

FEATURES OF THE RECUSAL OF THE PROSECUTOR AND INVESTIGATOR IN CRIMINAL PROCEEDINGS

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Introduction. Impartiality and objectivity of persons, who carry out criminal proceedings, are key principles of justice. In order to ensure the fairness of the investigation and trial, the legislation provides for a mechanism for the withdrawal of prosecutor and investigator in the event of circumstances that may affect their independence or raise doubts about their impartiality. So, it is important to investigate the issue of prosecutor's and investigator's recusal as a possibility of realization of a person's right to a fair trial.

Objectives. To explore the institute of appeals. To analyse the grounds for the withdrawal of the prosecutor and investigator.

Methods. In scientific work we used theoretical research methods such as comparative analysis, synthesis and generalization.

Article 77 of the Criminal Procedure Code of Ukraine provides for the following grounds for the withdrawal of the prosecutor and investigator:

- 1) if he is an applicant, victim, civil plaintiff, civil defendant, family member or close relative of a party, applicant, victim, civil plaintiff or civil defendant;
- 2) if he participated in the same proceedings as an investigating judge, judge, defence counsel or representative, witness, expert, specialist, translator;
- 3) if he personally, his close relatives or members of his family are interested in the results of criminal proceedings or there are other circumstances that raise reasonable doubts about his impartiality.

It should be noted that this list is not exhaustive. Paragraph 1 of Part 1 of Article 77 of the Criminal Procedure Code of Ukraine, provides for a logical prohibition of the legislator on the participation of prosecutor and investigator in criminal proceedings. If the prosecutor or investigator acts, for example, as a victim, civil plaintiff or defendant, they will have their own interest in the case, which will exclude impartial performance of their duties. The same applies to the situation if the prosecutor or investigator were in the same criminal proceeding judge or defence counsel or expert. Participating in these proceedings, they have already formed a certain opinion regarding the suspect, the accused and the resolution of the case, which again will not allow to make a legitimate and impartial decision.

As for item 3, this is an estimated basis, therefore its interpretation is uncertain and there are various options for explaining this basis. In particular, circumstances that raise doubts about the impartiality of the prosecutor and investigator may be: the existence of a conflict between the participants in criminal proceedings or friendly relations, incompetence and unethical behaviour. This may

also include the absence of political neutrality of the prosecutor, which is a violation of the requirements to prohibit participation in political actions, demonstration of their political beliefs or use of their powers in favour of a political party.

It is also important that the challenge can be declared only to the subject who acts at the appropriate stage of the criminal process. This means that it is impossible to challenge the investigator or prosecutor, who have already performed their functions, when the indictment has already been submitted to the court. There are also questions about the emergence of the right to challenge the investigator, prosecutor. Scientists are of the opinion, that the withdrawal or self-withdrawal of the investigator, the prosecutor can be declared at any stage of the pre-trial investigation, including at the initial stage, to ensure the legal beginning of the proceedings, only after the applicant becomes aware of the circumstances that are the grounds for withdrawal.

It is worth noting that the challenge must necessarily be motivated. That is, the circumstances specified in the application for recusal should be accompanied by proper evidence and arguments, and not based on the applicant's subjective conviction, otherwise the judge will have to refuse to satisfy such an application.

Conclusion. The institute of prosecutor's and investigator's recusal is an important mechanism for ensuring the impartiality and legality of criminal proceedings. Article 77 of the Criminal Procedure Code of Ukraine provides for specific grounds on which these persons are subject to suspension from participation in the case, in particular due to the presence of personal interest, family ties or prior participation in the same proceedings in a different role. Particular attention should be paid to evaluation criteria, such as doubts about the impartiality of the investigator or prosecutor, which may arise from a conflict of interest, friendly or hostile relations, political bias or unethical behaviour. However, the exercise of the right to challenge requires reasonableness and evidence, since subjective assumptions cannot be the basis for the removal of a participant in criminal proceedings.

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