of an effective mechanism for monitoring the implementation of decisions in cases initiated by the prosecutor; insufficient coordination between the prosecutor's office and enforcement bodies; conflicts between the norms of procedural and executive legislation.

In order to improve legal regulation, it is advisable to: legislatively clarify the procedural rights of the prosecutor in enforcement proceedings; to provide for mandatory information to the prosecutor about the progress of the execution of decisions in cases where he was represented; to improve the mechanisms of electronic interaction between the prosecutor's office and the enforcement service; to develop methodological recommendations on the participation of the prosecutor in enforcement proceedings in the field of budgetary and tax relations [10].

**Conclusions.** The participation of the prosecutor in enforcement proceedings in property and tax legal relations is an important element of the mechanism for protecting the interests of the state. The implementation of the representative function of the prosecutor's office does not end with the receipt of a court decision, but continues at the stage of its enforcement.

The prosecutor acts as a guarantor of compliance with the public interest, promotes the effective collection of property and tax obligations, ensures the legality of the activities of enforcement bodies. At the same time, there is a need to further improve legislative regulation and form a stable law enforcement practice.

A promising direction for further research is the analysis of the relationship between the representative function of the prosecutor and the powers of the state enforcement service in the context of the digitalization of enforcement proceedings.

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### ПРОКУРОР ЯК УЧАСНИК ВИКОНАВЧОГО ПРОВАДЖЕННЯ У МАЙНОВИХ ТА ПОДАТКОВИХ ПРАВОВІДНОСИНАХ

*У статті здійснено комплексний науково-правовий аналіз процесуального статусу прокурора як учасника виконавчого провадження у майнових та податкових правовідносинах. Обґрунтовано, що реалізація представницької функції прокуратури не обмежується стадією судового розгляду, а логічно продовжується на етапі примусового виконання судових рішень, що є завершальною фазою механізму захисту інтересів держави.*

*Досліджено нормативно-правові засади участі прокурора у виконавчому провадженні з урахуванням положень Конституції України, Закону України «Про прокуратуру», Закону України «Про виконавче провадження», процесуальних кодексів та податкового законодавства. Визначено, що участь прокурора у виконавчому провадженні має похідний характер від здійснення ним представництва інтересів держави в суді та реалізується у формах ініціювання відкриття виконавчого провадження, участі у вчиненні виконавчих дій, оскарження рішень, дій або бездіяльності виконавців.*

*Окрему увагу приділено специфіці участі прокурора у виконавчому провадженні у сфері майнових правовідносин, зокрема у справах щодо витребування державного та комунального майна, стягнення шкоди, завданої публічним інтересам, повернення бюджетних коштів, а також визнання недійсними правочинів, що порушують майнові права держави. Обґрунтовано, що ефективність діяльності прокурора на цій стадії безпосередньо впливає на реальність відновлення порушених прав та наповнення державного бюджету.*

*Проаналізовано особливості участі прокурора у виконавчому провадженні в податкових*

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**Дискусії, обговорення, актуально**

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правовідносинах, зокрема у справах щодо стягнення податкового боргу та інших обов'язкових платежів. Підкреслено публічно-правовий характер таких правовідносин та необхідність забезпечення балансу між невтручанням у дискреційні повноваження органів податкової служби та реалізацією конституційної функції представництва інтересів держави. Встановлено, що ключовими проблемами правозастосування є нечіткість меж процесуальних повноважень прокурора у виконавчому провадженні, відсутність уніфікованої практики взаємодії з органами державної виконавчої служби та приватними виконавцями, а також недостатня нормативна регламентація механізмів контролю за фактичним виконанням рішень.

У статті сформульовано пропозиції щодо вдосконалення законодавчого регулювання процесуального статусу прокурора у виконавчо-

му провадженні, зокрема шляхом уточнення його прав та обов'язків у Законі України «Про виконавче провадження», запровадження обов'язкового інформування прокурора про хід виконання рішень у справах, де він здійснював представництво, а також посилення електронної міжвідомчої взаємодії.

Зроблено висновок, що участь прокурора у виконавчому провадженні у майнових та податкових правовідносинах є важливим елементом гарантування публічного інтересу та фінансової безпеки держави, особливо в умовах воєнного стану та післявоєнного відновлення, а подальше наукове осмислення цієї проблематики сприятиме формуванню ефективної правозастосовної практики.

**Ключові слова:** прокурор, учасник, виконавче провадження, провадження, стадія, процес, майнові правовідносини, податкові правовідносини, податок, представництво.