

New regulations shaping the prosecuting authority system in Poland and practice of its implementation.

At the beginning, we would like to emphasize that the basis of the system provisions binding until 2016 regulating the activity of the prosecuting authority was separation of the offices of the Minister of Justice and General Public Prosecutor, and creation of conditions for the strengthening of independence of the prosecuting authority by elimination of non-procedural possibilities of influencing the course of individual cases for interim political purposes.

New regulations shaping the prosecuting authority system in Poland, were implemented by means of the Act of 28 January 2016 *Law on Prosecuting Authority* (Journal of Laws of 2016, item 177, as amended) – hereinafter referred to as: *P.o.p.*, as well as the Act of 28 January 2016 *Implementing Provisions – Law on Prosecuting Authority* (Journal of Laws of 2016, item 178, as amended).

The new law eliminated the rotation in office of the General Public Prosecutor and functional prosecutors, vesting full authority to nominate and dismiss them in the hands of the General Public Prosecutor. This solution weakened the prosecuting authority's independence. Changes in the organizational structure were only superficial changes and the General Public Prosecutor's Office was replaced with the National Public Prosecutor's Office, and appeal public prosecutor's office - with regional public prosecutor's offices. Nomenclature was introduced which is incompatible with the nomenclature of individual organizational level of courts, which previously was not the case. The actual reason of those changes, coming down exclusively to and introduction of new terms designating individual levels of the prosecuting authority was not the organizational or substantive aspects, but verification of the personnel of the allegedly abolished units. In the new law, which was adopted hurriedly and without social consultation, regulations are found which give rise to concerns with regard to their compliance with the Polish Constitution and which are obviously in contradiction with the Recommendation of the Committee of Ministers of the Council of Europe Rec (2000)19 on the role of public prosecution in the criminal justice system – hereinafter: Rec (2000)19¹ and in opinion no. 9 (2014) of the Consultative Council of European Prosecutors (CCPE) on European

¹ <https://rm.coe.int/16804be55a>

norms and principles concerning public prosecutors – hereinafter: “the Rome Charter”².

The prosecuting authority which was, to a significant extent, autonomous, was closely connected with the executive authority, because the office of the General Public Prosecutor was merged with the function of the Minister of Justice (Art. 1 § 2 of *P.o.p*). The transparent, competition-based procedure of selecting candidates for the office of the General Public Prosecutor, appointed for a term of six years by the President, was replaced by a non-transparent process of appointment of the head of the prosecuting authority by the leaders of a political party which wins parliamentary elections.

P.o.p, in its Article 97 § 1 forbids political affiliation and therefore strengthens impartiality (Art. 6 of *P.o.p*) and independence (Art. 7 § 1 of *P.o.p*) of public prosecutors of influences and authority of political groups. Nevertheless each member of the Council of Minister, even not belonging to a political party, is a politician obliged to follow the programme of the ruling party or coalition of parties. Therefore, if a politician serving the office of the General Public Prosecutor may issue, as a superior public prosecutor, guidelines specifying the method of proceeding in individual categories of cases, instructions – including instructions concerning the contents of procedural activities - (Art. 7 § 2 and 3 of *P.o.p*) - and amend or revoke procedural decisions of public prosecutors (Art. 8 § 1 of *P.o.p*), then the prohibition expressed in the law becomes an empty declaration, or in other words a provision without meaning – in a matter of fundamental importance for the functioning of the prosecuting authority.

In addition, we should mention that Article 1 § 1 of *P.o.p* and other provisions which vest the General Public Prosecutor with all the attributes and competences of both a public prosecutor and a superior public prosecutor lead to the collision with Art. 103 section 2 of the Constitution. In the aforementioned provision, the Constitution forbids a public prosecutor to hold a mandate of a deputy.

A highly important matter is an issue of limitation of public prosecutors’ independence. In Art. 7 § 1 of *P.o.p* it is guaranteed that a public prosecutor, in the performance of the activities specified in the law, is independent, but at the same time, § 2 of that Article imposes a duty on a public prosecutor to follow the orders, guidelines and instructions of a superior public prosecutor.

² http://www.coe.int/t/dghl/cooperation/ccpe/opinions/default_en.asp

In view of the fact that the General Public Prosecutor, according to Art. 13 § 2 of *P.o.p.*, is a superior of public prosecutors of common organizational units of the prosecuting authority, is also entitled to interfere with pending proceedings in an individual matter, despite the fact that, being the Minister of Justice, he is also a member of the government. This means full subordination of public prosecutors to the executive power in the process of taking decisions in specific cases, which is in contradiction both with the text of *the Rome Charter* and the Bordeaux Declaration (joint opinion no. 4 of 2009 of the Consultative Council of European Prosecutors and the Consultative Council of European Judges. According to the aforementioned documents, it is clear that the control power over public prosecutors should be vested only in the court, and the independence of the public prosecutor, declared in the law and its justification, remains illusive.

Doubts are also raised by the introduction of a right to amend or revoke every decision of the public prosecutor, which also includes an incidental decision in an individual case, by the General Public Prosecutor - the Minister of Justice, who is also a representative of the executive authority, and a public prosecutor. Such extent of influence of the executive authority on the activity of the prosecuting authority is in collision with the recommendations of Rec (2000)19, chapter: "Relationship between public prosecutors and the executive and legislative powers", the Rome Charter and the Bordeaux Declaration.

In comparison with previous regulations, prohibition was lifted for the General Public Prosecutor to issue instructions concerning procedural activities in individual matters. Introducing a possibility of issuing orders, guidelines and instructions, including those concerning the procedural activities by the General Public Prosecutor - the Minister of Justice, a public prosecutor, faced with a duty to follow such instructions, will no longer be able to exercise the right to demand justification thereof, apply for an amendment to the contents thereof or request being exempted from a duty to follow the same, according to Art. 7 § 4 of *P.o.p.*

It is also difficult to talk about respect for the principle of equality and transparency with regard to instructions issued in individual matters, in particular taking into account not only the rights of a public prosecutor conducting preliminary proceedings, but also parties to such proceedings. At this point we should note that *the Rome Charter* recommends the States that, in the situation where the prosecuting authority is subordinate to the government, instructions issued in individual matters are attached to the files of such matters before the hearing, so that the other parties can review them and submit their comments. Even though the

provisions of *P.o.p* and the Regulation of the Minister of Justice of 7 April 2016 - Rules of Internal Operation of Common Organization Units of the Prosecuting Authority (Journal of Laws, item 508) - hereinafter: “*the Rules of the Prosecuting Authority*”, stipulate both a possibility of demanding by a public prosecutor of delivery of an instruction in writing, including justification, within 3 days (§ 40 section 1 point 1 *of the Rules of the Prosecuting Authority*), and demanding an amendment to the instruction or being excluded from a procedural activity or from participation in a matter (§ 40 section 1 point 2 *of the Rules of the Prosecuting Authority*), such demand being considered by the direct superior public prosecutor of the public prosecutor issuing the instruction. However, the law does not specify whether the demand of the subordinate public prosecutor and the decision of the direct superior public prosecutor of the public prosecutor who issued the instruction should be included in the auxiliary prosecutor’s file (on-hand file), similarly to the instruction concerning the contents of the procedural activity. It seems that such documents should be included in on-hand files, in view of the transparency of the decision-making process. But there are no provisions ordering the granting of access to on-hand files to the parties before the hearing, so that they can review both position of responsible official and his superiors. The implementation of the postulate of obligatory access to the on-hand files at the request of the party would constitute a practical guarantee of the rule of equality of the parties in the course of preliminary proceedings.

At this point, we should mention other significant limitations to the independence of the prosecuting authority, which are not subject to any control, whether within the internal official procedure or verification at least by a court having jurisdiction for the consideration of the matter. The decision of a superior public prosecutor issued in a matter concerning the transfer of a given case to another public prosecutor has a totally discretionary character (§ 45 of the *Rules of the Prosecuting Authority*). Such decision also does not require the preparation of any justification, and the provisions do not specify any prerequisites which should be followed in the process of acceptance of such case. Commentators point out that the provision of § 45 of the *Rules of the Prosecuting Authority*, in view of the lack of clear criteria which should be followed in the acceptance of such case (e.g. excessive work load, incorrect or lengthy conduct of the case), may pose a much greater threat for the internal independence of a public prosecutor than the formalized procedure, anticipating an appeal institution, stipulated in Art. 7 § 3 of *P.o.p*.

The same applies to the issue of exercising internal supervision in the prosecuting authority, and in particular a possibility of an introduction by the superior public prosecutor of

a necessity of periodical consultation by the subordinate public prosecutor of the text of procedural decisions and other procedural activities (§ 65 section 2 of the *Rules of the Prosecuting Authority*). This provision introduces, in a disguised way, an institution of approval of public prosecutor's decisions, which is in contradiction with *P.o.p*, which stipulates such approval only for draft procedural decisions drawn-up by junior public prosecutors (Art. 173 § 2 of *P.o.p*).

To a significant extent, external confidentiality of preliminary proceedings was limited, because, according to Art. 12 § 1 of *P.o.p*, The General Public Prosecutor, National Public Prosecutor or another public prosecutor authorized by them may provide information to public authorities, and in particularly justified cases also to other persons, concerning the operation of the prosecuting authority, including information concerning specific matters, if such information may be relevant for the security of the state and its proper functioning. The aforementioned provision does not contain any requirement to obtain the consent, or even an opinion of the public prosecutor conducting the case, or at least to notify him, and such vast clauses as “state security” or “the functioning of the state” cover an extremely wide scope and do not have to lead to a breach of the interest of the preliminary proceedings and the parties thereto.

The same type of limitation applies to the issue of providing information regarding the pending preliminary proceedings to the media. Pursuant to 12 § 2 of *P.o.p*, the General Public Prosecutor and heads of organizational units of the prosecuting authority may provide the media with information on pending preliminary proceedings or concerning the operation of the prosecuting authority, either in person or through another authorized public prosecutor, with the exclusion of classified information, bearing in mind an important public interest. If the provision of information regarding the pending proceedings, in particular in the case of coordination of the activities of the operation of public authorities in emergency, urgent situations seems necessary and justified, the provision of such information to other parties or the media may rise concerns. The practice of application of the provisions within the aforementioned scope shows that information about several pending preliminary proceedings, including information about further directions of the conduct thereof has been provided by the management of the National public prosecutor's Office to a leader of a political party having a parliamentary majority, not serving any public function, who later, giving an interview to one of the opinion-forming weekly magazines supporting his party, disclosed the obtained data. The

information concerned, *inter alia*, the intentions of the procedural authorities towards the leader of the parliamentary opposition during the period of his application for one of the most important positions in the authorities of the European Union.

The aforementioned provision of Art. 12 of *P.o.p* is in contradiction with Article 42 sections 3 and 47 of the Constitution, which guarantee presumed innocence and the right to privacy to citizens, within the scope in which it is allowed for public prosecutors to provide “other persons“ with information about specific cases. It seems that the act, with regard to the aforementioned provision, disregarding the fact that the rights and freedoms of citizens are under protection of the Constitution, creates a possibility of providing information to politicians and to use such information from confidential preliminary proceedings in political disputes, i.e. in the fight for power.

Moreover, Art. 12 § 4 of *P.o.p* – which guarantees the financial immunity to public prosecutors of the highest rank, within the scope of their civil-legal liability, is in contradiction with Art. 7 of the Constitution, which obliges the public authorities to act on the basis of and within the limits of law.

The act, within the scope of the aforementioned provision, allows a possibility of a breach by the General Public Prosecutor and National Public Prosecutor of personal interests of citizens and guarantees – to persons serving such functions – reduced civil-legal liability. It only stipulates regressive liability, subject to beneficial rules which are specified in the *Labour Code*. The basic act does not allow the employer to consent to a breach of the provisions of law by public officials. In this way, Art. 12 of *P.o.p* is in gross contradiction with the Constitution, given that it applies to the highest-rank official of a body guarding the enforcement of law and the situation in which an objective judgement and normal continence which is a derivative of presumption of innocence.

The self-governing body of public prosecutors - the National Council of the Prosecuting Authority - was dissolved, and replaced with the National Council of Public Prosecutors. The authority of that body, as stipulated in Art. 43 § 2 of *P.o.p.*, indicates that, in fact, this body has an exclusively opinion-granting character. The composition of the Council, according to Art. 58 § 1 of *P.w.P.o.p.*, was determined in whole by the Minister of Justice.

The provision of Art. 43 § 1 of *P.o.p.*, stipulating that the National Council of Public

Prosecutors guards the independence of public prosecutors, was not supplemented by detailed solutions which would grant the newly-formed Council a tool to actually fulfil this task.

The Council, in June 2016, at the initiative of the National Public Prosecutor, without the appropriate legal authorization (the provisions of *P.o.p.* do not contain a relevant competence standard), undertook work aimed at the development of a new set of professional ethics rules of public prosecutors. According to the indication of the initiator, that set is supposed to set the limits of freedom of speech of public prosecutors in the media, including social media, in particular with regard to releases constituting individual manifestations of social activity of public prosecutors. In the opinion of the National Public Prosecutor, such rules are supposed to constitute a certain guideline in situations which evoke doubts.

The new adopted regulations concerning public prosecutors' ethics imposing restrictions concerning the freedom of speech and collide with the provisions of the Constitution which foresees limitation of any citizens' freedoms only in the statutory form (Art. 49 sentence 2, Art. 54 section 1 of the Constitution).

A possibility was introduced for the General Public Prosecutor to initiate operational-investigation activities undertaken by the relevant bodies, if they are directly connected with the pending preliminary proceedings (Art. 57 § 3 of *P.o.p.*).

On the one hand, the catalogue of actions which may be undertaken within the scope of the listed activities strongly interferes with citizens' rights (e.g. a right to privacy, a right to protection of correspondence), and, on the other hand, the aforementioned regulation does not contain any verifiable criteria connected, at the least, with the actual prerequisites for the application thereof or the type of case in which such operational-investigation activities could be undertaken at the initiative the public prosecutor who is the highest-rank superior of public prosecutors. Meanwhile, both the criteria of application of the aforementioned activities and the appeal measures available to the interested parties are stipulated by the provisions of other acts providing for the implementation of operational-investigation activities within certain legal limits (the Act on the Police, acts regulating the activities of special forces – the Internal Security Agency, the Central Anti-Corruption Bureau, etc., or the Code of Criminal Procedure).

Therefore, the regulation stipulated in Art. 57 § 3 of *P.o.p.* may constitute a certain type of “a passkey”, providing for bypassing legal securities stipulated in the aforementioned competence regulations governing individual forces.

The new law introduced significant changes in the procedure and rules of appointment both for the first and next public prosecutors' positions. At this point, we should note that before the competition procedure was in force for each of the public prosecutors' positions. In all cases, a politician - the General Public Prosecutor - the Minister of Justice has unlimited freedom to appoint candidates for public prosecutors' positions. The new solutions prefer discretionary, arbitrary evaluation in place of the previous transparent competition procedure.

It is only recruitment for the first public prosecutor's position that is conducted in the form of a competition procedure (Art. 80 of *P.o.p.*). The relevant procedure involves an announcement of a vacancy in the public prosecutor's position in an official publication. The qualifications of the candidates are evaluated by inspectors from circuit public prosecutor's offices (Art. 82 § 2 of *P.o.p.*). The appeal procedure is also stipulated (Art. 84 § 3 of *P.o.p.*). Even though it is not possible to appeal against a decision of the General Public Prosecutor on appointment refusal, nevertheless the adopted procedure is characterized by certain elements of transparency. Provided, however, that the competition procedure as such is conducted. But the law has the so-called "back door". The General Public Prosecutor may appoint, without the conduct of any competition procedure, a candidate for the first public prosecutor's position indicated in the motion of the National Public Prosecutor (the same Art. 80 of *P.o.p.*). Even though "in special justified cases", nevertheless such practice indicates that the provision is applied quite frequently.

In this case, we should conclude that Art. 80 of *P.o.p.*, within the scope in which it stipulates exceptions from the rule of selecting candidates for the first public prosecutor's position in a competition procedure - violates the principle of definiteness of the provisions of law, deriving from Art. 2 of the Constitution.

Contrary to the previously-binding competition procedure, currently, the promotion of a public prosecutor to a higher office is totally discretionary. The decision-making procedure does not cover any elements which would justify the statement that this is a transparent procedure. The only promotion criterion is the relevant length of service in a lower-rank position or in another legal profession (Art. 76 § 1-3 of *P.o.p.*). This criterion is not, however, binding, because the appointment for a higher position may be done with the omission of the relevant requirements (Art. 76 § 5 of *P.o.p.*), also based on a reward procedure, according to Art. 133 § 2 of *P.o.p.* What is more, contrary to the process of recruitment to the first public prosecutor's position, no evaluation is performed of the candidates. It is not evaluated or

documented in any formalized way, as is the case in the aforementioned procedure, whether a given candidate selected for promotion to a higher position, actually shows any initiative at his work, whether he perfectly and conscientiously fulfils his duties and whether he in any special way contributes to the fulfilment of official duties.

The practice which has developed since the time of coming into force of *P.o.p.* shows that since March 2016, *inter alia*, the following persons have been appointed for the highest offices: retired persons (public prosecutor's retirement) and persons not rendering work in any legal profession for a period of the past few years, who have gained the majority of their previous professional experience 10-15 years ago, when they served the functions of public prosecutors of the lowest rank; members of families of MPs of the ruling party who, during the previous period, being public prosecutors of a lower rank, despite their numerous attempts, were never promoted to a higher office in a transparent competition procedure by an independent public prosecutors' self-governing body; attorneys-at-law and legal counsels (employed by the public prosecutor's office 20-25 years ago in the lowest positions), promoted, without verifying their professional development, directly to the highest public prosecutors' positions; public prosecutors managing lowest-rank units (district public prosecutor's offices) who were appointed for public prosecutors' offices at the National public prosecutor's Office without any period of employment in (or delegation to) the highest-rank public prosecutor's office, not rendering any work in the unit to which they were appointed.

The new regulations of the Act on the Prosecuting Authority continue, without any reflection, the solutions imposing restrictions on public prosecutors to associate in organizations acting on the basis and within the limits of law (Art. 97 § 3 of *P.o.p.*), as well as restrictions of the rights of public prosecutors to lodge petitions, complaints or motions to the relevant public authorities, or motions to the Citizens' Rights Ombudsman for assistance in the protection of freedoms or rights infringed in the process of and in connection with the served office. Pursuant to Art. 101 § 1 and 3 of *P.o.p.*, public prosecutors, in matters of claims concerning their office, are entitled to proceedings before a court having jurisdiction for employees' matters, and any types of demands and complaints connected therewith should be first lodged by the public prosecutor by official channels. This means that the law permits the superior public prosecutors to decide about the right of public prosecutors to associate in legal organizations which affirm views or customs which are in contradiction with their (their superiors') views. The text of the law does not allow public prosecutors affected by such decisions to appeal to the authorities appointed to protect citizens' rights and freedoms, and to

lodge a petition or a motion to a competent state authority. Therefore, those regulations are in contradiction with Art. 58 of the Constitution, which guarantees freedom of association, as well as Art. 63 of the Constitution, stipulating a right to submit petitions, motions and complaints in the public or their own interest, and Art. 80 of the Constitution, guaranteeing a common right to apply to the Ombudsman for Citizens' Rights with a motion for assistance in protection of their freedoms or rights infringed by public authorities.

The provisions concerning the issue of delegation of public prosecutors are in contradiction with the recommendations of the Council of Europe. Pursuant to Art. 106 § 3 of *P.o.p.*, delegation of a public prosecutor to another unit of the prosecuting authority may be long-term, because that regulation stipulates a possibility of delegation of a public prosecutor, by means of a decision of the General Public Prosecutor or National Public Prosecutor, for a period of 6 months during a year, to another organizational unit of the prosecuting authority, which is often located many kilometres away from the place of residence of the delegated public prosecutor. This period may even be longer and amount to 12 months, if delegation is to the public prosecutor's office which has its seat in a town in which the delegated public prosecutor is domiciled or to a public prosecutor's office in a town where the public prosecutor's office which is the employer of the delegated public prosecutor is located. What is more, the provisions do not anticipate any restrictions in repetition of delegation, each time, after the lapse of a year.

There is also no means of appeal stipulated against such decision, which often may be a disguised disciplinary penalty or a possibility of non-procedural (contrary to the law) influencing the independence of a public prosecutor.

The provisions concerning delegation are fully in contradiction with the chapter entitled "Security afforded to public prosecutors in order to enable them to serve their functions" of the recommendation of the Committee of Ministers of the Council of Europe Rec(2000)19.

The law, in Art. 137 § 2 of *P.o.p.*, stipulates a counter type excluding disciplinary liability of a public prosecutor, stating that, by means of his action or omission, a public prosecutor does not commit a disciplinary offence if it is undertaken exclusively in social interest. In the opinion of the association, this regulation is in contradiction with Art. 2 of the Constitution, because it violates the principle of definiteness of the provisions of law. We would like to point out that the phrase of "*exclusively in the social interest*", as used in that provision, without the necessary object, is too general. We note that even the provision in this wording does not release the public

prosecutor from penal liability, because, according to Art. 7 of the Constitution, being a body of the public authority, he is obliged to act on the basis of and within the limits of law. In extreme cases, procedural decisions of a public prosecutor, stipulated by formal law, taken “*exclusively in social interest*”, but without any actual grounds, may significantly infringe the citizens’ freedoms and rights protected under the Constitution, and therefore meet the characteristics of an offence. That is because such general counter type of a disciplinary offence may encourage public prosecutors to take decisions infringing - to an obvious and gross extent - the provisions of law.

The most significant from the point of view of introducing significant personnel changes were not so much the system provisions of the act - the Law on Prosecuting Authority, but the provisions of the aforementioned act - *Provisions implementing the act – the Law on Prosecuting Authority*. It was emphasized in a public discussion that the alleged reform was aimed at the verification of the prosecuting authority’s personnel and granting excessive powers to the General Public Prosecutor. It was pointed out that the General Public Prosecutor, at the same time being a member of the Council of Ministers, may lead to politicization of the prosecuting authority and a risk of abuse.

Referring to the issue of delegation of public prosecutors, we may not disregard the fact that *P.w.P.o.p.* provided for degradation of nearly 1/3 of public prosecutors from 2 highest levels of the prosecuting authority. An arbitrary procedure was adopted, according to which it is the National Public Prosecutor who will select the persons who will be appointed for public prosecutor’s positions at the National Public Prosecutor’s Office and regional prosecutor’s offices, where a decision on their appointment will be, at his request, taken by the General Public Prosecutor (Art. 35 § 1, Art. 38 § 1 and Art. 40 § 1 of *P.w.P.o.p.*). People who are not covered by the motion of the National Public Prosecutor were transferred, by means of a decision of the General Public Prosecutor, to other offices in common organizational units of the prosecuting authority, maintaining their honorary titles, reflecting the previously-held positions and the right to remuneration acquired in their current position (Art. 36 § 1, Art. 39 § 1 and Art. 41 § 1 of *P.w.P.o.p.*).

The aforementioned regulations did not anticipate any criteria of evaluation of public prosecutors from the former General Prosecutor’s Office and former appeal public prosecutor’s offices and they resulted in the fact that the National Public Prosecutor retained full discretionary power with regard to motioning to the General Public Prosecutor for appointment

of public prosecutors to newly-established units. What is more, the regulation mentioned in the aforementioned *Implementing Provisions*, which constitute *lex specialis* towards the provisions shaping the system of the prosecuting authority, in fact turned out to be a selectively-used, hidden disciplinary sanction, which does not offer a possibility of expressing any opinion about the personnel suggestion by the public prosecutor concerned, and any, even if only limited to official channels, for of appeal or a possibility of submitting a complaint to an independent court.

The taken decisions on degradation of nearly 114 public prosecutors entailed more severe actual consequences than if such public prosecutors were punished with disciplinary penalties, as specified in Art. 142 § 1 point 4 of *P.o.p.* That is because a disciplinary court may punish a public prosecutor with transfer to another office (Art. 142 § 1 point 4 of *P.o.p.*). *The Implementing Provisions* allowed the General Public Prosecutor to transfer public prosecutors to other positions (even lower by 2 and 3 levels). The provisions did not specify any prerequisites for the transfer and did not specify the procedure for making decisions. The contents of the provisions give grounds for issue of decisions which did not contain any justification and prevented any appeal against them to the court. Therefore, the legislator allowed the General Public Prosecutor to treat public prosecutors of the General Public Prosecutor's Office and appeal public prosecutor's offices as unwanted, used-up objects.

The chronology of decisions taken by the National Public Prosecutor and the General Public Prosecutor, immediately after the implementation of the act indicates the intentions of the act executors. The first decisions were degradation decisions and then, on the following days, the relevant deeds of appointment were issued. This means that the priority in taking of the decisions was an intention to eliminate some public prosecutors of the superficially-dissolved units.

We should mention, by the way, that this chronology also confirms the actual inability of reviewing the professional career of all public prosecutors of the former General Public Prosecutor's Office by people taking decisions in personnel matters, which only means that such decisions were fully arbitrary and discretionary. The consequence of such actions was the contesting of all the professional achievements of public prosecutors, forming an attack on their dignity.

The adopted regulation, providing for arbitrary degradation of public prosecutors is in contradiction with the text of the "*Rome Charter*". Chapter 3.3.4. of the aforementioned

document states that a transfer of a public prosecutor without his consent to another public prosecutor's office may be an instrument of putting unlawful pressure on him (point 68 of the *Rome Charter*). If a possibility is introduced of transferring or delegating a public prosecutor against his will, whether such transfer is internal or external, securities should be provided by law, aimed at compensating the potential risk resulting from that fact - e.g. in the event in which a transfer is a disguised form of a disciplinary penalty - (point 69 of the *Rome Charter*). A possibility of transferring a public prosecutor without his consent should be legally regulated and limited to exceptional circumstances, such as urgent official needs (fair distribution of tasks, etc.) or disciplinary measures in specially serious cases. We should take into account the position, ambitions and specialization of a public prosecutor, as well as his family situation. After all – as stated by the document - a public prosecutor should be able to lodge an appeal to an independent body (point 71 of the *Rome Charter*).

At this point, we should point out that the aforementioned Articles, i.e. Art. 36 and Art. 39 of *P.w.P.o.p.* – within the scope in which they do not specify the prerequisites for degradation of public prosecutors, do not impose an obligation to justify the decision, do not grant any right to appeal against it to the court – violate:

- Art. 2 of the Constitution which stipulates that the Republic of Poland is a democratic state ruled by law and implementing the principles of social justice,
- Art. 45 section 1 of the Constitution which guarantees each citizen the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court
- Art. 77 section 2 of the Constitution stipulating that the statutes may not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights
- Art. 6 section 1 of the Convention of 4 November 1950 on Protection of Human Rights and Fundamental Freedoms which guarantees a right to a fair trial