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THE ROLE OF THE PUBLIC PROSECUTOR IN CRIMINAL PROCEEDINGS – THE POLISH PERSPECTIVE

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Abstract

The subject of the presentation will be an analysis of the role of the prosecutor in Polish criminal proceedings. The prosecutor's activity is determined by the principles governing the prosecution service, an institution that has undergone significant organizational changes in recent years and continues to evolve. The author will begin with an introduction presenting the constitutional and systemic position of the prosecutor within the framework of the bodies responsible for the protection of the rule of law and within the system of criminal procedure authorities. It will then move on to discuss the prosecutor's role in criminal proceedings, identifying three main functions: (1) as the authority conducting preparatory proceedings, (2) as the public prosecutor, and (3) as the guardian of the public interest. Each of these roles will be discussed in greater detail. In connection with the ongoing debate on the prosecutor as the guardian of the public interest (and the rule of law), the author will also offer de lege ferenda remarks.

Key words: *criminal proceedings, preparatory proceedings, prosecutor, rule of law, public prosecutor, law enforcement authority*

INTRODUCTION

The public prosecutor is a key organ of public authority in a democratic state governed by the rule of law. Sovereign states possess discretion in regulating this institution, which gives rise to the need for further, more in-depth research on the

subject. Accordingly, the scope of this study will be limited exclusively to Polish legislation, and specifically to selected aspects of the role of the public prosecutor in criminal proceedings.

Sovereign states enjoy discretion in regulating this institution, which in turn prompts the need for more extensive research on the subject. Accordingly, the scope of this study will be limited exclusively to Polish legislation, and specifically to selected aspects of the role of the public prosecutor in criminal proceedings.

At the outset, it should be noted that legal scholarship is not uniform as to the institutional placement of the prosecution service within the framework of the separation of powers and the system of bodies responsible for the protection of the rule of law. The matter is made more complex by the constitutional status of the prosecution service, as the Constitution of the Republic of Poland[1] oes not regulate it, which constitutes a significant deficiency of the fundamental law (*Ważny, 2009, pp. 114-117*). It should be noted that the Constitution of the Republic of Poland refers to the Prosecutor General only once, in Article 191(1)(1), listing him among the entities authorised to submit applications to the Constitutional Tribunal in matters specified in Article 188 of the Constitution (*Grzeszczyk, 2005, pp 30-55*). The absence of firm constitutional foundations for the functioning of the prosecution service and its prosecutors leaves this area of regulation entirely at the discretion of the legislature, which may result in frequent changes to the institutional status of the prosecution service and its officers.

On the one hand, the public prosecutor is an organ of the executive branch acting in the public interest—essentially an extension of the executive authorities—while at the same time being vested with the attribute of independence (*Seroczyńska, 2017, pp. 109-139*). On the other hand, the prosecutor possesses limited adjudicatory powers—issuing decisions and orders in the preparatory proceedings that determine rights and obligations—so that, albeit with some reservations, the prosecutor may also be regarded as belonging to the sphere of the judiciary (*Kędzierski, 2009, pp. 102-110*). The prosecutorial authority is furthest removed from the legislative branch; however, it should be emphasised that the Prosecutor General is subject to a reporting obligation before the lower house of Parliament (the Sejm) (*Zięba-Załucka, 2022, pp. 173-187)*.

Due to the constitutional omissions in this area, the organisation of the prosecution service and its tasks are regulated by the 2016 Act on the Public Prosecutor's Office[2], which replaced the previous legislative act dating back to the

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997 No. 78, item 483, as amended: 2001 No. 28, item 319; 2006 No. 200, item 1471; 2009 No. 114, item 946.

[2] Act of 28 January 2016 – Law on the Prosecution Service, Journal of Laws 2024, item 390, as amended.

period of the Polish People's Republic, namely the Act of 1985[3]. In the context of this article[4], and the Penal Code[5] as well as other legislation regulating criminal procedural matters—such as the Act on the Protected (Crown) Witness—are also of primary importance[6]. A more detailed analysis of these provisions further illustrates the complexity and multifaceted nature of this authority.

It should be noted in passing that, in practice, the functioning of an independent prosecution service only began to take shape after 1989; however, in many cases of a political nature, its lack of independence has been confirmed. It appeared that in 2009 a groundbreaking change occurred, namely the depoliticisation of the prosecution service through the separation of the functions of the Ministry of Justice and the Prosecutor General (*Kędzierski, 2009, pp. 102-110)*. However, this was only a halfway measure, as the Prosecutor General was still appointed by politicians (with the appropriate parliamentary majority) and was not provided with sufficient guarantees of independence to enable the prosecution service to fully uphold the rule of law (*Wysocki, 2010, p. 3*). In 2016, the reform was reversed, which, despite a number of reservations, had represented a correct direction in the institutional changes to the prosecution service (*Augustyn and Bała, 2021, pp. 27-36*). Moreover, these reforms were accompanied by a restructuring of the prosecution model, which was based on limiting prosecutorial independence both internally and externally, and on strengthening hierarchical subordination, directly affecting specific criminal proceedings. Unfortunately, the deepened deficits in prosecutorial independence were not compensated by other changes in the preparatory proceedings, for example, regarding the institutional position of the court through the enhancement of its authority, organizational changes, or the expansion of the catalogue of judicial actions (*Seroczyńska, 2017, pp. 109-139*).

In April 2024, Codification Commissions were established at the Ministry of Justice, including for Criminal Law and the Organisation of the Judiciary and the Prosecution Service (*Czarnecki, 2025, pp. 21-38*). Their aim was to develop legal changes in the specified areas. It appeared that this would open a discussion on the directions of reform; however, the process was limited to the preparation of draft bills by selected experts and their submission to the ministry, where they underwent further modifications. Accordingly, this article discusses the issue of the role of the public prosecutor in criminal proceedings. First, the author will analyse the principle of prosecutorial independence, both internally and externally, as a kind of

[3] Act of 20 June 1985 on the Prosecution Service, Journal of Laws 2011 No. 27, as amended.

[4] Act of 6 June 1997 – Code of Criminal Procedure, Journal of Laws 2025, item 46, as amended.

[5] Act of 6 June 1997 – Penal Code, Journal of Laws 2025, item 383, as amended.

[6] Act of 25 June 1997 on the Crown Witness, Journal of Laws 2016, item 1197.

keystone of the prosecution model. Next, the author will illustrate the procedural roles of the prosecutor as an organ of the preparatory proceedings, a public accuser, and a guardian of the public interest (rule of law). Finally, the article will draw concluding observations and propose de lege ferenda recommendations.

I. THE ISSUE OF PROSECUTORIAL INDEPENDENCE

Standards of prosecutorial independence have been extensively regulated in international law. At the universal level, the United Nations Guidelines on the Role of Prosecutors do not explicitly mention independence; however, they provide instructions requiring states to ensure conditions that enable prosecutors to perform their official duties without intimidation, obstruction, harassment, improper interference, or unjustified exposure to civil, criminal, or other liability *(Turek, 2023, pp. 76-88).*

At the regional level, attention should be drawn to the Council of Europe system. The European Convention on Human Rights contains a number of provisions concerning prosecutorial independence, specifically in the context of the standard of an effective investigation, understood as the entirety of the preparatory proceedings. According to the case law of the European Court of Human Rights, independence is not absolute but is assessed in light of the circumstances of the specific case. The standard of prosecutorial independence has also been extended in detailed legal instruments, such as the Criminal Law Convention on Corruption[7] and the Council of Europe Convention on Action against Trafficking in Human Beings[8] Non-binding in nature are, among others, Recommendation No. (2000)19 of the Committee of Ministers of the Council of Europe [9] as well as CCPE (Consultative Council of European Prosecutors) documents relating to the functioning of the prosecution service (Turek, 2023, pp. 76-88). It is also worth noting the work of the Venice Commission, which, in its standards concerning the prosecution service, emphasised that the independence of courts and the

[7] Criminal Law Convention on Corruption, concluded in Strasbourg on 27 January 1999, Journal of Laws 2005 No. 29, item 249.

[8] Council of Europe Convention on Action against Trafficking in Human Beings, concluded in Warsaw on 16 May 2005, Journal of Laws 2009 No. 20, item 107.

[9] Rec(2000)19 – Recommendation of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Deputies of Ministers) [Non-official translation / Traduction non-officielle], https://search.coe.int/cm?i=090000168056b049c [accessed: 18.11.2025].

independence of the prosecution service should be understood differently *(Turek, 2023, pp. 76-88).*

In the context of domestic regulations, attention should also be paid to European Union law, specifically to the treatment of the prosecution service as a "judicial authority," that is, within the meaning of Framework Decision 2002/584/JHA[10] authorised to issue decisions on the European arrest warrant[11]. Interestingly, according to the European Court of Human Rights, the subordination of the prosecution service to the executive does not disqualify it from being considered a "judicial authority" vested with powers enabling it to determine the rights and obligations of citizens, as exemplified by the European arrest warrant[12].

At the domestic level, it should be emphasised that the Constitution of the Republic of Poland guarantees the right to an independent and impartial court. As noted above, it does not regulate the fundamental functioning of the prosecution service; consequently, it does not specify the issue of prosecutorial independence, similarly to Article 6(1) of the European Convention on Human Rights and Article 14(1) of the International Covenant on Civil and Political Rights[13]. It follows that the adoption of such a legislative approach is consistent with international standards *(Gerecka-Żołyńska, 2016, pp. 57-70).* This means that the model of the prosecution service and the interpretation of the principle of independence are regulated by statute. On the one hand, this approach is flexible, which can be useful when addressing deficiencies in the model; on the other hand, it exposes the prosecution service to changes that may not always be consistent with international standards.

In Poland, the principle of prosecutorial independence is expressed in Articles 7–9 of the Act on the Public Prosecutor's Office. It should be noted that the 2009 reform of the prosecution service, which separated the offices of the Minister of Justice and the Prosecutor General, expanded the scope of the prosecution service's independence as an authority tasked with safeguarding the rule of law[14]. The reversal of the reform in 2016 altered the model of the prosecution service to one more subordinated to the executive branch (by merging the offices of the Minister of Justice and the Prosecutor General) and, unfortunately, negatively affected the

[10] Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 1..

[11] Judgments of the Court of Justice of the European Union in Cases C-508/18, C-82/19, and C-509/18.

[12] Judgment of the Court of Justice of the European Union in Case C-584/19.

[13] International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, Journal of Laws 1977 No. 38, item 167.

[14] Act of 9 October 2009 amending the Act on the Prosecution Service and certain other acts, Journal of Laws 2009, No. 178, item 1375.

scope of prosecutorial independence[15]. The change sparked considerable controversy; some scholars argued that the legislature may adopt such a model of the prosecution service (Stanek, 2021), while others contended that it is inconsistent with international standards (Turek, 2023, pp. 76-88).

Prosecutorial independence is expressly provided for in Article 7(1) of the Act on the Public Prosecutor's Office, while simultaneously indicating the following limitations. First, a prosecutor is obliged to follow the instructions, guidelines, and orders of a superior prosecutor. Second, a superior prosecutor is authorised to amend or revoke the decisions of a subordinate prosecutor. Any amendment or revocation must be in writing and incorporated into the case file. Third, a superior prosecutor may assign to subordinate prosecutor's tasks that fall within the superior's scope of authority, unless the law reserves a specific task exclusively for the superior. Fourth, a superior prosecutor may take over cases handled by subordinate prosecutors and perform their procedural acts, unless otherwise provided by law.

It should be noted that such limited prosecutorial independence does not align with the classical model of the French prosecutor's independence. The instructions, guidelines, and orders of a superior, referred to in Article 7 of the Act on the Public Prosecutor's Office, may pertain to any aspect of a prosecutor's professional activity and are not subject to oversight by public opinion or an independent body, nor are they required to be issued through formal official channels *(Turek, 2023, pp. 76-88)*. Given that the Minister of Justice also serves as the Prosecutor General, it may issue any order it deems appropriate in any individual case. Prosecutors enjoy a significantly broader scope of independence when acting as members of the Disciplinary Court attached to the Prosecutor General *(Maroń, 2024, 46-70).*

II. THE ROLE OF THE PUBLIC PROSECUTOR IN CRIMINAL PROCEEDINGS

The public prosecutor has a broad range of duties arising from the Act on the Public Prosecutor's Office and other special laws. However, limiting the scope of consideration to criminal proceedings, it can be noted that the prosecutor acts in three roles (*Olszewski, 2014, pp. 43-59).* First, as an organ of the preparatory proceedings. Second, as a public accuser. Third, as a guardian of the public interest (the rule of law) (*Grzegorczyk and Tylman, 2011, p. 259*).

II.1 Organ of the Preparatory Proceedings

In the Polish model of criminal proceedings, a distinction is made between two forms of preparatory proceedings: *śledztwo* (investigation) and *dochodzenie*

[15] Act of 28 January 2016 – Law on the Prosecution Service, Journal of Laws 2016, item 177

(preliminary inquiry). This division should be characterised by differences in the structure and purpose of the preparatory proceedings, derived from the French model. Under the Napoleonic Code of Criminal Procedure, the judicial investigation (*instruction judiciaire*) was a judicial stage conducted by an examining magistrate, while the preliminary inquiry was conducted by the prosecutor to determine whether it was appropriate to refer the case to the examining magistrate *(Esmein, 1913, p. 539).* This division has evolved over time—some countries have abandoned it, introducing a unified form of preparatory proceedings *(Wiśniewski, 2011, pp. 56-67).* In the Polish criminal procedural system, *śledztwo* (investigation) and *dochodzenie* (preliminary inquiry) are not properly distinguished; therefore, this division can be regarded as fictitious and lacking substantive justification *(Głębocka, 2023, pp. 393-395).*

According to the provisions and structure of the Code of Criminal Procedure, the leading form of preparatory proceedings is the *śledztwo* (investigation), which is generally conducted by the public prosecutor. However, the prosecutor has the authority to entrust the investigation, in whole or in part, to the Police or to other authorities authorised to conduct preparatory proceedings in the form of a *dochodzenie* (preliminary inquiry) within the scope of their competence[16]. Furthermore, the prosecutor may instruct these authorities to carry out specific evidentiary acts (incidental acts), such as a search.

In the case of the less formal form of preparatory proceedings—the *dochodzenie* (preliminary inquiry)—the prosecutor performs supervisory tasks, that is, correcting and remedying any detected irregularities *(Prusak, 1984, p. 99).* Within the framework of supervisory activities, and in order to ensure the legality of preparatory proceedings, the prosecutor may resume preparatory proceedings that have been discontinued and reopen finally discontinued appellate proceedings. Furthermore, the Prosecutor General has the right to exceptionally revoke a decision discontinuing preparatory proceedings (Tylman, 1988, p. 4). It also falls within the prosecutor's competence in a *dochodzenie* (preliminary inquiry) to approve the indictment prepared by the Police or another authorised body and to submit it to the court. It should be noted that the prosecutor, if deemed necessary due to the importance and complexity of the case, may conduct the preliminary inquiry independently and may also discontinue it at any stage of the proceedings (*Skowron, 2023*).

[16] It should be noted, among others, the authorities listed in Article 312 of the Code of Criminal Procedure, namely the Border Guard, the Internal Security Agency, the National Revenue Administration, the Central Anti-Corruption Bureau, and the Military Gendarmerie.

II.2 Public Accuser

At the stage of preparatory proceedings, the prosecutor is referred to as *dominus litis* and *dominus eminens*, but his role changes fundamentally at the adjudicative stage, where it is an equal party to the proceedings in relation to the accused and acts as the public accuser in both public prosecutions and private prosecutions (if it has chosen to take them up in the public interest).

The role of the public accuser is extremely important in the context of a democratic state governed by the rule of law. In practice, this state authority, entrusted with these tasks, initiates and supports the prosecution before the court in cases of offences that the law mandates or permits to be pursued by public complaint *(Grzegorczyk and Tylman, 2011, p. 295).* In other words, it can be stated that the prosecutor appears before the court with a request for the punishment of the accused *(Daszkiewicz, 1960, p. 9).* Although the prosecutor acts in his own name, it represents the public interest as well as the so-called "personal" interest of the accuser, which should ensure a fair determination of criminal liability.

The prosecutor is not the only public accuser, but in the Polish criminal procedural system there exists the principle of his primacy in this regard. If an indictment has been filed and is supported by another authority, the prosecutor may also perform prosecutorial acts in that case *(Samborski, 2010, p. 321).* Authorities that also exercise the powers of a public accuser include: the Trade Inspection authorities, the State Sanitary Inspection, the Border Guard, tax offices and tax control inspectors, and the President of the Office of Electronic Communications[17]. It should be borne in mind that the authorities mentioned above exercise prosecutorial powers solely before the court of first instance—the last actions they may take are filing a request for the preparation of the judgment's reasoning and serving a copy of the judgment and its reasoning. The right to file an appeal rest exclusively with the prosecutor *(Grzegorczyk and Tylman, 2011, p. 295-297).*

The second group of public accusers includes officers of the Forest Guard[18] and the State Hunting Guard[19]. However, they may file appeals and support the prosecution at the appellate stage of the proceedings *(Grzeszczyk, 2009, p. 246).*

From the above, it follows that, as an organ of the preparatory proceedings and as a public accuser, the prosecutor performs the function of criminal prosecution. Furthermore, according to R. Olszewski, in preparatory proceedings,

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[17] Regulation of the Minister of Justice of 22 September 2015 on authorities authorised, alongside the Police, to conduct investigations and authorities authorised to file and support prosecutions before the court of first instance in cases where investigations were conducted, as well as the scope of matters entrusted to these authorities, Journal of Laws 2015, item 1725.

[18] Act of 28 September 1991 on Forests, Journal of Laws 2025, item 567.

[19] Act of 13 October 1995 – Hunting Law, Journal of Laws 2025, item 539.

his role also requires him to perform functions of defense and adjudication (Olszewski, 2014, pp. 43-59).

II.3 Guardian of the Public Interest

The most complex role appears to be that of the prosecutor as a guardian of the public interest and the rule of law *(Cieślak 1984, p. 42).* It should be emphasised that the public interest constitutes an objective category, which is subject only to determination by the prosecutor and not to his discretionary *assessment (Turek, 2023, pp. 76-88).* The exercise of the role of guardian of the public interest will differ significantly between criminal proceedings and proceedings outside of them

In the context of the topic at hand, it should be stated that the prosecutor should perform this function at every stage of criminal proceedings. However, whether it is exercised with the same intensity during the preparatory and adjudicative stages, while simultaneously performing the functions of prosecution and accusation, is another matter. An ideal concept would be to regard the role of guardian of the rule of law as the starting point for all actions undertaken by the prosecutor in criminal proceedings. Nevertheless, given the multiplicity of functions, the degree to which this role is exercised will depend in each case on the specific act the prosecutor may undertake at a particular stage of the criminal process (*Olszewski, 2014, pp. 43-59).*

The best guarantor of the rule of law in criminal proceedings is the court, given that it enjoys the attribute of judicial independence—being accountable only to the Constitution and statutes. The prosecutor, by contrast, possesses only independence (being hierarchically subordinated and obliged to follow the orders of superiors), which is flexible depending on the adopted model of the prosecution service and statutory regulations. Accordingly, in order to most fully and effectively carry out duties related to the protection of the public interest and the rule of law, the prosecutor should possess a broad scope of both external and internal independence. Currently, deficits in this regard are noticeable *(Seroczyńska, 2023, pp. 76-88).*

Restoring the regulations in force before 2016 would guarantee an expansion of prosecutorial independence in the internal aspect. In the external aspect, this would be a step in the right direction, but separating the functions of the Minister of Justice and the Prosecutor General would not ensure apoliticism, as the Prosecutor General would still be appointed by politicians—a parliamentary majority. Accordingly, it should be borne in mind that the court remains the main guardian of the rule of law in criminal proceedings at every stage; however, at the preparatory stage, it is not an operative body. Therefore, a debate on the model of the prosecution service is necessary in order to ensure an adequate scope of

independence that allows prosecutors to effectively protect the public interest and uphold the rule of law.

3. Summary

The prosecutor undoubtedly plays a fundamental role in criminal proceedings—both at the preparatory and adjudicative stages. His role differs substantially between these stages, but ultimately it should amount to one overarching purpose: safeguarding the rule of law. It follows that, in practice, the function of guardian of the public interest should aggregate both the functions of prosecution and accusation. Furthermore, it should also encompass the function of defense, which has not been extensively addressed in this study.

However, in the Polish prosecution model, noticeable deficits exist, stemming from neglect over the past 36 years. First, constitutional deficits—there are no clear legal frameworks for the organisation and structure of the prosecution service in the Constitution of the Republic of Poland. Second, the ongoing influence of the Soviet criminal procedure model is still evident, particularly in preparatory proceedings, for example in formalism and duplication of evidentiary proceedings. Third, legislative work related to the prosecution was neglected during the constitutional debate—the enactment of a new prosecution law should have been coordinated with the adoption of the 1997 Constitution of the Republic of Poland. Fourth, there has been a lack of broad academic debate on the desirable and optimal model of the prosecution service. Fifth, there are observable deficiencies in prosecutorial independence. Sixth, there is a lack of correlation and integration between the activities of the prosecution and other authorities (courts, police, and other services) at the preparatory stage.

Accordingly, a broad discussion and proposals for fundamental changes to the Polish prosecution model are necessary. However, statutory changes alone are insufficient. A revision of the Constitution of the Republic of Poland is required to establish a foundation for the functioning of this institution above political divisions—so that the prosecution serves as a guardian of the public interest and the rule of law, with particular emphasis on the principle of independence. On the other hand, corrective changes are also justified, and therefore the efforts to separate the functions of the Minister of Justice and the Prosecutor General should be regarded positively.

Nonetheless, it must be borne in mind that under the current institutional conditions, and given historical and legal constraints, the prospects for the prosecutor to meet expectations regarding the protection of the rule of law—particularly at the stage of criminal proceedings—are limited. It should be remembered that the best guarantors are judges equipped with the attribute of judicial independence.

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