

THE PUBLIC PROSECUTION AUTHORITY IN POLAND – ORGANIZATION AND TASKS IN COMBATING CRIME

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The tasks of the public prosecuting authorities have been formulated in the Law on Public Prosecution Authorities of June 20, 1985.

The Prosecutor General is the chief prosecuting authority, to which prosecutors of common and military structural units of prosecuting authorities are subordinated. The function of Public Prosecutor General is performed by the Minister of Justice.

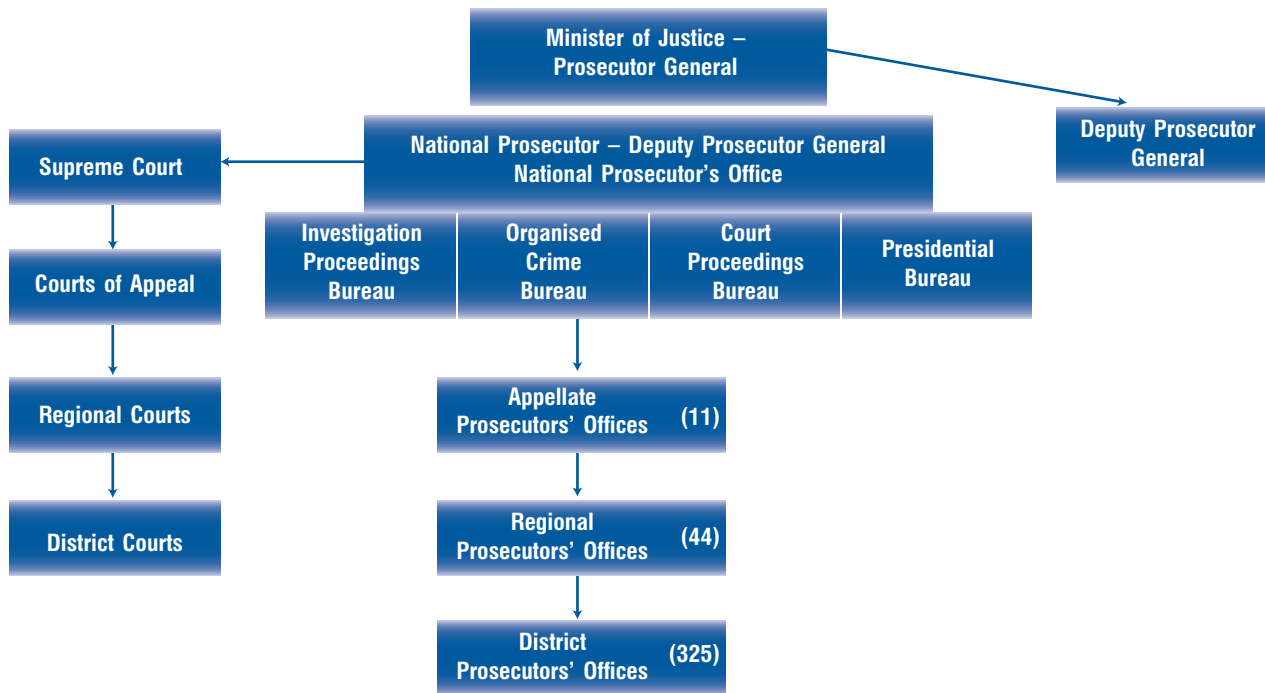
The Minister of Justice determines regulations providing for the internal official procedures of the prosecuting authorities and defining their internal structure. The internal official procedures of military prosecution authorities and their internal structure are determined by the Minister of National Defense in consent with the Minister of Justice.

Structural units of the Public Prosecuting Authorities include:

- National Public Prosecution Office, which is organizationally incorporated into the Ministry of Justice, managed by the National Public Prosecutor, being at the same time a deputy to the Prosecutor General;
- 11 appellate public prosecution offices managed by appellate public prosecutors;
- 44 regional public prosecution offices managed by regional public prosecutors;
- 325 district public prosecution offices managed by district public prosecutors.

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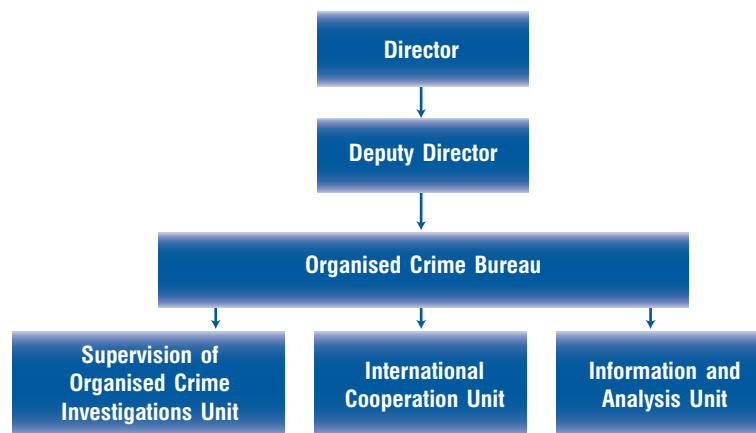
Administration of Justice, Judiciary and Prosecution



The National Public Prosecution Office consists of departments, managed by Directors, i.e.:

- The Preparatory Proceedings Bureau, the basic tasks of which include coordination of official supervision over preparatory proceedings performed within appellate public prosecution offices;
- The Organized Crime Bureau, established for the purpose of coordinating prosecution of this, most dangerous form of crime and for international cooperation in combating organized crime;

Organized Crime Bureau



Organized Crime Units in Regional Prosecutor's Offices: Białystok, Bydgoszcz, Gdańsk, Gorzów, Wielkopolski, Jelenia Góra, Katowice, Kraków, Kielce, Lublin, Łódź, Opole, Olsztyn, Poznań, Rzeszów, Szczecin, Warszawa, Wrocław, Zielona Góra

- The Judicial Proceedings Bureau, performing the prosecuting tasks associated with participation in proceedings before the Supreme Court and Supreme Court of Administration;
- The Presidential Bureau, performing organizational functions of the National Public Prosecution Office, considering the complaints filed in respect to activities conducted by the prosecuting authorities, organizing and performing visits and inspections of appellate public prosecution offices.

Military prosecution authorities comprise:

- The Supreme Military Prosecution, managed by the Chief Military Prosecutor who, at the same time, is one of the deputies to the Prosecutor General;
- Regional military prosecution offices and district military prosecution offices.

Deputy Prosecutors General are appointed from among prosecutors of the National Public Prosecution Office and recalled by the Prime Minister on motion of the Prosecutor General. A motion relating to the Chief Military Prosecutor is filed by the Prosecutor General in consent with the Minister of National Defense.

Prosecutors performing other functions within the public prosecution structures are appointed and recalled by the Prosecutor General.

The Prosecutor General appoints the prosecutors in all structural units of the public prosecution authorities, with appointment of military prosecutors requiring motion of the Minister of National Defense.

The following eligibility requirements have to be met by the would-be public prosecutors: being a Polish citizen, having full civil and citizen rights, graduation from university law studies, completing a three year prosecution or judicial practice, passing a public prosecutor or judge examination and completing a term of military service provided for in the regulations on military service of professional soldiers in units of military prosecution. The minimum age requirement for becoming a public prosecutor is 26 years.

The Prosecutor General manages the activities of the public prosecution office personally or through his deputy, issuing regulations, guidelines and orders. He may also undertake any activities belonging to the scope of activities of public prosecution or recommend their performance by the subordinated prosecutors, unless the Law provides that such activity may be performed by the Prosecutor General only.

Superior public prosecutors may order the public prosecutors subordinated to them to perform activities belonging to their scope of activities, unless the Law reserves such activities exclusively to their competence and may also take over activities conducted by the public prosecutors subordinated to them.

In performing their activities provided for in the applicable laws, the public prosecutors are independent and should be guided in their work by principles

of neutrality and equal treatment of all citizens. Independence of the public prosecutor is guaranteed by the appropriate provision of the Law on the Public Prosecution System (Art. 8.1). Such independence is external and the public prosecutor will act independently of any other authorities or persons; internal independence is greatly restricted and provided for in detail in the applicable laws.

The public prosecution authorities operate according to the principle of hierarchical subordination, i.e. a public prosecutor is obliged to obey the regulations, guidelines and orders of his superior public prosecutor.

However, any order concerning the content of a process action has to be issued by the superior public prosecutor in writing with appropriate justification on demand of the public prosecutor whom such an order refers to. Under exceptional situations, in which an obstacle exists to serving such an order in writing, it is permitted to transmit it orally and to confirm it forthwith in writing.

Any order concerning the content of a process action issued by a superior public prosecutor other than the direct superior of the given public prosecutor may not deal with the manner of concluding preparatory proceedings and proceedings in court. Hence, such an order may be issued by the direct superior of a public prosecutor, only. This principle constitutes quite a difficult barrier for intervening by the Prosecutor General or the National Public Prosecutor into decisions of public prosecutors conducting preparatory proceedings.

The absolute subordination to orders of their superiors is difficult to achieve, particularly in trial, because a changing situation during the trial may make an order issued in advance obsolete. Thus, a provision of the Law allows the public prosecutor to make independent decisions related with continuation of the trial when new circumstances are disclosed.

The superior public prosecutor is authorized to take over the case and to perform actions belonging to the duties of the subordinated public prosecutor and also to change or modify any decision of the subordinated public prosecutor. Any change or modification of a decision which has been disclosed to the parties, their attorneys or defenders and to other authorized persons may take place only in accordance with the procedure and principles provided for in the Law.

During proceedings in court, the public prosecutor is not dependent on the behavior of other parties and participants in the trial and, in particular, is not bound by motions of parties having rights of action, e.g. the auxiliary prosecutor or claimant.

Statutory tasks of the public prosecuting authorities are performed by the Prosecutor General and by the public prosecutors subordinated to him. In supervising prosecution of crime these tasks include the conducting or supervising of preparatory proceedings, participation in judicial proceedings by performing in court the functions of a public attorney for the prosecution, and also supervision over the carrying out of the criminal verdicts and decisions of deprivation of liberty.

The notion of “prosecution of crime” used both in constitutional provisions as well as in the Law on the Public Prosecution System comprises all aspects of combating crime, i.e.:

1. performing of the basic purposes of preparatory proceedings – determination whether a criminal offense was committed in fact, comprehensive explanation of circumstances of the matter, detection of the offender and, when required, his capture, as well as collection and preserving of evidence for court use which constitutes preparation of the indictment;
2. actions which lead to the penalizing of the offender by sustaining the indictment in the first instance court and preparing and lodging appellate measures from court verdicts, including the carrying out of the declared punishment.

If a justified suspicion arises that a criminal offense has been committed, the public prosecutor acting in accordance with the applicable laws, initiates and performs preparatory proceedings or orders the initiation and performance of such proceedings to another authorized body, supervising the proceedings in the latter situation. The duty of the public prosecutor in initiating proceedings in respect to offenses prosecuted officially emerges directly from the principle of legality – one of the fundamental principles of the Polish legal system. The same duty rests also on police authorities. Rulings of the public prosecutor during preparatory proceedings are binding for the authority which conducts such proceedings.

Preparatory proceeding may be performed as an investigation which is compulsory in cases which are examined by the regional court in first instance and in other cases provided for in the Code of Criminal Proceedings. In other situations investigation is conducted when the case is important or complex. Investigation is conducted by the public prosecutor.

In other cases preparatory proceedings are conducted as an inquiry which may also be initiated and conducted by the public prosecutor, but is usually done by the police on its own initiative or upon order of the public prosecutor. Inquiries may also be initiated and conducted by other duly authorized State authorities within the scope of the applicable laws (i.e. Frontier Guard, State Commercial Inspection, State Sanitary Inspection, tax offices, tax inspectors).

The principles of conducting preparatory proceedings and the position of the public prosecutor in this phase of penal proceedings are provided for in the Code of Criminal Procedure and in a number of detailed laws.

Upon initiation of an investigation, the public prosecutor may order it to be performed in entirety or in a defined part by the police or another authority. The entire investigation may be vested with such authorities particularly when it will be necessary to extensively use the remaining at their disposal operational and technical resources.

In vesting the conducting of entire or partial investigation with the police or other authorities, the public prosecutor issues guidelines and determines the date by which the investigation schedule is to be submitted. The schedule

is then reviewed by the public prosecutor, who may introduce changes and modifications or name those actions which will be done by him or in which he intends to participate.

It is the duty of the public prosecutor to regularly review the files of the case, particularly when actions expressly reserved by the law to the public prosecutor are to be made, e.g. issue of a decision of presenting charges, announcing the charge to the suspect and interrogating him.

In situations provided for in the applicable laws, the public prosecutor will apply coercive measures in respect to the suspects. However, the public prosecutor is obliged to apply to the court for the imposing upon the suspect of a coercive measure in the form of temporary arrest. The court will issue a positive decision when the application of such a measure will ensure correct continuation of the preparatory proceedings. The Law provides in detail for the prerequisites of temporary arrest.

As provided for in Code of Criminal Procedure, the public prosecutor is a public attorney for the prosecution before all courts. He is authorized to institute and sustain or just Sustain the indictment in cases submitted to court by other prosecutors. Other State authorities are also entitled to perform the actions of a public prosecutor, however within their statutory authorization, i.e. in cases expressly provided for by laws and only in cases of simplified proceedings.

In performing his public attorney functions, the public prosecutor is a party in the litigation, but with special rights – he does not restrict his actions to the narrowly understood personal interest, but represents the state and, thus, may perform actions in the public interest, including those in the interest of the other party (e.g. he may appeal the verdict also to the benefit of the convicted person).

The changes in social, political and economic relations as well as the democratic changes initiated in 1989 led to accelerated growth of individual entrepreneurship, an increase in the number of businesses, and brisker exchange of goods and services with other countries. These positive effects were, unfortunately, accompanied by a continuous increase in the number of criminal offenses committed.

In the first years of democratic changes the crimes and methods of committing criminal offenses also underwent a major change. Crimes so far unknown in Poland appeared, such as terrorism, organized crime, particularly pervasive smuggling of highly profitable goods, such as drugs, alcohol and arms, brutal violence with use of firearms, explosives, attempted assassinations of judges and public prosecutors.

The gradual growth of crime, and particularly of organized crime, greatly diminished the feeling of security among people.

The problem of rendering the Public Prosecution more efficient, the question of its position in the system of the state authorities and the limits of the Public Prosecution Office's and each prosecutor's independence – these are the main questions of particular interest of many professional groups, not only of the prosecutors in Poland.

Considering the issue of the position of the Public Prosecution within the system of the state bodies, one has to take into account the tradition of the country concerned. Therefore, in order to comprehend the problem pertaining to the position and the relationship with other state powers, it is necessary to present – very briefly – the overall model of the functioning of the Public Prosecution in Poland.

The proper realization of the Public Prosecution's statutory duties depends on its position and relationship with other authorities of the state. The basic task conferred upon the Polish Public Prosecution is conducting of the investigation and supervision of all preparatory proceedings conducted by the Police and other authorized bodies, and also exercising the function of the public prosecutor (accuser) in the courts.

The gravity and significance of these functions determine the position and relationship of the Public Prosecution Office with other state powers and define the conditions of fulfilling its duties impartially and free of any undue interference. Ensuring that public prosecutors are able to perform their professional duties and responsibilities in the conditions guaranteeing them independence should be the fundamental problem of considering the institutional position of the Public Prosecution Office. The following concepts have to be examined:

1. The Public Prosecution is an independent body within the state authorities, headed by the Prosecutor General as an independent authority, not subordinated to any other power. The Prosecutor General and the rest of prosecutors are appointed by the National Council of Judiciary and Prosecution, eventually the National Council of Public Prosecution, which has now been disbanded.
2. The Public Prosecution is subordinated to the Parliament or the President, in that these bodies are authorized to decide on the appointment of the Prosecutor General and other prosecutors on all levels of the hierarchy,
3. The Public Prosecution Service is a part of the executive power – the Government. The Minister of Justice is also Prosecutor General.

According to most Polish prosecutors, the first proposition would be the most suitable in the present situation. Every concept needs establishing due institutional safeguards in order to guarantee the independence from other state powers. The principle of independence is one of the fundamental principles of proper functioning of the Public Prosecution.

The question of the scope of independence of each prosecutor, especially in the decision-making process, may be debatable. In this context many questions arise, such as whether:

- to abandon the principle of uniformity and hierarchical subordination of the Public Prosecution,
- to allow prosecutors to perform their tasks enjoying full or limited independence, for example while acting during the trial phase.

At any rate, the power with which the prosecutor is equipped, being authorized to decide on prosecution of the person concerned, needs ensuring the necessary conditions of performing his or her duties free from any interference both from inside and outside. This would advocate the prosecutor's independence.