THE MODEL OF PROSECUTION IN POLAND

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Abstract *The paper aims at analyzing a modern model of prosecution in Poland. First it presents the origin and models of presently existing public prosecution. Later on it focuses on the principles and legal basis for the organization and functioning of the Polish Prosecution, paying special attention to the reforms, which have been introduced in the recent years. The paper also discusses the structure of the Polish Prosecution, its functions, the principles of prosecutors' disciplinary liability, the status of prosecutors, their trainees, assessors and assistants. It also presents some reflections on the model of the Prosecution existing in Poland at present.*

Key words: *model of public prosecution, principles of the prosecution organization and functioning, prosecution legal basis, reform of the prosecution, organization and functions of the prosecution, status of prosecutors, trainees, assessors and assistants, disciplinary liability.*

Introduction

Modernly the Prosecution in Poland is a rather specific institution and considerably differs from other organs, both judicial and state administration, because of the functions it executes. In the light of the doctrine, as well as the legal regulations being in force, the Prosecution is not considered to be a *sensu stricte* understood authority of justice. Nevertheless, in practice legal provisions on the Prosecution's organization fully let it be classified as widely comprehended organs of justice.

The hereby paper aims at analyzing the position of the Prosecution within the system of state authorities, as well its model, which has been created in Poland on the basis of the legal regulations being in force. There will be discussed the origin of this model in comparison with other presently existing patterns, the principles of the Prosecution's organization and functioning, its legal basis, internal structure, functions and competences, the status of prosecutors, their trainees, assessors and assistants, as well as the main principles of the prosecutors' disciplinary liability.

The Constitution of the Republic of Poland of 2 April 1997[1], being presently in force, has deconstitutionalized the Prosecution, i.e. has expelled it from its content[2]. Unfortunately, differently from the previous basic law, the present one lacks a place for such an important organ for the protection of human rights and freedoms as the Prosecution is. This fact may surprise, especially if we compare relative provisions in other democratic states, where basic laws, sometimes very widely, regulate functions and the position of the Prosecution within the system of state authorities. Such state of affairs appears not only in the Western European countries, but also in the states of the Eastern and Central Europe, which are on their way to rebuild democracy.

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[1] The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No 78, item 483 with later amendments).

[2] T. Grzegorczyk, *Niezależność prokuratury i prokuratorów w świetle znowelizowanej ustawą z dnia 9 października 2009 r. ustawy o prokuraturze*, „Prokuratora i Prawo" 2010, No 1-2, p. 29.

A model of the Prosecution, which was created in Poland after 1985 on the basis of the Law on the Prosecution of 20 June 1985[3] (amended many times and being still in force) mainly took after the German pattern, though also kept some features taken from the Soviet one. The Prosecution was created to execute three main functions: being a public prosecutor, an organ chasing criminals, as well as supervising the legalism in the activities of other public authorities, especially the institutions of government and self-government administration[4].

The function of a public prosecutor is a fundamental task of the Prosecution, being the organ closely connected with the courts. It is especially important in case of Poland, since it became the member of the European Union, because court records are to a larger extent verified by supranational authorities of human rights protection. Therefore, preparing solid process documentation has gained a new dimension. However, charging the Prosecution with the function of chasing criminals, as well as the supervision of the legality of other state authorities' activities, seems to be excessively increasing its competences, especially in the context of also including into the scope of this supervision the control over the legality of issuing legal acts by self-government authorities. The *ratio legis* of the situation, in which the Prosecution is supposed to execute such functions, is not clear. In this field it is up to self-government authorities to improve their own controlling and supervisory bodies.

From the organizational point of view, the Prosecution has found itself within the structure of the executive power authorities, subordinated to the Minister of Justice[5], which is the model existing in modern democratic states the most often. Moreover, after 1990, there used to be a custom of joining the functions of the General Prosecutor and the Minister of Justice in one person.

In 2009 there was conducted one of the most extensive reforms of the Prosecution in the period of almost twenty five years, during which the Law on the Prosecution of 1985 had been in force. It was amended by adopting on 9 October 2009 a Law amending the Law on the Prosecution and several other laws, which came into force on 31 march 2010[6]. It is hard to state interchangeably, what the objective of that reform, seeming to be intended on a large scale, was. On the one hand, it did not change considerably the model and functions of the Prosecution. On the other hand, it was supposed to bring fundamental modifications in the organization and position of the Prosecution in the system of state authorities. The legislator seemed to have gone in the direction of strengthening the Prosecution's independency and non-political character[7], by introducing such solutions as: separation of the functions of the General Prosecutor and the Minister of Justice[8], creating a distinct procedure and clarified requirements and principles of the General Prosecutor's appointment and dismissal, establishing the National Prosecution Council, implementing competitions for the positions of prosecutors and terms of offices for executing functions in all the organizational units of the Prosecution. It is hard not to notice, that these

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[3] Law of 20 June 1985 on the Prosecution (consolidated text published in the Journal of Laws of 2011, No 270, item 1599 with later amendments).

[4] S. J. Jaworski, *Rozważania na temat modelu prokuratury*, „Prokuratora i Prawo" 2005, No 5, pp. 7-23.

[5] R. Krajewski, *Leksykon instytucji wymiaru sprawiedliwości i ochrony prawa*, Warszawa 2007, p. 143 and the next.

[6] Law of 9 October 2009 amending the Law on the Prosecution and several other laws (Journal of Laws of 2009, No 178, item 1375 with later amendments).

[7] B. Mik, *Nowe gwarancje niezależności prokuratury i prokuratorów – fakt czy iluzja?*, „Prokuratora i Prawo" 2010, No 5, p. 102 and the next.

[8] W. Grzeszczyk, *Nowy model ustrojowy prokuratury*, „Prokuratora i Prawo" 2010, No 3, p. 6 and the next.

solutions lack certain cohesion and the reforms might appear to be rather superficial and might not bring the intended result.

1. Origin and modern models of prosecution

The origin of the institution of prosecution goes back to the XIV century's France. As it was there, where the process of appointing special officers in charge to protect the king's interests by the courts began. Their functions included, among others, prosecution of all kinds of crimes and supervision of courts activities on behalf of the king.

As a result of long-term evolution, there were formed two models of public prosecution on the European continent: the French and the German ones. The French model is characterized by the fact, that a prosecutor is a representative of the state and the ministry of justice, who acts in the field. He fulfils a number of judicial, investigative and administrative functions. However, in the German model the functions of a prosecutor are different. He serves individuals and the community, as well as remains "an advocate of the state".

In Poland the institution of the Prosecution appeared within the system of state authorities on the territories of the partitioning parties at the beginning of the XIX century. The structures of the Prosecutions, based on the invaders' laws, lasted till Poland regained independence in 1918 and was also functioning for some time during the interwar period. The situation changed in 1928, when the President issued a Decree-law on the organization of common courts. The new legal regulations closely linked the Prosecution with the judiciary, and the position of the Chief Prosecutor was combined with the function of the Minister of Justice[9]. At the central level, the Prosecution was subordinate to Prosecutor's Supervision in the Ministry of Justice. The Prosecution organizational units were established by the Supreme Court, the courts of appeal and the district courts.

The model of the Prosecution in Poland changed fundamentally after World War II. In 1950, there was conducted a reform of the organization and functions of the Prosecution. It consisted in separation of the Prosecution from the Ministry of Justice and making it subordinate to the Council of State. The Prosecution's scope of competences was extended to supervising the legality of acts and activities of the official institutions and authorities in power. The Prosecution itself was divided into common and military organizational units. This division lasted till 1967. Among the common units, there was established the General Prosecution, as well as provincial and district prosecutions.

In 1990, there was introduced another reform in the Prosecution's structure, which resulted in the change of its position in the system of state authorities. The General Prosecution was abolished and the Prosecution was again subordinated to the Minister of Justice. In the Ministry of Justice's structure, the General Prosecution's tasks were taken over by the Department of Justice. The Prosecution's task to supervise the legality was annulled. In 1993 appellate prosecutions were established. They gained the power of instance and official supervision.

In 1996 the Department of the Prosecution was abolished and in its place the National Prosecution was established, which was subordinate to the Minister of Justice. It was headed by the National Prosecutor, who at the same time fulfilled the function of a Deputy General Prosecutor. This body existed until 2010, i.e. till the aforementioned law of 9 October 2009, reforming the Prosecution, came into force.

Nowadays, on the European continent, as opposed to the judiciary, where the French model dominates, the structure of prosecution has adopted different organizational

[9] J. Kędzierski, *Niezależność prokuratury – w kregu faktów i mitów*, „Prokuratura i Prawo" 2009, No 1, p. 105.

forms, resulting mainly from the traditions in particular countries[10]. It can be seen, that the structural position of prosecution corresponds to one of the four basic models.

The first one links prosecution to the legislative power. Its main feature is, that the General Prosecutor is appointed by the parliament and is responsible to it. Such a model presently exists in Hungary and Switzerland.

The second model subordinates prosecution to the executive power. This is the most common model in Europe. In such a case, prosecution either might be one of the government authorities – such a solution exists in Norway, Germany, Slovenia, the Czech Republic and France, or might be subordinate to the Minister of Justice and at the same time functionally strongly connected with judicial authorities. Such a model of the prosecution's organization has been introduced in Belgium and Latvia.

In the third model, prosecution is independent from the executive power and included into the judicial one. In this case the legal status of a prosecutor does not differ from the legal status of a judge. A prosecutor is independent, as well as irremovable, and it is guaranteed by the fact that he is appointed by the Supreme Judicial Council, to which he is responsible. Such a model has been adopted in Italy. The opponents of such a position of prosecution underline the fact, that its total independence from the executive power makes it difficult, and sometimes even impossible, for the state to implement a certain penal policy.

The fourth model makes prosecution completely autonomous from all the state authorities. This non-standard and rather rarely used model has been adopted in Portugal. The only connection between prosecution and the Legislative Assembly is the fact that the latter appoints the Supreme Council, which is a part of the General Prosecution. Followers of such a model, being undoubtedly the most modern one, claim that in the face of a kind of crisis in the classical separation of power principle, it might become the most popular solution.

2. Principles of the Prosecution's organization and functioning

In literature we can find two groups of principles, on which the inner structure and the activity of the Polish Prosecution have been based. The first one applies to its organization, and the other one – to its functioning. Discussing these principles seems to be considerably important, especially in the context of the reflections over the model of the Prosecution and the directions of its hitherto and future reforms.

There are recognized the following organizational principles of the Prosecution:

- the principle of uniformity, which means, that all the units of the Prosecution make a unitary organizational entity and outside they act on behalf of the Prosecution as a whole;
- the principle of centralism, according to which all the organizational units of the Prosecution are subordinate to one chief organ – the General Prosecutor;
- the principle of hierarchical subordination, which means, that all the organizational units of the Prosecution are not directly subordinate to the General Prosecutor, but through the organizational units on a higher level;
- the principle of a single management, which means, that the whole Prosecution, as well as its particular organizational units are always headed by a single person;
- the principle of independence, which is expressed in the fact, that prosecutors, while exercising their powers, are independent from the local government and self-government administration authorities, and are subordinate only to superior

[10] *Ibidem*, p. 106 and the next.

prosecutors.

Functioning principles include:

- the principle of legality, which obliges the Prosecution to chase all revealed crimes prosecuted *ex officio*;
- the principle of impartiality, which obliges the Prosecution to investigate and take into account all the circumstances of a committed crime, whether they are advantageous or not for the accused;
- the principle of action *ex officio*, according to which the Prosecution is obliged to conduct a legal proceedings on its own initiative, independently of anyone's demand;
- the principle of cooperation with other state authorities, and social and cooperative organizations, which results in an obligation for close cooperation of the Prosecution with government and self-government bodies, as well as with other organizations and institutions;
- the principle of substitution, meaning that a superior prosecutor has the right to order a subordinate one conducting any action;
- the principle of devolution, which makes it possible for a superior prosecutor to take over and conduct any action belonging to the scope of responsibilities of a subordinate prosecutor;
- the principle of indifference, meaning that, from the point of view of the effectiveness and legal validity, it is of no importance, which prosecutor conducts an action in connection with a legal proceedings;
- the principle of a single-handed conduction of actions, which means that every action being in the scope of responsibility of a prosecutor is carried out by a single prosecutor.

3. Organization of the Prosecution

The Prosecution consists of:

- the General Prosecutor;
- subordinate to him prosecutors of common and military organizational units of the Prosecution;
- prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation.

The Prosecution has been *expressis verbis* determined as an organ of legal protection. Taking into account its independency of the Ministry of Justice, it is difficult not to notice the establishment of a considerably different from the hitherto, position of the Prosecution within the system of state authorities.

Similarly as it used to be before the reform, the General Prosecutor still remains the chief body of the Prosecution. He manages the activities of the Prosecution by himself or with the help of his deputies by issuing dispositions, instructions and orders. He is superior to all the prosecutors of common and military organizational units of the Prosecution, as well as to the prosecutors of the Institute of National Remembrance. He fulfils all the tasks of the Prosecution together with subordinate to him prosecutors. According to the principle of substitution, the General Prosecutor is entitled to order prosecutors performing actions within the scope of the Prosecution's responsibilities or – in accordance with the principle of devolution – to take over actions of subordinate prosecutors.

It cannot go without saying, that the position of the General Prosecutor has been changed, and as a result of this the position of the whole Prosecution has also been modified[11]. It has been made independent from the authorities of the executive power in a much higher degree. The procedure of his appointment and dismissal, created on the basis of totally new principles, as well as his present status indicate this.

The position of the General Prosecutor can be occupied by an active prosecutor of a common or military organizational unit of the Prosecution or the Institute of National Remembrance, who has been in the position for at least ten years, or by an active judge of the Criminal Chamber or the Military Chamber of the Supreme Court , or by an active judge of a common court or a military court, who has also been in the position for at least ten years deciding in criminal cases.

The General Prosecutor is appointed for a six-year term of office (without a possibility to be re-appointed) by the President of the Republic of Poland, not later than during the three months' period before his term of office expires, from among two candidates submitted by the National Judicial Council and the National Prosecution Council – one from each. The Deputies of the General Prosecutor are also appointed by the President on the motion of the General Prosecutor.

Thus constructed procedure of appointing the General Prosecutor surely aims at strengthening professionalism of the institution. Here, the role of the National Judicial Council and the National Prosecution Council cannot be overestimated. Doubtful might be the appointing authority, i.e. the President, who belongs to the executive power – and that because of two reasons. Firstly, subordination of the General Prosecutor, which also means the whole Prosecution, to the executive power in this scope is still seen here. Secondly, there might appear a question about the degree of legitimization of his power as an organ heading the independent Prosecution – the similar one as we might ask in connection with the procedure of appointing judges as well. In the latter case the procedure, constructed almost identically (a judge is appointed by the President on the motion of the National Judicial Council), proves to be correct in its long-term practice and does not seem to influence judges' independency, on the condition, of course, that the real impact on appointing judges is exercised by the National Judicial Council, and the head of state, having no formal grounds to non-appointing, does not refuse the nomination. In case of the General Prosecutor, the legal regulations do not provide a situation, in which the President would refuse the nomination of one of the candidates, and by this way – to some extent – make him choose the candidate submitted by one of the Councils. As far as the status of a prosecutor cannot be completely equated to the status of a judge, and subordinating the Prosecution to the executive power in not a principally bad solution, the question of legitimization to execute power in the name of the sovereign by state authorities still remains a disputable matter in the doctrine. So, all we can do here is to hope, that thus created procedure will also prove to be correct in practice.

After the term of office expires, the General Prosecutor is allowed to retire, independently of the age. This solution aims at avoiding the situation, in which he would become subordinate to a former inferior prosecutor in the future. At the same time, reaching the age of retirement during the term of office does not influence its run.

The status of the General Prosecutor is very similar to the status of a judge, for assuring of which he has been provided with basic attributes, making it possible to exercise his duties independently. Independency of the General Prosecutor is additionally

[11] W. Grzeszczyk, *Nowy model …*, p. 9 and the next.

underlined by an obliging him principle of *incompatibilitas*, prohibiting him to remain in a service or labour relation, or occupy any other position, except of a scientific or didactical one, or to fulfill any other paid activities. Moreover, he is obliged by the principle of political and party indifference, which did not exist in practice before, because it was impossible to be executed. According to this principle, the General Prosecutor is not allowed to belong to any political parties or trade unions, as well as to conduct any public activity, which cannot be reconciled with the dignity of his office. The General Prosecutor's independency is additionally strengthened by the immunity, which protects him against calling him to a criminal account and depriving him of liberty without a prior consent of a disciplinary court. The General Prosecutor must not be detained or arrested, except an apprehension red-handed while committing a crime, and if his detention is necessary for a proper course of proceedings. The President of the Republic of Poland must be immediately informed about such a detention. He can also order to free the detained instantly.

The General Prosecutor is obliged to submit reports on the Prosecution's activities to the Prime Minister, and the Minister of Justice expresses his written opinion on it. The Prime Minister can accept or reject a yearly report on the Prosecution's activity.

The General Prosecutor's term of office expires in case of his death or dismissal. The President may dismiss the General Prosecutor before his term of office expires in four cases: if he resigns from the position; if he becomes durably disable to fulfill his duties as a result of an illness or lack of strength, which must be stated by a medical certificate (on a motion of the Prime Minister or the National Prosecution Council); if he has been validly sentenced for committing a crime or a fiscal offence, or has submitted a false vetting declaration, which has also been stated by a valid judgment; and if he has been validly penalized with one of the following disciplinary punishments: reprimand, removal from the occupied function, transfer to another official position or dismissal from the prosecution service.

Moreover, the General Prosecutor can be dismissed before his term of office expires by the lower chamber of the parliament – *Sejm*. This happens in case of rejecting his report on the Prosecution's yearly activity by the Prime Minister, or if he has embezzled the taken oath. In such a situation, the Prime Minister, on the basis of the opinion of the National Prosecution Council, can submit such a motion to *Sejm*, which passes a resolution by two-thirds of the votes of at least half members of the chamber present.

The first Deputy of the General Prosecutor, as well as his other deputies are appointed from among the prosecutors of the General Prosecution, and are dismissed from their positions by the President of the Republic on a motion of the General Prosecutor. The Chief Military Prosecutor is one of the General Prosecutor's deputies. He is appointed from among the prosecutors of the Chief Military Prosecution, and dismissed by the President of the Republic, on a motion of the General Prosecutor, completed in agreement with the Minister of National Defense. The Chief Military Prosecutor manages the activity of the military organizational units of the Prosecution substituting for the General Prosecutor. Moreover, another deputy of the General Prosecutor is the Director of the Chief Commission for the Prosecution of Crimes against the Polish Nation, who is appointed from among the prosecutors of the Institute of National Remembrance, and dismissed from this position by the President of the Republic on a motion of the General Prosecutor, submitted in agreement with the President of the Institute. The Director of the Chief Commission for the Prosecution of Crimes against the Polish Nation manages the

Chief Commission. The number of other deputies of the General Prosecutor is determined by the Minister of Justice, on a motion of the General Prosecutor, by way of a regulation.

Common organizational units of the Prosecution include:

- the General Prosecution;
- appellate prosecutions;
- provincial prosecutions;
- district prosecutions.

The General Prosecution has been established instead of the National Prosecution and is not included into the Ministry of Justice any more. Having a status of a common organizational unit of the Prosecution, it provides service of the General Prosecutor, who heads and manages it. Its main tasks comprise assuring the participation of the General Prosecutor in proceedings before the Constitutional Tribunal, the Supreme Court and the Chief Administrative Court, exercising instance and official supervision over the preparatory proceedings led by other organizational units of the Prosecution, conducting inspections of appellate prosecutions and fulfilling actions in the field of legal transactions with abroad.

An appellate prosecution is established for the area of minimum two provincial prosecutions' jurisdiction. It is headed by an appellate prosecutor, who is a superior to all the prosecutors of the appellate prosecution, as well as the provincial and district prosecutions in the area of its jurisdiction. The main tasks of an appellate prosecution include assuring the participation of a prosecutor in the proceedings led before an appellate court or a provincial administrative court, conducting and supervising preparatory proceedings in the cases of prosecuting organized crimes and corruption, exercising instance and official supervision over the proceedings led by provincial and district prosecutions.

A provincial prosecution is established for the area of minimum two district prosecutions' jurisdiction. It is headed by a provincial prosecutor, who is superior to all the prosecutors of the provincial prosecution and the district prosecutions in the area of its jurisdiction. The main tasks of a provincial prosecution include assuring the participation of a prosecutor in the proceedings before a provincial court, conducting and supervising preparatory proceedings in the cases of crimes and economic offences, as well as exercising instance and official supervision over the proceedings led by district prosecutions and conducting inspections in them.

A district prosecution is established for the area of one or more number of municipalities. In reasonable cases there can be more than one district prosecution established in the area of one municipality. A district prosecution is headed by a district prosecutor, who is superior to all the prosecutors of a given district prosecution. The main tasks of a district prosecution include assuring the participation of a prosecutor in the proceedings conducted before a district court, as well as leading and supervising preparatory proceedings, except the cases belonging to the jurisdiction of provincial and appellate prosecutions.

Appellate, provincial and district prosecutions are established and abolished by the Minister of Justice, on the basis of the General Prosecutor's opinion, by way of a regulation, which also specifies their seats and jurisdiction. Moreover, the Minister of Justice is entitled to determine the jurisdiction of common organizational units of the Prosecution for the cases of particular crimes, independently of the general jurisdiction of the prosecutions' organizational units and notwithstanding the place of their commitment, in civil and administrative cases, as well as in cases of offences, taking into account

effective fighting down the crimes and assuring the efficiency of proceedings. He can also establish and abolish non-resident units of provincial and district prosecutions, situated outside the prosecutions' seats.

Military organizational units of the Prosecution include:

- the Chief Military Prosecution;
- provincial military prosecutions;
- garrison military prosecutions.

The Chief Military Prosecution is headed by the Chief Military Prosecutor, who is also a Deputy of the General Prosecutor and at the same time superior to all the prosecutors of the Chief Military Prosecution, as well as other military organizational units of the Prosecution. The Chief Military Prosecutor manages the activities of the military organizational units of the Prosecution substituting for the General Prosecutor.

A provincial military prosecution is headed by a provincial military prosecutor, who is superior to all the prosecutors of the provincial military prosecution and the garrison military prosecutions in the area of its jurisdiction.

A garrison military prosecution is headed by a garrison military prosecutor, who is superior to all the prosecutors of this prosecution.

Military organizational units of the Prosecution are established and abolished, as well as their seats and areas of jurisdiction are specified by the Minister of National Defense in agreement with the Minister of Justice.

The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (IPN) was established under the Law on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation of 18 December 1998[12]. It is an untypical institution, which involves prosecutors to its activities. Its specific character is especially seen in the objective, for which it was established, as well as in the subject of its activities. Among the Institute's competences, the one, which is worth mentioning, is the function of prosecuting crimes committed against the people of the Polish nationality, as well as against the Polish citizens of other origin in the period from 1 September 1939 to 31 July 1990, which are: the Nazi, Communist and other crimes against peace, humanity and war crimes.

The Institute is headed by the President, whose position is independent of the state authorities. The President is appointed and dismissed by the lower chamber of the parliament – *Sejm* with the upper chamber – *Senate*'s consent, on a motion of the Council of the Institute, which submits a candidate from outside its members, for a 5-year term of office. The President of the Institute performs his tasks with the help of the organizational units of the Institute of Remembrance. These organizational units include:

- the Chief Commission for the Prosecution of Crimes against the Polish Nation;
- the Office for the Preservation and Dissemination of the Archival Records;
- the Public Education Office;
- the Vetting Office.

In places, being the seats of appellate courts, departments of the Institute have been created, while in other cities – its branches. A department is headed by a department director, whereas a branch is managed by a head of a branch, who are both appointed and dismissed by the President of the Institute of Remembrance.

[12] Law of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (consolidated text published in the Journal of Laws of 2007, No 63, item 424 with later amendments).

Within the departments there are created respectively departmental commissions and offices. Within the branches there can be created departments for the preservation and dissemination of the archival records, public education departments and prosecution departments.

The Chief Commission and the Vetting Office are headed by the Directors. The Director of the Vetting Office is appointed from among the prosecutors of the Office, and dismissed by the General Prosecutor on a motion of the President of the Institute of Remembrance, constructed on the basis of the opinion of the Institute Council. The Director of the Chief Commission, being at the same time one of the deputies to the General Prosecutor, is also superior to the prosecutors of the Chief Commission and departmental commissions.

Departmental commissions for the prosecution and departmental vetting offices are managed by the heads, appointed from among the prosecutors of the Vetting Office and departmental vetting offices, as well as dismissed by the General Prosecutor on a motion of the President of the Institute of Remembrance.

The prosecutors of the Institute of National Remembrance are the prosecutors of the Chief Commission for the Prosecution of Crimes against the Polish Nation, of the Vetting Office and of the departmental commissions and vetting offices. The prosecutors of the Institute of Remembrance are appointed by the General Prosecutor on a motion of the National Prosecution Council, and are also dismissed by the General Prosecutor, on a motion of the President of the Institute of Remembrance.

The prosecutors of the Institute of Remembrance's Commission fulfill certain investigative functions. Prosecutors of the departmental commissions commence and conduct investigations of crimes belonging to the jurisdiction of the Institute. The prosecutors of the Chief Commission, as well as those of the departmental commissions, have all the powers of the prosecutors of common and military organizational units of the Prosecution. The purpose of an investigation in the cases of crimes is to provide a comprehensive examination of the case circumstances and to determine the aggrieved parties. In the case of investigations conducted by the Institute of Remembrance, the provisions of the Penal Code are applied. A prosecutor of a departmental commission can refrain from commencing an investigation, and discontinue the commenced one in relation to the perpetrator of a crime if, of his own accord, he discloses all the important information concerning the accomplices in the crime, as well as the circumstances of its commitment, and if the information makes it possible to commence proceedings against a given person. The prosecutors of the Chief Commission are entitled to participate in appellate court proceedings started due to an appeal or cassation. Substituting for the General Prosecutor, the Director of the Chief Commission is entitled to submit a cassation in cases belonging to the jurisdiction of the Institute of Remembrance, also including those pertaining to the competence of military courts.

The most important vetting functions of the vetting offices especially include: keeping a register of the vetting declarations, their analysis and collecting information necessary for their correct assessment, preparation of vetting proceedings, as well as preparation and publication the catalogues of persons and personal data. In case of doubt as to the truthfulness of a declaration, the prosecutors of the vetting offices inform the person obliged to submit the declaration about this fact, as well as about a possibility to provide clarifications, which are entered on the record. Within the preparation of the vetting proceedings, the prosecutors of the vetting offices are entitled to require the files or documents and written explanations to be sent or presented, and, if necessary, to hear

witnesses, consult experts and commandeer objects or perform searches, as well as to apply penalties for breach of order. The prosecutors of the vetting offices submit a motion to commence a vetting procedure to the court, or inform the person obliged to submit such a declaration about the lack of grounds for lodging such a motion.

In case of the prosecutors of the Institute of Remembrance, including its departmental units, the provisions of the Law on the Prosecution apply.

Prosecutors are appointed from among the Polish citizens, who: enjoy full civil rights; have irreproachable character; have completed higher legal studies in Poland and have been awarded a master's degree, or have received adequate education abroad, which is recognized in Poland; are capable, as far as their health condition is concerned, to perform the duties of a prosecutor; are at least 26 years old; have passed a prosecutor's or a judge's examination; have been employed in a position of a prosecution assessor for at least a year or have performed a period of service, specified in the provisions on the professional military service, in the military organizational units of the prosecution. The requirements for passing the examination or completing legal practice do not apply to professors or associate professors of legal sciences in the Polish higher educational establishments, in the Polish Academy of Sciences, or other scientific and research institutes. These requirements do not also apply to judges, attorneys, licensed legal counsels and counsels of the Attorney General of the Treasury, who have practiced these professions or have been employed on such positions for at least three years, whereas the requirement to complete the legal practice does not apply to notaries. Military prosecutors in the military organizational units of the Prosecution are appointed from among professional officers, officers of temporary service or prosecutors of common organizational units of the Prosecution.

The prosecutors of the common organizational units of the Prosecution are appointed, through a contest, by the General Prosecutor on a motion of the National Prosecution Council, and military prosecutors – by the General Prosecutor in agreement with the Minister of National Defense. Service relation of a prosecutor is commenced when he receives a nomination. A prosecutor takes an oath before the General Prosecutor.

The chiefs of common organizational units of the Prosecution, i.e. appellate, provincial and district prosecutors, are appointed by the General Prosecutor, for a 6-year term of office in case of an appellate and provincial prosecutor, and a 4-year term – in case of a district one. The chiefs of military organizational units of the Prosecution, i.e. military provincial and garrison prosecutors, are appointed by the General Prosecutor in agreement with the Minister of National Defense.

Introducing a totally new procedure of appointment for a position of a prosecutor (by the General Prosecutor, on a motion of the National Prosecution Council, by means of a contest), terms of offices for exercising the functions of the chiefs of organizational units of the Prosecution and their deputies at all levels undoubtedly testify to a more independent status of prosecutors than it used to be.

The General Prosecutor dismisses a prosecutor of a common organizational unit of the Prosecution, if he has renounced the position. He may also dismiss a prosecutor, if the latter, despite of having been punished twice by a disciplinary court, has perpetrated another service offence, in which he has committed obvious infringement of law or transgressed the dignity of his position. Service relation of a prosecutor is terminated after 3 months since the delivery of the notification about the dismissal, and also on a day of loss of the Polish citizenship.

The General Prosecutor may dismiss a prosecutor of a military organizational unit of the Prosecution on a motion of the Minister of Defense in cases, when the provisions on the military service provide for a dismissal from professional service. On a motion of a prosecutor of a military organizational unit of the Prosecution, who is not a military officer, and has denounced his position, the General Prosecutor appoints him to an equal position in a common organizational unit of the Prosecution, independently of the number of prosecutors' posts, unless he does not meet the requirements necessary for such an appointment.

A prosecutor, while fulfilling his duties, remains independent[13]. One of the attributes of this independency is his irremovability from the position, which means, that transferring of a prosecutor to another place of service may only happen with his consent.

In his activities, a prosecutor is obliged to keep the principle of impartiality and equal treatment of all the citizens. His duties also include carrying out dispositions, instructions and orders of a superior prosecutor. During his service and out of it, he is supposed to protect the authority of his position and avoid anything that could discredit prosecutor's dignity or weaken trust in his impartiality.

Similarly to judges, prosecutors are obliged to abide to the principle of political and party indifference, therefore in the period of their service they are not allowed to belong to any political party or to carry out any political activity.

They are also obliged to abide to the principle of keeping official secret, which means that prosecutors must keep in secret the circumstances of cases, which became known to them because of the position they hold. This obligation lasts even after the termination of the service relation. It is annulled only when a prosecutor testifies as a witness in a preparatory proceedings or before the court, unless disclosure of the secret threatens interests of the state or an important private interest, which is not contradictory to the aims of justice. In such a case, the General Prosecutor is entitled to absolve him from this obligation.

Furthermore, prosecutors are obliged to abide to the *incompatibilitas* principle, which prohibits them to be employed anywhere else. The only exception is performing scientific or didactic activities, only if it does not prevent them from exercising their duties. A prosecutor is not allowed to perform activities, which might disturb him from executing his service or weaken trust in his impartiality, or discredit prosecutor's dignity.

Prosecutors are protected by immunity, which means that they cannot be called to a criminal account without a consent of a proper disciplinary court, as well as they cannot be detained without a consent of their disciplinary superiors, unless they have been apprehended red-handed while committing a crime.

In the Prosecution there function some collegiate bodies, which include:

- assemblies of prosecutors;
- boards of prosecutions.

Assemblies of prosecutors operate only in appellate prosecutions. They consist of the prosecutors of those prosecutions and of the prosecutors' delegates from provincial and district prosecutions within the jurisdiction of a certain appellate prosecution. The delegates, in the number equal to the number of appellate prosecutors, are chosen for the tenure of 2 years, by the meetings of prosecutors from those prosecutions, a half by each. The General Prosecutor determines the regulations for choosing delegates. Assemblies of prosecutors are headed by appellate prosecutors, who summon meetings on their own

[13] T. Grzegorczyk, *Niezależność prokuratury* …, p. 29 and the next.

initiative, or an initiative of the General Prosecutor, the board of an appellate prosecution or by 1/5 of its members. Within the scope of competences of the assemblies of prosecutors lies hearing the information from appellate prosecutors on the activities of the prosecutions and prosecutors, as well as giving opinion on the subject; establishing the number and choosing two thirds of members to the board of an appellate prosecution; choosing representatives to the National Prosecution Council and members of disciplinary courts; considering the reports on the activities of boards of appellate prosecutions; giving opinions about the candidates for appellate, provincial and district prosecutors, as well as in other matters presented by appellate prosecutors or boards of appellate prosecutions.

Boards of prosecutions operate in appellate and provincial prosecutions.

Boards of appellate prosecutions consist of four to ten members, in two thirds chosen by the assemblies of prosecutors and in one third appointed by appellate prosecutors from among the prosecutors. Boards are headed by appellate prosecutors, who summon meetings on their own initiative or on a motion of one third of their members. Their terms of office last two years. The boards consider conclusions made after inspections or vetting of a prosecution, as well as give opinions about the candidates for the prosecutors of appellate and provincial prosecutions and the deputies of appellate and provincial prosecutors, about the dismissal of the prosecutors of appellate and provincial prosecutions and in other matters presented by appellate prosecutors.

Boards of provincial prosecutions also consist of four to ten members, in two thirds chosen by the meetings of provincial prosecutors and prosecutors' delegates from district prosecutions, as well as a provincial prosecutor and a prosecutor appointed by him. Boards are headed by provincial prosecutors, who summon meetings on their own initiative or on a motion of one third of their members. Their terms of office last two years. Boards of provincial prosecutions consider conclusions made after inspections or vetting of prosecutions, as well as give opinions about the candidates for prosecutor assessors, prosecutors of district prosecutions and deputies of district prosecutors, about the dismissal of the prosecutors of district prosecutions and in other matters presented by provincial prosecutors.

The National Prosecution Council has been established instead of the Prosecutors' Council, which operated at the General Prosecutor. Both as to its tasks and internal structure, it has been created following the model of the National Judicial Council. Its composition is miscellaneous, mostly consisting of prosecutors, partly of the chosen members of parliament, however the other part are members of the Council *ex officio* or as a result of a nomination. The National Prosecution Council consists of twenty five members, among which two exercise their functions *ex officio*, i.e. the Minister of Justice and the General Prosecutor, and one person comes from a nomination, i.e. a representative of the President of the Republic. Besides, the elected members are: four members of the *Sejm* and two members of the *Senate*, chosen by the relative chambers for the parliamentary term of office; one prosecutor chosen by the meeting of the prosecutors of the Chief Military Prosecution; one prosecutor chosen by the meeting of the prosecutors of the Institute of National Remembrance; three prosecutors chosen by the meeting of the prosecutors of the General Prosecution and eleven prosecutors chosen by the assemblies of prosecutors of appellate prosecutions. The term of office of the Council lasts four years and only a person nominated by the President exercises his duties without determining the term and may be dismissed at any time. Prosecutors are allowed to perform their terms of office as members of the Council only twice.

The National Prosecution Council's tasks comprise, first and foremost, guarding prosecutors' independency. It plays an important role in the procedure of the General Prosecutor's appointment, in cases of his disciplinary responsibility, as well as in the procedure of appointing for a position of a prosecutor and for functions in all organizational units of the Prosecution. Moreover, it also fulfills some advisory competences, among others, in the scope of: legal acts concerning the Prosecution, the General Prosecutor's reports on the Prosecution's activities, principles of the assessment of prosecutors' assessors, the state and development of the prosecution staff, as well as the directions of professional training for prosecutors, assessors and trainees, reports on the activities of the Disciplinary Advocate of the General Prosecutor, drafts of instructions and dispositions of the General Prosecutor. Besides, it determines three members for the Programme Council of the National School of Judiciary and Prosecution, adopts an assemblage of the principles of prosecutors' professional ethics and watches over its observance.

The National Prosecution Council appoints and dismisses its President, two of his deputies and a secretary from among its members. The General Prosecution provides the Council with financial, administrative and office service.

4. Competences of the Prosecution

The main task of the Prosecution is protection of legality and overseeing the prosecution of crimes. Prosecutors exercise these powers through:

- conducting and supervising preparatory proceedings in criminal cases and exercising the function of a public prosecutor before the court;
- bringing actions in criminal and civil cases, as well as submitting motions and participating in court proceedings in civil cases, as well as employment relation and social security cases, if such matters as protection of legality, public interest, property or individual rights make it necessary;
- taking up measures, provided by law, aiming at its proper and uniform applying in court and administrative proceedings, as well as in cases of offence and other proceedings;
- supervising execution of writs on temporary arrest and other decisions on imprisonment;
- cooperation with scientific units in the field of conducting research on the problems of crime, its combat, prevention and control;
- collecting, processing and analyzing data in informatics systems, including personal data deriving from the conducted or supervised proceedings or from participating in court, administrative, offence or other proceedings, transferring data and analysis results to proper bodies, including authorities of other countries;
- appealing to a court against illegal administrative decisions and participating in court proceedings in cases of such decisions' legality;
- coordinating activities of other state authorities in the field of prosecuting crimes;
- supervision over the legality of initiating and conducting operational and intelligence actions by prosecution organs in the scope provided by laws which regulate organization and subject of activity of such authorities;
- cooperating with state authorities, state organizational units and social organizations in the field of prevention of crime and other cases of violating law;
- cooperating with the Head of the National Centre of Criminal Information;

- cooperating and participating in activities taken by international and supranational organizations, as well as international teams;
- giving opinions on the drafts of normative acts.

In cases belonging to the jurisdiction of military courts or other military bodies, those activities are carried out by the prosecutors of military organizational units of the Prosecution.

The General Prosecutor takes all the actions connected with the functioning of the Prosecution, coordinating of chasing perpetrators and submitting motions on judicial control to the Supreme Court. His instructions in the field of preparatory proceedings are binding for all the authorities entitled to conduct such proceedings. The General Prosecutor is entitled to submit motions to the Constitutional Tribunal on deciding whether normative acts are in compliance with the Constitution. Besides, he is entitled to apply to chief and central state administration bodies for taking remedies aiming at the improvement of activities of subordinate to them bodies in the field of preparatory proceedings. Provincial and district prosecutors are also entitled to such powers respectively in relation to voivodes (province governors) and self-government bodies. In cases belonging to the jurisdiction of military courts the Chief Military Prosecutor and relatively, subordinate to him, military prosecutors exercise the same powers as the General Prosecutor. The General Prosecutor, as well as the Chief Military Prosecutor within his jurisdiction, submit motions to the President on pardons for persons sentenced by the courts.

Prosecutors start and conduct preparatory proceedings and issue regulations. In the course of proceedings they take preventive measures in relation to the suspects. A prosecutor is entitled to order another authorized body to institute and lead preparatory proceedings. In such a case he supervises it. Regulations of a prosecutor are binding.

If preparatory proceedings reveal the existence of circumstances that might be conducive to committing crimes or hinder crimes exposure, a prosecutor applies to a proper body an address demanding to conduct inspection or commencing proceedings against the guilty in the matter of disciplinary, official or financial liability.

In case of discontinuance or refusal to commence preparatory proceedings, or taking the case to court with an indictment act, a prosecutor is entitled, relatively to circumstances, either to relegate the case to a proper body in order to commence official, disciplinary or offence proceedings, or in order the case to be considered by a proper social or professional organization.

In court proceedings prosecutors perform the duties of a public prosecutor before all the courts. They are also entitled to perform these actions in cases brought to court by other prosecutors. If the results of court proceedings do not confirm the charges put in the indictment act, prosecutors drop the charges. Furthermore, prosecutors are entitled to appeal against court decisions. They also supervise carrying out writs on temporary arrest and other decisions on imprisonment.

If a resolution of a self-government authority or a regulation of a voivode does not comply with law, prosecutors are entitled to apply to such a body for its amendment or abrogation, or to submit a motion for its abrogation to a proper supervisory body. In case of a self-government authority's resolution, prosecutors may submit a motion to an administrative court in order to state its invalidity.

5. Disciplinary liability

A prosecutor bears disciplinary liability for any violation of service discipline, especially for obvious and gross infringement of law or offence against the dignity of a

prosecutor's office, including his conduct before taking the position[14]. Prosecutors bear solely disciplinary liability for offences and abuse of freedom of speech, while exercising their service duties, which constitute an insult of a party, its representative, defender, probation officer, witness, expert or translator, prosecuted by private accusation.

Disciplinary punishments include: admonition, reprimand, dismissal from the held position, transfer to another official post and expulsion from the prosecution service. In case of military prosecutors, instead of dismissal from the held position, a prosecutor is subject to warning of inadequate fitness for the service on the position.

The General Prosecutor is a disciplinary superior to the prosecutors of common organizational units of the Prosecution, an appellate prosecutor – to prosecutors of appellate, provincial and district prosecutions within his jurisdiction and in case of prosecutors of provincial and district prosecutions within the jurisdiction of a provincial prosecution this function is exercised by a provincial prosecutor. The Chief Military Prosecutor is a disciplinary superior to the military prosecutors of military organizational units of the Prosecution. The Director of the Chief Commission for the Prosecution is a disciplinary superior to all the prosecutors of the Chief and departmental commissions of the Institute of National Remembrance, whereas the Director of the Vetting Office is a disciplinary superior to the prosecutors of all the vetting offices.

A prosecutor can be suspended if, because of the nature of his offence, it is necessary to immediately discharge him from exercising his duties. A disciplinary superior is entitled to suspend a prosecutor.

In case of minor offences, where it is not reasonable to institute disciplinary proceedings, a subordinate prosecutor inflicts a penalty of admonition for breach of order.

The following disciplinary courts have the authority to decide in disciplinary cases:

- for the prosecutors of common organizational units of the Prosecution, in the first instance, it is the Disciplinary Court and in the second instance – the Appellate Disciplinary Court, both operating by the General Prosecutor;
- for the prosecutors of military organizational units of the Prosecution it is the Disciplinary Court in the Chief Military Prosecution;
- for the prosecutors of the Institute of Remembrance, in the first instance, it is the Disciplinary Court, and in the second instance – the Appellate Disciplinary Court, both operating in the Institute.

Disciplinary courts appoint form among their members presidents and deputy presidents. The courts' term of office lasts four years. Members of disciplinary courts are judicially independent and their decisions are subject only to laws.

The President, Deputy President and fourteen members of the Disciplinary Court in the Chief Military Prosecution are appointed, from among the candidates chosen by the prosecutors of military organizational units of the Prosecution, by the General Prosecutor in agreement with the Minister of National Defense.

Members of the Disciplinary Courts in the Institute of National Remembrance, in the number established by themselves, are chosen by the assemblies of prosecutors of the commissions for the prosecution of crimes and vetting offices.

In the first instance disciplinary courts judge in a bench composed of three, and in the second instance – of five members. The juries are appointed by the president or the deputy president of a disciplinary court. In the second instance jury, there must not

[14] A. Herzog, *Przepisy o odpowiedzialności dyscyplinarnej prokuratorów – uwagi de lege ferenda*, „Prokuratura i Prawo" 2008, No 12, pp. 105–118.

participate a member of the disciplinary court, who took part in entering the appealed judgment in the first instance.

The motion to commence disciplinary proceedings is put by a disciplinary advocate, nominated from among the prosecutors by the General Prosecutor, - on the request of disciplinary superiors and after the initial clarification of circumstances necessary to establish the essentials of the offence and after the statement of the accused. In the course of the proceedings, the advocate performs the duties of a prosecutor, submits and supports appeals. Disciplinary proceedings are conducted in a closed session. In the first instance, the proceedings should be concluded after one month from the date of submitting the motion. The court decision and its reasoning are delivered to the disciplinary advocate and the accused. The reasons for the judgment shall be made in writing within the seven days from entering the decision. Disciplinary judgment might be made public after it becomes final and valid, under the resolution of the disciplinary court.

The accused and the disciplinary advocate are entitled to appeal against the judgment entered by the first instance disciplinary court, which should be considered within seven days from the date of lodging the appeal to the appellate court. The parties and the General Prosecutor are entitled to lay a cassation to the Supreme Court against the decision entered by the second instance court. A cassation may be lodged because of gross infringement of law or gross disproportion of disciplinary punishment within 30 days – for the party, and three months after the delivery of the judgment and reasoning – for the General Prosecutor. The party lays the cassation to the Supreme Court through the disciplinary court which entered the appealed judgment, whereas the General Prosecutor does it directly. The Supreme Court adjudicates the cassation during the hearing in the presence of the panel of three judges.

6. Prosecutors' trainees, assessors and assistants

Legal apprenticeship of prosecutor's trainees consists in preparing a trainee for performing the duties of a prosecutor properly. It lasts three years and six months. It comprises two phases: general apprenticeship, which lasts 12 months, and prosecutor's apprenticeship, lasting 30 months. The training period takes place in the National School of Judiciary an Prosecution[15].

A prosecutor's trainee is appointed from among the Polish citizens, who enjoy full civil rights, have unblemished opinion, have not been sentenced by a valid judgment for a crime or a fiscal offence, against whom neither a public indictment criminal proceedings nor a fiscal offence case is being conducted, who have completed higher legal education in Poland and have been awarded a master's degree, or adequate studies abroad recognized in Poland, and who have been placed on the list of candidates announced by the Director of the National School of Judiciary an Prosecution.

The apprenticeship comprises classes held in the National School and practices according to the training programme. Receiving positive marks from all the tests and practices included in the programme is the condition of completing the general apprenticeship.

A person, who has completed the general apprenticeship, is entitled to submit an application for continuing training at the prosecutor's apprenticeship to the Director of the National School of Judiciary and Prosecution, who issues a decision on the admission to

[15] Law of 23 January 2009 on the National School of Judiciary an Prosecution (Journal of Laws of 2009, No 26 item 157 with later amendments).

the apprenticeship. In the last month of the training period, the trainees take a prosecutor's examination. The ranking of the trainees, who have passed the exam with the positive mark, is completed by the Director of the National School of Judiciary and Prosecution and handed to the Minister of Justice. On its basis, depending on the ranking place, the latter presents the examined trainee a proposal of service on a position of a prosecutor's assessor in a common or military organizational unit of the Prosecution.

Assessors of common organizational units of the Prosecution are appointed to the position and dismissed by the General Prosecutor, whereas military assessors – by the Chief Military Prosecutor. The General Prosecutor and the Chief Military Prosecutor may respectively entrust assessors of common and military organizational units of the Prosecution with the duties of a prosecutor for a specified period, not longer than three years. In such a case, however, the assessor is not allowed to participate in proceedings before appellate and provincial courts, lodge appeals and motions to the Supreme Court, or appear before it. Prosecutor's assessors, who are not entitled to perform actions of a prosecutor, may appear in courts as public prosecutors in simplified proceedings. Assessors of common and military organizational units of the Prosecution are bound by the regulations respectively applied to the prosecutors of relative units.

Prosecutors' assistants may be employed in common organizational units of the Prosecution. Substituting prosecutors, on the basis of a written proxy, they are entitled to currently supervise an investigation and, in the course of preparatory proceedings, to carry out such actions as: witness interrogation, seizure of a property, searches, inspections and experiments. Prosecutors' assistants carry out independently administrative actions connected with the conduct and supervision of preparatory proceedings and preparation of concluding them decisions.

To be employed as a prosecutor's assistant, a person must meet the requirements set for the candidates for the prosecutor's trainees, moreover, he must be at least 24 years old and complete prosecutor's apprenticeship or general apprenticeship in the National School of Judiciary and Prosecution. After six years of employment, a prosecutor's assistant is entitled to take the prosecutor's examination together with the prosecutor's trainees.

Conclusions

The wish to make the Prosecution politically indifferent, through the separation of the functions of the General Prosecutor from the Minister of Justice, had been postulated for many years and is undoubtedly right. Thus, establishing the General Prosecution independent from the Ministry of Justice, having its own budget, was a correct solution. However, reaching this goal successfully, while the Prosecution still remains in a large degree of subordination to the executive power, rises some justified doubts[16]. This kind of subordination is proved not only by the procedure of appointment of the General Prosecutor. Besides that, he is also obliged to submit reports on the activities of the Prosecution to the Prime Minister. The Minister of Justice gives his written opinion on it. Consequently, the Prime Minister may accept or reject the yearly report. In case of its rejection, the Prime Minister is entitled to lodge a motion to the *Sejm* in the subject of the General Prosecutor's dismissal before his term of office expires. Although such a motion needs the opinion of the National Prosecution Council, and the resolution of the lower chamber of parliament is supposed to be taken by the majority of two thirds of the votes of its members, still the Council's opinion is not binding the Prime Minister, and if the

[16] J. Kędzierski, *Niezależność prokuratury …*, p. 102 and the next.

political configuration (a political one!) in the chamber favours such a motion, it is not difficult to be voted for. Perhaps total independence of prosecutors and the Prosecution as a whole – the one identical to the judges' status – is not necessary, but still it seems to be better to consequently go in the direction of the Prosecution's wider independency from the executive power authorities.

Answering another question, in fact, how prosecutors' independency relates to the principles of the organization and functioning of the Prosecution, still rises some more reflections and doubts. From the one hand, procedure of appointing prosecutors on the basis of a contest, opinions of prosecutors' self-government and the National Prosecution Council, seems to tend to increasing their independency. From the other hand, the principles of centralism and hierarchical subordination still oblige them to fulfill dispositions, instructions and orders issued by their superiors, who are also entitled to change or annul the decisions of subordinate prosecutors.

Using those principles raise even more controversies, especially in the context of appointing the heads of prosecutions and their deputies. From the one hand, the opinion of the assemblies of prosecutors in appellate prosecutions, as well as the terms of offices in exercising these functions have been introduced, which still remains an important, though a controversial factor for assuring prosecutors' independency. On the other hand, one should remember, that they are also obliged to fulfill dispositions, instructions and orders of the superior prosecutors and, finally, of the General Prosecutor, who is a body appointing heads of the prosecutions and their deputies. Thus, they will have to follow the superior prosecutors' decisions and, at the same time, to seek for support among their colleagues-prosecutors. They will remain in a classical situation "between the devil and the deep sea", especially that appellate and provincial prosecutors are allowed to perform their functions only once, while district prosecutors, striving for the next term of office, will have to endeavour after the support of their candidatures, and afterwards will also have to return to exercising duties of ordinary prosecutors. Hence, postulates *de lege ferenda*, as far as the principles of organization and functioning of the Prosecution are concerned, ought to oscillate around guaranteeing this organ independency, especially from the influence of naturally political in their orientation authorities of the executive power.

Establishing the National Prosecution Council, which main task is guarding prosecutors' independency, and which, as far as its functions, as well as its internal structure are concerned, has been created according to the model of the National Judiciary Council, must be estimated as a correct solution. The only doubt might arise in connection with the fact, whether its existence is proper in separation from the National Judiciary Council. Thus, a postulate *de lege ferenda* may be seen in joining these two bodies together in the future and, after re-constitutionalization of the Prosecution, establishing the National Council of Judiciary and Prosecution. In such a situation, the mentioned above goal, i.e. real strengthening of an independent status of prosecutors, seems to be much more probable, especially taking into account strengthening the position of prosecutors' self-government the way it took place in case of judges' self-government.

The fact, that in the Constitution there are no provisions on the Prosecution, must be estimated negatively. It is even more surprising, when one considers the fact, that there has been inserted the whole subchapter related to the National Broadcasting Council (chapter VIII) and it has been done in a very unfortunate way – in the chapter titled *Organs of control and legal protection*. It is rather vague, what exactly the National Broadcasting Council controls or protects. However, the basic law lacks place for the institution incredibly crucial, as far as the protection of human rights and freedoms is concerned, i.e.

for the Prosecution. Therefore, reestablishing the Prosecution in the Constitution must remain a *de lege ferenda* demand[17]. Lack of proper provisions in the Constitution will raise a tendency to politicize and influence the service of the Prosecution among politicians and future governments.

Taking into account the above reflections, turning back to a discussion on a new law on the Prosecution seems to be considerably necessary. The standpoint of the Ministry of Justice, consisting in not creating any concrete, official and totally new draft of such an important law and not submitting it to a wider discussion, must be estimated critically. It does not surely promote a solid assessment of any suggested solutions in such a considerable matter, so closely connected with the protection of human rights and freedoms.

The structural model of the Prosecution in Poland must be created anew. It is difficult, or even impossible to go back to the traditional structure of the Prosecution from the interwar period, even more so – to the solutions introduced after World War II, although the position of the General Prosecution seems to be more adequate than the former position of the National Prosecution.

Differently from the judiciary, there are no international standards relating to the prosecution. The VIII United Nations' Conference in 1997 worked out only a recommendation concerning the status of prosecutors. In one place it is said that the prosecution is not entitled to exercise justice – and only this statement can be related to the principle position of this institution.

Nowadays the European Union is trying to work out standards concerning the prosecution. However, it is an incredibly complicated issue. The reason for this is the fact, that prosecution authorities have been shaped in particular Western European countries as a result of their long-term traditions, dating back even to the XIV century, that is why their functions, organizations, competences and positions in the system of state authorities are different.

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