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Political neutrality as an indicator of professional prosecution

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Abstract

The relevance of the topic is determined by the importance of the principle of political neutrality as a preventive factor in the professional activity of the prosecutor, which calls for ensuring him from the external influence of any political force and the appearance of personal illegal interests in social cataclysms). The purpose of the article – to consider the professional activity of the prosecutor through the understanding of its principles as indicative characteristics of professional skills and professionalism. To confirm this, the author chose functionalism as the main methodological approach, which gave him reasons to claim that the functions of activity determine professional skills (the profession of a prosecutor), and the principles define professionalism (level of mastery of this profession). As auxiliary methods were used: formal-logical (for an argumentative presentation of the research material), formal-dogmatic (for the analysis of current regulatory documents) and comparative-legal (for comparison of the analyzed material). The main results of the study are shown the principle of political neutrality as a requirement in the field of professional activity of civil servants not only in Ukraine, but also in the European Union, the integration with which is defined as the main vector of further development of our state. A substantive distinction is made between political neutrality and synonymously similar concepts of political impartiality and independence, apoliticality and non-partisanship. At the same time, political neutrality is shown as one of the most important criteria in the formation of requirements for professional selection, professional training, professional development and professional activities of prosecutors. The practical value of the study is a warning to prosecutors against political ignorance, which can arise from a misunderstanding of political neutrality. In order to avoid or overcome this negative aspect, a number of factors are proposed for the prosecutor to achieve professional skills, which is described through a peculiar formula: the prosecutor's professional skills can be considered the sum of political, media and informational and environmental literacy, divided by political neutrality

Keywords:

policy, neutrality, political ignorance, political literacy, prosecutor, professional skills, professionalism

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Introduction

To some extent, the principle of political neutrality can be considered a preventive measure that protects the prosecutor during their entire professional activity; on the one hand, from unwanted (even legislatively prohibited) influence of politicians, and on the other hand, from their alleged personal desire to satisfy their wishes and illegal interests due to subjective attitude towards certain political forces. Such a risk is possible in modern Ukrainian society, which, in the conditions of war, increasingly acquires signs of political instability and social crisis. This necessitates the investigation of this issue with an emphasis on political neutrality as an indicator of the prosecutor's professionalism.

The principle of political neutrality (impartiality, independence, etc.) has already been the subject of research by Ukrainian scientists. While most of them clearly support its peremptory compliance by all civil servants, O. Petrunovska (2019) practically denies the possibility of its clear compliance. S. Karpiuk (2020) urges not to identify the principle of political neutrality with non-partisanship, while emphasizing the mandatory apolitical nature of professional civil service. N. Panova (2017) considers their political impartiality to be a guarantee of high-quality and consistently effective work of civil servants. In this context, T. Kahanovska (2017) interpreted the essence of public service in the context of militarized service as its variety. D. Mandychev (2021) considers independence (or impartiality) as one of the six criteria for evaluating the performance of judges (or candidates submitted for the position of judge) for their professional ethics or integrity, respectively. In this regard, it was interesting to adapt the works of communicativists into this study: Yu. Romanenko (2019) analysed the informational influence on the formation of an individual as an independent social subject, as part of a social community, in the context of all humanity; G. Sandvik and J. Rysdal (2021) traced the relationship of human manipulation with the field of sociology and social psychology; O. Demyanchuk (2019) proposed introducing political education without advertising a particular political force, expanding political awareness, avoiding selective engagement; V. Moroz (2022) advocated media literacy as one of the mandatory competencies of applicants for general education; S. Scheibe and F. Rogow (2017) believe that media literacy refers to the ability to "understand reality"; Ye. Mahda (2017) even developed an author's course on media literacy.

The purpose of this study was to consider the professional activity of the prosecutor through understanding its principles as indicative characteristics of professionalism and professionalism based on the developed research.

Differentiation of the term "political neutrality" from related concepts

The legislator applies the term "political neutrality" synonymously to the term "political impartiality" or in the context of the much broader term "independence". Some scientists add one more thing to these terms – "non-partisanship". Analysing and comparing their content load, they note that "the most strict and rigid, undoubtedly, is the term "non-partisanship", which puts forward such an unambiguous requirement as "not being a member of a political party or political movement". It is this requirement that is put forward for employees of the specialized and militarized civil service. The terms "political neutrality" and "political impartiality" are somewhat milder, since they do not prohibit membership in political parties and political movements but put forward requirements for refraining from demonstrating political views, political preferences, and special treatment of political parties in the performance of their official duties" (Svirin, 2014).

There is no clear approach to understanding which civil service can be considered militarized yet. The explanation of T. Kahanovska (2017) appears the most scientifically sound, she believes that "the military service is a state service of a special nature, which consists in the professional activity of special subjects suitable for it in terms of health, age, and moral qualities – employees, connected with the implementation of important constitutionally significant defence, security, and protection tasks and functions of the state with the possibility of coercion".

Her colleague N. Panova (2017) believes that "for a specialized and militarized civil service, the principle of non-partisanship has long been known and has a legislative definition: officials of the Customs Service of Ukraine may not be members of political parties (Customs Code of Ukraine); police officers may not be members of political parties, movements, and other public associations that have a political purpose (Law of Ukraine "On the National Police"¹); military personnel may not be members of any political parties or organizations or movements (Law of Ukraine "On Military Duty and Military Service"); members of the rank and file of the special communications service for the period of service or work in the special communications service shall suspend membership in political parties (Law of Ukraine "On the State Service of Special Communications and Information Protection of Ukraine"); ordinary and commanding officers and employees of the State Penitentiary Service of Ukraine shall not be members of political parties (Law of Ukraine "On the State Criminal Executive Service of Ukraine").

None of the researchers indicates whether the prosecutor's office belongs to the militarized service. Therefore, non-partisanship is a requirement only for

¹Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

employees of a specialized anti-corruption prosecutor's office. However, the Law of Ukraine "On the Prosecutor's Office"¹, to avoid such conflicts in the context of agreeing on political neutrality and non-partisanship, contains a clear instruction that "a prosecutor cannot belong to a political party, take part in political actions, rallies, strikes" (Item 3 of Article 18. Incompatibility requirements).

Thus, as for the professionalism (professional activity) of the prosecutor, any political activity is excluded. This refers to the principle of independence from the illegal influence of politicians on the decision-making of prosecutors when performing their official tasks, the categorical prohibition for prosecutors to become members of political parties and participants in political events of any type, the political non-involvement of the prosecutor's office as a state institution, etc. This aspect was emphasized by other researchers of various professional environments of the civil service, considering the fact that it is not necessary to be on the list of members of a political force to support its political program and related issues during one's professional activity, a personal attachment to political ideas is sufficient (Vasylkivska, 2016; Kornuta, 2016; Nalyvaiko & Orieshkova, 2016). All of them agree that the observance of the principle of political non-involvement (impartiality, neutrality) is currently the need of the hour, although the implementation of this principle in the field of functioning of civil servants, namely prosecutors, is actually quite problematic.

In contrast to the synonymy of the terms "political neutrality" and "impartiality", some researchers introduce the concept of departyzation as a synonym of non-partisanship into the research toolkit. Thus, researching the areas and features of the legislative normalization of depoliticization of the civil service in Ukraine, O. Moshak and M. Svirin (2015) single out these principles of departyzation (non-partisanship), while political neutrality and impartiality they supplement with the concept of loyalty, which received legal consolidation in Ukrainian legislation in different years.

In other words, non-partisanship (departyzation) is not synonymous with political neutrality or impartiality, much less their guarantee. This requirement of the legislators is rather one of the auxiliary methods that to a certain extent "eliminates" additional risks regarding the probable political bias of the prosecutor. Therefore, the main emphasis should be placed on distinguishing between the terms "political neutrality" and "political impartiality".

One of the variants of such a distinction is proposed by O. Kohut (2016), that considering the interpretation of the principle of political impartiality in Article 4 of the Law of Ukraine "On Civil Service"² (as "preventing the

influence of political views on the actions and decisions of a civil servant, as well as keeping from demonstrating one's attitude towards political parties, demonstrating one's own political views while performing official duties", in her opinion, "it would be more appropriate to use the name "principle of political neutrality" here, while in the section on the legal status of a civil servant to prescribe (as it is factually done) the requirement of political impartiality, by determining the appropriate limitations of the political rights of civil servants".

According to O. Petrunovska (2019), the principles of political impartiality "are conditioned by such constitutional rights as freedom of conscience and freedom of association into political parties and public organizations. And since Ukraine is a legal and democratic state, based on another principle – the rule of law, – it is logical to consolidate this principle. The only question is whether it will be possible to achieve the implementation of this principle in practice." While arguing with her fellow scientists, Petrunovska practically denies the possibility of clearly observing it. At the same time, this position reflects the opinion regarding civil servants in general, but some categories of them (namely prosecutors) are already legally warned against taking part in political parties and any demonstration of their commitment to them.

Excessive politicization, which is inherent in modern Ukrainian society, is considered a substantial obstacle to democratic reforms and one of the key issues of further development and effective operation of civil service bodies. As S. Fedchyshyn (2015) notes, civil servants are mostly viewed as a considerable administrative resource that allows them to retain power and guarantees "desired results" during the upcoming elections. Some explain this by the shortcomings of the legislation, and most researchers believe that this is a result and a consequence of command and administrative management. Oligarchic clans also try to see prosecutors as potentially useful administrative personnel, which may be needed at the right time. To avoid this, a clear legislative regulation of the actions and activities of prosecutors is required, as well as their own conscientious politically neutral orientation.

In general, while supporting the position that "the principle of political neutrality is closely related to the principle of impartiality", another researcher S. Karpiuk (2020) still emphasizes "...not equating the principles of political neutrality with non-partisanship". In Karpiuk's opinion, "professional civil service should be apolitical (and not non-partisan – Auth.), since its function is to render services to the population on a professional independent basis, regardless of the attitude towards the political elite in power." It is the term "apolitical" in this context that is the broadest and most generalized, from which the terms "political neutrality" and

¹Law of Ukraine No.1697-VII "On the Prosecutor's Office". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

²Law of Ukraine No. 889-VIII "On Civil Service". (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

“political impartiality” originate. Here the prefix a- (as in all foreign language concepts) conveys the meaning of negation, which is an analogue of the Ukrainian particles meaning “against”, “no”, “without” (hence apolitical – literally means against politics, non-political). Whereas politically neutral means that the subject does not belong to any political force, does not join any political party, does not take part in any political cause, does not concern themselves with anything in the political sphere. A politically impartial person is someone who does not have a pre-determined political opinion against something or a pre-negative opinion regarding a particular policy. For the professionalism of the prosecutor, obviously, political neutrality is crucial, which contributes to impartiality, and therefore objectivity in decision-making.

Even broader than apolitical (which concretizes the denial of a particular sphere – politics) is the concept of independence (which does not indicate any of the spheres of human life and at the same time universalizes freedom and independence in any sphere).

Considering independence as the main criterion of integrity, namely in the legal analysis of indicators of judges' compliance with the position held, D Mandych (2021) defines it (also calling it impartiality) as one of the six criteria listed among the Indicators for determining the non-compliance of judges (candidates for the position of judge) with the criteria of integrity and professional ethics (along with independence, honesty and incorruptibility, compliance with ethical standards, equality, diligence). Mandych believes that such an understanding is rather doubtful since these criteria can be attributed to moral and ethical categories, and they tend to adapt (change) considering changes in social ethics and morals. Apparently, this is why the Public Integrity Council adopted certain indicators for each criterion that demonstrate non-compliance with it: e.g., non-compliance with the principle of political neutrality, the inability to prove the legality of received income or non-involvement of one's actions, etc.

Principles of professional activity of prosecutors as civil servants

The principles of activity of state institutions must necessarily factor in and reflect, first of all, the priorities of the state. Given Ukraine's current needs, such a priority is accession to NATO and the European Union. For this, Ukraine must perform several requirements, one of which is the harmonization of national legislation with EU legislation (*acquis communautaire* – translated from French means the acquisition of the commonwealth (Glossary of EU terms, 2003-2004). This Glossary is considered a rather dynamic development that is constantly being improved because it must consider the

norms and provisions of many documents – founding treaties, secondary legislation and legal doctrines of the European Union, ECtHR decisions, international agreements, etc. – that is, a set of decisions within the Community (first level), within the scope of foreign cooperation on joint security (second level), and within the scope of cooperation between the police and justice authorities in criminal proceedings (third level). The third level concerns the activities of law enforcement and human rights institutions, which include the prosecutor's office; therefore, there are reasons to believe that the program of substantive and systemic reforms provided for by the Ukraine-EU Association Agreement also applies to this area (Agreement, 2014).

One of the main principles of state institutions is their independence. According to the conclusion of the Consultative Council of European Prosecutors¹, the independence of prosecutors has its own characteristics, namely:

- “Prosecutors must be independent in their status and behaviour: they must enjoy external *independence*, i.e., vis-à-vis undue or unlawful interference by other public or non-public authorities, e.g., political parties; they must enjoy *internal independence* and must be able to freely carry out their functions and decide, even if the modalities of action vary from one legal system to another, according to the relationship to the hierarchy” (Item 31);

- “the prosecutor should be the guarantor of respect for the law and the defender of society; he or she must not be an instrument in the interests of any social, political and religious group, any fraction in the government or the protector of its supporters...” (Item 32);

- “respect for external independence does not prevent the prosecution service from receiving general instructions on priorities of prosecutorial activities as they result from the law, the development of international co-operation or requirements relating to the organisation of the service” (Item 34);

- “Internal independence does not mean that every prosecutor is free to do anything; he or she may be subject to a hierarchy whose task is to ensure, in a clear way and without prejudice to independence, the proper functioning of the prosecution service as a whole and coherence, consistency and uniformity of action in the administration of justice and protection of human rights” (Item 39).

Ukrainian prosecutors are now guided by regulatory documents that, within the framework of the principle of independence, additionally approved the principle of political neutrality. Therefore, this principle is a normative indicator of the professionalism of prosecutors.

Thus, the Law of Ukraine “On the Prosecutor's Office”² states that “the activities of the prosecutor's office are based on the principles of: ... 5) independence

¹Conclusion of the Consultative Council of European Prosecutors No. 13 “On Independence, Accountability and Ethics of Prosecutors”. (2018, November). Retrieved from: <https://rm.coe.int/opinion-13-ccpe-2018-ukr/1680939322>.

²Law of Ukraine No.1697-VII “On the Prosecutor's Office”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

of prosecutors, which makes provision for the existence of guarantees against illegal political, material or other influence on the prosecutor regarding his or her decision-making in the performance of official duties; 6) political neutrality of the prosecutor's office; ...".

According to Article 8 of the Code of Professional Ethics and Conduct of Prosecutors, approved by the All-Ukrainian Conference of Prosecutors on April 27, 2017¹, "prosecutors are obliged to observe political neutrality in the performance of their official powers, to avoid demonstrating their own political beliefs or views in any way, not to use their official powers in the interests of political parties or their branches or individual politicians". Furthermore, Article 22 of this Code stipulates that "a prosecutor may not belong to a political party, take part in political actions, rallies, strikes, and involve subordinate employees in them, publicly demonstrate his or her political beliefs" (Code, 2017).

Prosecutors are closest in cooperation in the administration of justice to judges, regarding whom the principle of political neutrality is also prescribed legislatively (Part 4 of Article 54): a judge cannot belong to a political party or trade union, manifest favouritism towards them, or take part in political actions, rallies, strikes; while in office, a judge cannot be a candidate for elected positions in state authorities (except judicial) and local self-government bodies, as well as take part in election campaigning (which is regulated by the Law "On the Judiciary and the Status of Judges"²).

Other colleagues whose professional activities are limited to political neutrality are police officers. Thus, Article 10 of the Law of Ukraine "On the National Police"³ specifies as follows:

"1. The Police ensure the protection of human rights and freedoms regardless of political beliefs and party affiliation.

2. The Police are independent in their activities from decisions, statements, or positions of political parties and public associations.

3. It is forbidden to use any objects that depict the symbols of political parties and carry out political activities in police bodies and units.

4. Police officers are prohibited from expressing their personal attitude towards the activities of political parties in the performance of their official powers, as well as from using their official powers for political purposes."

In addition, according to Item 4 of Article 61 of the same Law, a police officer cannot be a member of a political party.

The Law of Ukraine "On Civil Service" (as amended)⁴ contains Art. 10 "Political impartiality", which states as follows:

"A civil servant must impartially carry out legal orders (commands), commissions of managers, regardless of their party affiliation and political beliefs.

A civil servant is not entitled to demonstrate his or her political views and to commit other actions or inaction that in any way may prove his or her special attitude towards political parties and adversely affect the image of the state body and trust in the authorities or pose a threat to the constitutional order, territorial integrity and national security, for the health and rights and freedoms of other people..."⁵.

Article 40 of the Law of Ukraine "On Prevention of Corruption"⁶ reads as follows: "1. The individuals specified in clause 1, sub-item "a" of Item 2 of the first part of Article 3 of this Law shall be obliged to observe political neutrality in the performance of their official powers, to avoid demonstrating their own political beliefs or views in any way, not to use official powers in interests of political parties or their branches or individual politicians".

Political neutrality as a criterion for verifying the integrity of prosecutors

In the professional activity for monitoring compliance with the principles of integrity of employees of the General Prosecutor's Office, prosecutors of various levels and investigators of the Prosecutor's Office, in the list of questions from the "Prosecutor's Integrity Questionnaire" (which is prescribed in the Procedure for Conducting a Secret Integrity Check of Prosecutors), the first questions that provide information on the declaration of property, income and expenses, material and financial obligations, compliance of the lifestyle with the received income, as well as information on whether corruption offences were committed or offences caused by them, etc. In general, this refers to issues that should demonstrate the compliance of prosecutors with the requirements and norms of anti-corruption legislation and possible corruption risks, but there is no mention in any way of the observance of the principle of political neutrality (see: Order of the Prosecutor General's Office of Ukraine⁷).

¹The Code of Professional Ethics and Conduct of Prosecutors, approved by the All-Ukrainian Conference of Prosecutors. (2017, April). Retrieved from: <https://zakon.rada.gov.ua/laws/show/n0001900-17#Text>.

²Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

³Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁴Law of Ukraine No. 889-VIII "On Civil Service". (2016, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19#Text>.

⁵Ibidem, 2016.

⁶Law of Ukraine No. 1700-VII "On Prevention of Corruption". (2014, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1700-18#Text>.

⁷Order of the General Prosecutor's Office of Ukraine No. 205 "On the Approval of the Procedure for Conducting a Secret Check of the Integrity of Prosecutors in the Prosecutor's Office of Ukraine". (2016, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0875-16#n16>.

This approach is obviously justified by the fact that at the stage of selecting and evaluating candidates for vacant positions in the prosecutor's office, the proportionally opposite methodology is applied. Thus, the appointment to the position is preceded by a comprehensive verification procedure, namely to choose the winner of the competitive selection based on the results of the interview, three categories of criteria are provided for, the first of which are the moral and business qualities, and the next – professional ones, as well as managerial and organizational abilities (Appendix to the Regulations on the Commission for the selection of the management staff of the prosecutor's office (Chapter 3)).

Although it must be recognized that the first indicators of compliance with the moral and business qualities of a candidate for a position in the prosecutor's office are honesty criteria - compliance of income with expenses and property, proper declaration (Item 3.1.1.1), as well as compliance with the candidate's way (level) of life and members of his or her family to the declared income (Item 3.1.1.2); and only after that, any other data that give rise to reasonable doubts about the candidate's non-compliance with the criterion of honesty, specifically, information about violations of the rules of professional ethics, the presence of signs of academic dishonesty, cases of unsettled conflicts of interest, etc. (Item 3.1.1.3).

Therewith, even among such honesty criteria as professional ethics (Item 3.1.2), the method of selection for a position in the prosecutor's office does not contain any indicator related to political neutrality, although it must be recognized that within this criterion, characteristics are given that somehow indicate this principle of professional activity of the prosecutor. This, this context suggests the discussion of the risks of the candidate's ineligibility for the specified position due to certain manifestations of political involvement, which is qualified as “cases of committing acts that discredit the candidate and may harm the authority of the prosecutor's office, during off-duty hours...; ...such behaviour of the candidate or members of his or her family, which indicates support for aggressive actions of other states against Ukraine, cooperation with representatives of the so-called “DPR”/“LPR”, the occupation administration or their accomplices (considering the current situation in Ukraine, apparently it is advisable to add: collaborationism, high treason, etc. – Auth.), among other things in public statements; a profound understanding of the principle of conflict of interests and actions that may give the impression of impartiality in the performance of official duties or damage the reputation of the prosecutor's office in the public mind...”.

There are practically no such examples, but a peculiar illustration of the situation associated with such

a discrepancy (albeit not during the selection for appointment to the prosecutor's office, but already in service in the prosecutor's office) can be considered the disciplinary penalty imposed on the head of the fifth Department of Procedural Management, Support of State Prosecution and Representation in Court of the Specialized Anti-Corruption Prosecutor's Office of the General Prosecutor's Office of Ukraine O.A. Yarova, which is listed on the official website of the relevant body conducting disciplinary proceedings¹. The legal case that occurred is described as follows: “On June 15, 2018, at about 10:36 a.m., the head of the fifth department of the management of procedural management, maintenance of state prosecution and representation in court of the Specialized Anti-Corruption Prosecutor's Office of the Prosecutor General's Office of Ukraine O.A. Yarova in the “KyivExpoPlaza” exhibition centre, located at the address: 2-B Saliutna Str., Kyiv, took part in a political action – All-Ukrainian Forum “New Course of Ukraine”, at which current People's Deputy of Ukraine and leader of the “Batkivshchyna” parliamentary party Yu.V. Tymoshenko factually presented her pre-election program as a candidate for the post of President of Ukraine. On O.A. Yarova had a badge (tag), which was of the same type for other participants of the forum, on which was the text “All-Ukrainian Forum “New Course of Ukraine”, which testifies to the involvement of O.A. Yarova in the specified forum, which is essentially a political action. It follows from the above that O.A. Yarova took part in a political action. Furthermore, O.A. Yarova thus consciously and publicly demonstrated her political beliefs. Because she could not but understand that the congress of the political party “Batkivshchyna” will be widely covered by numerous media, as well as by the political party itself (its members). This act of O.A. Yarova is inconsistent with the principles of the prosecutor's office and the requirements of professional prosecutor's ethics. In addition, due to the wide public coverage of the fact of participation in a political event by the media, O.A. Yarova jeopardized the authority of the prosecutor's office as a whole - sowed doubts about its political neutrality and discredited herself as a prosecutor. Therewith, this political action took place on a working day, during working hours, and therefore O.A. Yarova violated the internal labour regulations”.

Briefly, the proceedings can be reproduced as follows: “Prosecutor O.A. Yarova explained that she does not belong to any political organization and did not take part in such events. But as a person who is entitled to exercise their electoral and other rights and freedoms, she is interested in this topic without considering any political affiliation. She explained that she is studying for a postgraduate course in economics, and she is

¹Decision of the General Prosecutor's Office of Ukraine No. 178дп-19 “On the Imposition of Disciplinary Sanctions on the Head of the Fifth Department of the Management of Procedural Management, Support of the State Prosecution and Representation in Court of the Specialized Anti-Corruption Prosecutor's Office of the General Prosecutor's Office of Ukraine O.A. Yarovu”. (2019, June). Retrieved from <https://kdkp.gov.ua/decision/2019/06/12/1835>.

interested in reform and economics issues both as a person and as a prosecutor. She wanted to receive supporting materials and waited a few minutes for the book and the main diagrams. After she received these materials, she returned to the workplace." ... "Checking the facts stated in the disciplinary complaints regarding the participation of O.A. Yarova in the congress of the political party "Batkivshchyna", it was established that according to the content of the Law of Ukraine "On Political Parties in Ukraine"¹, the congress of a political party is its statutory body. Thus, a party Congress cannot be considered a political action; it is a form of work of one of the governing bodies of a political party. Elected delegates who are party members take part in the party congress with the right to vote. Consequently, since she is not a member of the party and, accordingly, could not be elected a delegate to the Congress with the appropriate range of powers, her presence at it cannot be considered participation in the party congress. At the same time, given that the Congress is a public and, accordingly, open event, it may also be attended by other people who are not members of the party or its supporters. During the inspection, sufficient evidence was not found to consider the "New Course of Ukraine" forum as an event of the "Batkivshchyna" political party. Thus, during the audit, the facts set out in the disciplinary complaints about O.A. Yarova's commission of a disciplinary offence under Item 6 of Part 1 of Article 43 of the Law of Ukraine "On the Prosecutor's Office"², namely, a one-time gross violation of the rules of prosecutor's ethics, were not confirmed. The fact that the prosecutor O.A. Yarova committed a disciplinary offence, stipulated in Item 5 of Part 1 of Article 43 of the Law of Ukraine "On the Prosecutor's Office"³ (committing actions that defame the title of the prosecutor and may cause doubt in his or her objectivity, impartiality and independence, in the honesty and incorruptibility of the prosecutor's office) was not confirmed, since the inspection did not reveal any violations by O.A. Yarova concerning any prohibitions and restrictions established by the Law of Ukraine "On the Prosecutor's Office"⁴.

Therefore, based on the results of the review of the Qualification and Disciplinary Commission of Prosecutors in disciplinary proceedings No. 11/2/4-1950ds-353dp-18⁵, decision No. 178dp-19 of June 12, 2019 was adopted "to bring the head of the fifth department of procedural management, maintenance of the state prosecution and representation in the court of the Specialized Anti-Corruption Prosecutor's

Office of the General Prosecutor's Office of Ukraine Olha Yarova to disciplinary responsibility and to impose on her a disciplinary sanction in the form of a reprimand" according to Item 7, Part 1, Article 43 of the Law of Ukraine "On the Prosecutor's Office"⁶, namely: violation of internal service rules.

Even though a decision was not made as a result of the disciplinary proceedings under Item 5 of Art. 43 "Grounds for bringing the prosecutor to disciplinary responsibility", especially under Part 3 of Article 18 "Requirements regarding incompatibility" of the Law of Ukraine "On the Prosecutor's Office"⁷, however, the very fact of submitting and processing information regarding the potential risk of non-compliance with the principles of independence and political neutrality in the prosecutor's professional activity is indicative.

In such cases, the legislation is rather a warning, a precautionary factor that deters from certain actions or inaction (in our case, it does not allow - more precisely, it clearly prohibits, - and therefore, with a conscious perception, it protects the prosecutor from what can harm his or her likely career, both from the external influence of the social circles, and from the internal influence of unhealthy ambitions or the desire for easy profit). Therefore, some researchers consider another purpose of the principle of political neutrality to be the protection of civil servants (including prosecutors - Auth.) from unwanted influence and excessive control by various political forces, which will enable them to perform their functions well regardless of the governing political force (Panova, 2015). This principle protects prosecutors (civil servants in general) from the threat of losing their positions because of their political commitments. Such a threat can be especially likely when other parties come to power, and the entire pro-government vertical changes in all sectors and spheres of State life. This is because they are trying to combine the administrative functions of government employees with political functions. Therefore, the change in the supreme leadership of the state "generates such consequences as staff turnover, dependence on political changes and bias of civil servants, primarily the management staff, inconsistency, and unpredictability in making managerial decisions, as well as the workload of politicians with minor administrative issues. Each new political campaign in Ukraine is accompanied by massive updates of the official corps. About 40,000-50,000 of the total number of civil servants change every year, which entails adverse consequences: in such teams, loyalty to the leader is

¹Law of Ukraine No. 23 "On Political Parties in Ukraine". (2001). Retrieved from <https://zakon.rada.gov.ua/laws/show/2365-14#Text>.

²Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

³Ibidem, 2015.

⁴Ibidem, 2015.

⁵Qualification and Disciplinary Commission of Prosecutors in disciplinary proceedings No. 11/2/4-1950ds-353dp-18. (2019, June). Retrieved from <https://zakononline.com.ua/court-decisions/show/87624736>

⁶Law of Ukraine No. 1697-VII "On the Prosecutor's Office". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

⁷Ibidem, 2015.

valued more than loyalty to the state; obedience to team rules is placed higher than obedience to the law" (Petrunovska, 2019). Given this, the principle of political neutrality can become one of the ways to solve this problem. Furthermore, political neutrality can become a guarantee of professionalism and professionality in the performance of relevant state functions. Therefore, compliance with and implementation of the principle of political neutrality is a crucial and even pragmatic task at all levels of professional activity of the prosecutor's office from the stage of competitive selection and throughout the entire service.

Differentiation of the term "political neutrality" from the terms "political indifference" and "political ignorance"

Here, one should pay attention to the opposite nuance. Sometimes political neutrality is confused with political indifference, which can later develop into political ignorance. A ban on political activity can quite naturally cause inertial disinterest in political processes taking place in the state, and then - become a habit of avoiding everything politically "stained". This approach to observing the principle of political neutrality is often accompanied by a conscious or unconscious avoidance of opportunities to obtain relevant information, which develops into ignorance and a frank lack of knowledge. Such a state of a person who holds the position of prosecutor can even cause cognitive dissonance (to perform their functions professionally, a prosecutor must have important information, e.g., know the political system of society and the normative principles of its functioning, distinguish between pro-government and opposition political parties, but never demonstrate their favour or antipathy towards any of them). But political ignorance should not become the norm of a prosecutor's professional activity. Knowledge and its adequate application, factoring in situations, circumstances, professional powers and restrictions, give greater chances to feel more confident and be convinced of the correctness of the decisions taken through objectivity, comprehensiveness in investigating and estimating the situation or legal case. This professional approach contributes to the development of a professional, which means that it opens more opportunities for professional growth and obtaining relevant benefits.

Political ignorance should be opposed by political awareness (literacy). In the modern world, it is quite common to raise the question of starting to study politics from a general education school and making political science one of the mandatory educational components in higher education. Disinterest in politics causes a lack of understanding of political processes, and therefore a lack of understanding of governance mechanisms and strategic development of humanity. Sociologists cite several reasons for this: firstly, it is an inherited command and administrative approach based on the principle

of "we do not decide anything"; secondly, the lack of political education that can develop leadership skills, socio-political literacy and modernize the worldview; thirdly, the attitude towards politics as a swamp, and to oneself as a voice in the desert; fourthly, outright distrust of politicians and at the same time fear of taking responsibility for oneself, proposing changes here and now. Considering this, it is necessary to introduce political education without advertising a separate political force, to expand political awareness, avoiding selective involvement (Demyanchuk, 2019).

The study of the basics of national policy (as an educational discipline) should form in schoolchildren (as a potential conscious electorate of the state) an understanding of the processes of creation and mechanisms of the implementation of national policy in a real social environment, and therefore, provide them (as individual citizens and as part of public associations, communities, social institutions, and state structures) the opportunity to influence these processes (Basics of state policy..., n.d.). Such courses are now becoming common among young people who want to realize their healthy ambitions in solving national problems and need qualified advice at the same time. The most common example can be considered the national educational and scientific project Prometheus, one of which is the course "Fundamentals of National Policy", developed under the aegis of the American Embassy in Ukraine (more precisely, a separate department handling issues of education, culture, and media) and adapted by Professor of the Kyiv-Mohyla Academy O. Demyanchuk (2019).

Another criterion for the prosecutor's professionalism, apart from political awareness, can be considered media literacy, which demonstrates the so-called media (information and communication) culture. Such competence lies in the ability to use information and communication techniques (means and methods of receiving, storing, and transmitting information) for communication and self-expression. Researchers in this field believe that media literacy also refers to "the ability to consciously perceive and critically interpret information, to separate reality from its virtual simulation - to understand the reality constructed by media managers, to understand the power relations, myths, and types of control that they cultivate" (Scheibe & Rogow, 2017).

Such competence is vital for everyone who wants to possess knowledge, skills, and abilities that allow to analyse, critically evaluate and at the same time formulate their own informational messages, to be aware of the influence of the media and communication through the perception of complex processes of their activity. A prosecutor belongs to the type of specialists who not only need such competence, but for whom it is also absolutely necessary. After all, media literacy is also the ability not to be influenced and manipulated by the media, the ability to make balanced and correct decisions thanks to

knowledge and comparison of the content of national and foreign media, the use of analytical and critical thinking for quick and effective orientation in large information masses, the ability to recognize reliability and expertise of the received data or disinformation, the ability to identify manipulative and propagandistic media content and subsequently avoid or counter them.

Occasionally, it is very difficult to distinguish between decisions based on a critical analysis of the situation and decisions dictated by veiled information manipulation. Thus, for instance, a prosecutor who came to a working meeting with the subject of the case under consideration at the place where the meeting of a certain political party is taking place, even if they make a positive decision for this subject, considering the objective factors of the case, can still be accused of a certain attachment to that political force, since the information allegedly involuntarily heard could affect the their thought process. Another side of this situation is also possible: those who are interested in the opposite decision of the prosecutor will focus on the possible manipulations, and the prosecutor themselves, fearing accusations of political bias, would change their previous decision, not even noticing that it was then that their opinion was manipulated. In such cases, researchers in the field of sociology and social psychology believe that "if a person succumbs to the principles of manipulation, it is only their fault" (Sandvik & Rysdal, 2021). Therefore, in such situations, information and communication literacy (awareness) becomes a significant component of professionalism because, on the one hand, it does not allow others to influence the decision-making, and on the other hand, it makes it possible to independently distinguish neutral information from manipulative. Therefore, it is not at all surprising that (similar to political awareness) media literacy has begun to be offered as one of the mandatory competencies, and therefore it is recommended to introduce it for study in various academic subjects (Moroz, 2022). Even a well-known Ukrainian political scientist and author of research on hybrid (information) warfare techniques, Yevhen Mahda has developed an author's course on media literacy, adapting it to the main challenges of the modern world - disinformation and fake news (Magda, 2017). In the list of competencies that can be improved and acquired during the study of this course, critical and systemic thinking, the ability to logically justify a position and cooperate with other people (general competencies), as well as informational-communicational and emotional-ethical competencies, possession of technologies for supporting professional activity in conditions of reforms and social transformations (professional competences).

Apart from media literacy, information ecology can also be considered an essential factor in the prosecutor's professionalism - an area that factors in the results of the influence of information on the emergence and life of biological systems, which include people, human

associations, and humanity as a whole, as well as on the physical and moral and mental state and social well-being of a person in information content (Romanenko, 2019). The prosecutor's office is not an exception among all types of activities of state bodies, where information technologies are intensively implemented, which potentially allows increasing the efficiency of their functioning, but at the same time opens them to new risks of information overload.

Information ecology as a factor of the prosecutor's professionalism provides for:

- 1) the ability to single out a subject (fact, action, event, idea, etc.) in the context of the situation (matter) under study, since a large amount of information scatters attention and does not contribute to its concentration;
- 2) the formation of so-called personal "memory cards" because the sources of information (media, social networks) require changes in the methods of processing, accumulation, and storage of acquired knowledge and the creation of a kind of systematized databases;
- 3) the stability of cognitive and intellectual activity, which with the development of information technologies is to some extent facilitated by the presence of the Internet as an information partner of a person (artificial intelligence) and at the same time forms a kind of information dependence on it;
- 4) creation of a personal "social network", consisting of a number of interconnected social spheres - personal space, family sphere, professional environment, etc. And here political neutrality actually becomes the indicator of the professionalism of the prosecutor, who filters information about the subjects of consideration and differentiates it into useful, acceptable or unacceptable, and based on this, systematizes and arranges their life activities into informational clusters.

Conclusions

Professionality has two shades of semantic meaning: on the one hand, this concept implies a connection with a certain profession (thus, in the context of this study, we discussed the professional environment of the prosecutor's office), and on the other hand, it means the work of a professional (namely, expertise, skill, and special training of the prosecutor). Professionality is reflected in the totality of certain knowledge, skills, abilities, and experience achieved by a person in a particular area of activity, and demonstrates the level of proficiency in these achievements. Therewith, each profession provides its unique qualification requirements for the person who receives it, i.e., this refers to a list of requirements and norms regarding the level of education and professional characteristics (already mentioned knowledge, skills, abilities, experience, etc.) necessary for the high-quality performance of the types of work provided for by the profession. Apart from the qualification professional requirements, there are also job requirements that actually distinguish a certain separate speciality (specialization) from a set of related professions (specialities). For

instance, prosecutors, judges, barristers, investigators, etc. are distinguished from lawyers.

In the context of the prosecutor's profession, two groups of requirements can be distinguished: the first are mandatory (these are functions, tasks), they are specialized because they reflect the main types of activities of the prosecutor's office; the second are fundamental (these are foundations, principles), they are special, i.e., they can be the same for all professional varieties within the scope of the speciality of a lawyer. Clearly, the first (functional) requirements are crucial in the professionalism of the prosecutor. But the requirements of the second group (fundamental) allow discussing the professionalism of the prosecutor. In other words, the functions of activity determine professionalism (profession), and the principles determine professionalism (level of proficiency in the profession). That is why the principles of organization and implementation of activities (namely, the prosecutor) can be considered its methodological basis. That is, in the professional activity of a prosecutor, functions indicate what should be done, and principles determine how (more precisely, under what conditions) it should be done. Without complying with the professional requirements of the second group, the prosecutor never implements the requirements of the first group qualitatively; after all, failure to comply with the principles of the prosecutor's office to a certain extent negates the performance of the prosecutor's individual professional functions. Such an understanding of the principles of professional activity of the prosecutor gives grounds to investigate them as indicative characteristics of his or her professionalism and professionalism.

Political neutrality is one of the key criteria in forming requirements for professional selection, professional training, professional development, and professional activity of prosecutors. Therewith, it is crucial to distinguish between the semantics of political neutrality and independence, impartiality, non-engagement, integrity, apolitical, non-partisanship, and other related and derived categories; and also, striving to ensure the prosecutor's independence in decision-making, not to reduce him or her to political ignorance, which would significantly limit their ability to be objective and examine situations in a variety of ways. Therefore, political literacy has every chance to become one of the factors of professionalism of prosecutors on a par with media literacy and information ecology. The professionalism of the prosecutor as such can be considered a result that is figuratively reproduced according to the following formula: the sum of political, media, and information and environmental literacy divided by political neutrality. Awareness in the field of politics and understanding of the mechanisms of functioning of information flows and their influence, passed through the lens of the inadmissibility of manifesting political preferences and attachments, can provide a professional approach to making a prosecutor's decision (admittedly, considering their special professional competencies of a lawyer).

Conflict of Interest

None.

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References

- [1] Association Agreement between Ukraine and the EU. (2014). Retrieved from <https://eu-agreement.ed-era.com/>.
- [2] Basics of state policy: Online course. (n.d.). Retrieved from https://courses.prometheus.org.ua/courses/Prometheus/GOV101/2015_T2/about.
- [3] Demyanchuk, A. (2019). *Political literacy: Why politics should become a school subject*. UAINFO. Retrieved from <https://uainfo.org/blognews/1569454203-politichna-gramotnist-chomu-politika-povinna-stati-shkilnim.html>.
- [4] Fedchyshyn, S.A. (2015). The question of the participation of civil servants in political activities in Ukraine. *Scientific Bulletin of Kherson State University*, 2, 206-209.
- [5] Glossary of terms of the European Union. (n.d.). Retrieved from http://europa.dovidka.com.ua/d.html#Acquis_communautaire_Community.
- [6] Kaganovska, T. (2017). *The problem of defining the concept of militarized service as a type of public service*. *Scientific Journal of the National Academy of the Prosecutor's Office of Ukraine*, 4, 79-86.
- [7] Karpyuk, S. (2020). Administrative and legal mechanism of compliance by civil servants and officials of local self-government bodies with the rules of ethical behavior regarding political neutrality. *Collection of Scientific Papers ΛΟΓΟΣ*, 26, 123-128. doi: 10.36074/26.06.2020.v2.47.
- [8] Kogut, O.V. (2016). *Problematic issues of legal regulation of civil service*. *University Scientific Notes*, 59, 101-111.
- [9] Kornuta, L.M. (2016). *The principle of political impartiality in the system of civil service principles*. *Actual Problems of Domestic Jurisprudence*, 5, 72-75.
- [10] Mandychev, D.V. (2021). Legal analysis of indicators of non-compliance of judges (candidates for the post of judge) with the criterion of independence. *Law and Society*, 4, 111-120. doi: 10.32842/2078-3736/2021.4.15.
- [11] Media literacy: Practical skills. (n.d.). Retrieved from https://courses.prometheus.org.ua/courses/course-v1:CZ+MEDIA102+2018_T3/about.

- [12] Methodology for the selection and evaluation of candidates for vacant administrative positions in the prosecutor's office: Appendix to the Regulation on the Commission for the Selection of the Management Staff of the Prosecutor's Office. (n.d.). Retrieved from https://webcache.googleusercontent.com/search?q=cache:R2QBlovFS4UJ:https://old.gp.gov.ua/ua/file_downloader.html%3F_m%3Dfslib%26_t%3Dfsfile%26_c%3Ddownload%26file_id%3D212508&cd=9&hl=uk&ct=clnk&gl=ua.
- [13] Moroz, V. (2020). *Media literacy has finally taken its place as one of the key competencies*. Retrieved from <https://ms.detector.media/trendi/post/30580/2022-11-04-mediagramotnist-nareshti-stala-na-svoie-mistse-odniiei-z-klyuchovykh-kompetentnostey/>.
- [14] Moshak, O.V., & Svirin, M.G. (2015). *Depoliticization of the civil service: Peculiarities of legislative normalization in Ukraine*. *South Ukrainian Legal Journal*, 3, 15-19.
- [15] Nalivayko, L.R., & Oreshkova, A.F. (2016). *The principle of political impartiality in the civil service system*. *Scientific Bulletin of Kherson State University*, 3(1), 41-44.
- [16] Panova, N.S. (2015). *Essential characteristics of the principles of civil service*. *Bulletin of the University of Customs and Finance*, 2(15), 109-121.
- [17] Panova, N.S. (2017). *Political impartiality of a civil servant as a guarantee of efficiency and stability of civil service*. *Scientific Bulletin of the Uzhhorod National University*, 47(2), 144-147.
- [18] Petrunovska, O.I. (2019). The principle of political impartiality of the civil service. *A Young Scientist*, 4(68), 412-415. doi: 10.32839/2304-5809/2019-4-68-92.
- [19] Romanenko, Yu.V. (2019). *Information security and information ecology*. *International Relation, Part "Political Science"*, 21.
- [20] Sandvik, G., & Rysdal, J. (2021). *How to counteract manipulation*. Kharkiv: Non-fiction edition.
- [21] Scheibe, S., & Rogou, F. (2017). *Media literacy*. Kyiv: Vilna Presa, Academy of the Ukrainian Press.
- [22] Svirin, M. (2014). *The principles of limiting the political activity of civil servants in the official political discourse of the modern Ukrainian state*. *Public Service*, 10, 152-156.
- [23] Vasylykivska, V. (2016). *Theoretical and legal characteristics of the latest principles of public service, taking into account legislative changes*. *Entrepreneurship, Economy and Law*, 10, 87-91.

Політична нейтральність як індикатор професійності прокурора

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Анотація

Актуальність теми зумовлена важливістю принципу політичної нейтральності як запобіжного чинника в професійній діяльності прокурора, що покликаний убезпечити його від зовнішнього впливу будь-якої політичної сили й особистих незаконних інтересів (особливо гостро цей аспект може виявлятися в політично нестабільних суспільствах, у разі зміни керівництва держави чи значних соціальних катаклізмів). Стаття має на меті розглянути професійну діяльність прокурора через розуміння принципу політичної нейтральності як індикаційної (показової) характеристики професіоналізму. Для підтвердження цього автор обрав функціоналізм як основний методологічний підхід, що дало підстави стверджувати, що функції діяльності визначають професійність (професію прокурора), а принципи – професіоналізм (рівень володіння цією професією). Як допоміжні методи використано формально-логічний (для аргументованого викладу дослідницького матеріалу), формально-догматичний (для аналізу чинних нормативних документів) і порівняльно-правовий (для зіставлення аналізованого матеріалу). Основні результати дослідження демонструють принцип політичної нейтральності як вимогу у сфері професійної діяльності державних службовців не лише в Україні, а й у Європейському Союзі, інтеграція з яким визначена основним вектором подальшого розвитку України. Здійснено змістове розмежування політичної нейтральності із синонімічно близькими поняттями політичної неупередженості та незалежності, аполітичності, позапартійності й департизації. Причому політичну нейтральність визнано одним з найважливіших критеріїв у формуванні вимог щодо професійного відбору, професійної підготовки, професійного становлення та професійної діяльності прокурорів. Практична цінність дослідження полягає в застереженні прокурорів від політичного невігластва, що може виникнути в разі неправильного розуміння політичної нейтральності. Для уникнення або подолання цього негативного аспекту запропоновано низку чинників досягнення прокурором професійності, що описано через своєрідну формулу: професійність прокурора можна вважати сумою політичної, медійної та інформаційно-екологічної грамотності, поділеною на політичну нейтральність

Ключові слова:

політично нестабільне суспільство; політична грамотність; прокурор; професійність; професіоналізм