LEX SUPER OMNIA

THE STICK METHOD

THE ‘GOOD CHANGE’ SYSTEM OF PERSECUTING INDEPENDENT PROSECUTORS

Niezależni Prokuratorzy

Ladies and Gentlemen,

The Lex Super Omnia Association of Prosecutors is carefully watching and analysing the reality of public prosecution as the institution intended to guard the rule of law, responsible for prosecuting crime, and supervising preparatory proceedings.

In order to pursue their statutory goals, public prosecution services should be guided by top standards, reliability, honesty, and justice, also in its own organisation, the principles governing its operations, and its relations with the employees. Yet, as far back as since 2016 and promulgation of the regulations of the new Act on the Public Prosecution Service, including the introductory secondary legislation, the prosecution services have not met the standards. The first, earlier unmet, absolutely arbitrary and inequitable decisions to demote prosecutors of the National Public Prosecution Service and Appellate Public Prosecution Services revealed that the time of the new prosecution regime would be the time of negative selection targeted at persons instead of merits. As the time went by, the institution also initiated the process of personnel replacement and restricting prosecutors' self-governance turning the institution of prosecutors' self-governance into an illusion.

In addition, on an unprecedented scale, official proceedings and disciplinary procedures began to be launched against prosecutors who dared speak their minds loud and clear and question the solutions promoted by the senior management of the prosecuting services for good reasons. The shuffling of membership of the disciplinary courts in such a way as to ensure prevalence thereon of prosecutors performing functions at individual organisational units of the prosecuting services has caused that the verdicts reached by the courts, as well as the activities of the disciplinary ombudspersons are scarred with grave doubt as to the actual independence of the persons holding the function posts and their capacity to make decisions based solely on the accumulated evidence material and regulations of the law.

The assortment of the actions taken by the senior management of the prosecution service is complete with delegations of prosecutors to units distant from their residence. All this is done without any explanation or reasons, without listening to the prosecutors' arguments, which deprives them of their empowerment and reduces them to pawns moved about the board of the game played by their superiors.

In one of his interviews, the National Prosecutor declared that the prosecution services would be guided by the 'stick and carrot' rule. Following the earlier publications by the Association where we described the 'carrot' elements, we here place in your hands a study of the system of exerting pressure on prosecutors, restricting their independence in this way, and employing various forms of persecution.

Alas, this is because the time has revealed that the 'stick' is by far most dominating with respect to independent prosecutors in the prosecution services.

Respectfully yours,

Management Board, Lex Super Omnia Association of Prosecutors

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I LET US START FROM THE BEGINNING ...

Christmas time in cozy atmosphere of the family, anticipation of the oncoming New Year....

The idyllic air of the point in time, sublime as it is, was disturbed by news shared on the telephone and by emails on the publication of two bills on the Sejm website: Act on the Public Prosecution Service (Sejm print No. 162) and Regulations enacting the Act on the Public Prosecution Service (Sejm print No. 162A).

What had been a subject of gossip and speculation, particularly among the prosecutors, became a fact on the Christmas Eve of 2015.

The bills on the Public Prosecution Service and the Regulations enacting the Bill were aimed at introducing allegedly fundamental changes to the system and organisation of the prosecution services. The authors of the bill were said to determine comprehensive changes to the form and operating principles of the prosecution service, its structure, hierarchy, reporting lines, operations, including procedural and substantive law competencies of prosecutors in the preparatory and judicial proceedings, the position and role of prosecutors, including the principles of their appointment and dismissal, the options of delegating them, the required qualifications, and their rights and obligations.

In the opinion of the authors of the bill, the arguments supporting introduction of such fundamental changes were as follows: 'the heretofore Act on the Public Prosecution Service was adopted in 1985 and has been subject to numerous amendments. Today, it does not meet the needs of a modern law-governed state, or the challenges related to the development of technology and various kinds of criminal activities, particularly of terrorist nature or of the organised financial and economic crime type' (p. 88 of the bill).

The drafted amendments were also aimed at reorganising the structure of the prosecution service – abolishing the General Prosecutor's Office with the independent Prosecutor General heading it, and forming the National Public Prosecution Service in its place, with simultaneous merger of the functions of the Minister of Justice and Prosecutor General; moreover, they were aimed at liquidating appellate public prosecution services and replacing them with divisional public prosecution services.

The nearly 90-page long bill on the public prosecution service was appended with 10 pages of an explanatory memorandum containing but vague statements which explained nothing and referred to opinions of unknown experts, apparently laying the grounds for the legality of the proposed changes. From time perspective, one can clearly state that substantive arguments in support of the proposed solutions were simply missing.

The above bills were submitted as parliamentary bills, which translated to omission of public consultations which might have served as a forum of thorough evaluation of the functioning of the amendments to the Act on the Public Prosecution introduced in 2009. In this way, the voice of the prosecutor community was also eliminated, thus demonstrating its disregard and neglect.

The reporting MP was Michał Wójcik who announced self-correction consisting in deletion of Art. 75 of the Act of 27 July 2001 – The Law of the Common Court System from Art. 127(1)of the Bill on the Public Prosecution Service.

How did Michał Wójcik, MP justify the above change? He stated that it was an obvious clerical mistake. He indicated that the text of the bill happened to contain a reference to Art. 75 of the above-cited Act, while the text was identical with that of Art. 94 of the Bill on the Public Prosecution Service.

One should note that Art. 75 of the Act of 27 July 2001 on Organisation of Common Courts regulated the issues connected with the transfer of a judge to another place of posting. In two cases, namely the transfer of a judge without his/her consent to another place of posting, as specified in § 2(1) and 2(2), he/she had the right to appeal from the decision of the Minister of Justice to the Supreme Court. Prosecutors were deprived of the right, since Art. 94 does not contain any such provision. A mere clerical mistake!

An analysis of the works of the Sejm committees and sub-committees revealed above-standard active engagement of the then undersecretary of state at the Ministry of Justice, Bogdan Święczkowski, who participated in the works of the Justice and Human Rights Committee, sub-committees, and in the works of the Senate. Inquired in the matter by the senators, he said: 'The Ministry of Justice assisted the proposers with substantive and legislative knowledge, but since it is an MP bill, I cannot discuss the reasons of processing the act at this specific pace. I can only be happy because the Minister of Justice believes the sooner the new Act on the Public Prosecution Service comes into force and effect, the better' (stenographic record of 29 January 2016).

In his interview for the Gazeta Prawna Daily of 24 January 2016, Bogdan Święczkowski did not conceal the fact that the Ministry of Justice where he was an undersecretary, quote: cooperated closely with the MPs in the compilation of the bill'. Engaged in the Sejm works on the act were also, e.g.: Tomasz Darkowski, director of the Legislation Department, Ministry of Justice, today a lawyer at the Kopeć and Zaborowski Law Office, Małgorzata Bednarek, member of the 'Ad Vocem' Independent Association of Prosecutors, now a judge of the Disciplinary Chamber at the Supreme Court, and Jacek Skała, Chairman of the Prosecutors and Prosecution Employees Trade Union, today a prosecutor at the Kraków Divisional Public Prosecution Service delegated to the National Public Prosecution Service. Both actively supported Bogdan Święczkowski backing the processed bills and not voicing any vital substantive comments or reservations. That paid them well, since as indicated above their professional careers accelerated substantially, and the organisations they represented were successfully pacified. Michał Wójcik, MP, was soon appointed Vice-Minister of Justice. Sitting in the government bench during the works on the acts of law was prosecutor Beata Skonieczna subsequently appointed deputy director of the Presidential Office, National Public Prosecution Service; she was awarded two higher titles, including one in the prize mode, plus generous financial gratifications.

On 28 January 2016, both acts of law were adopted by the Sejm by 236 votes for, with 209 against and 7 abstentions. On 1 February, the Senate adopted the Act with no corrections, and on 12 February 2017 it was signed by the President of the Republic of Poland.

An analysis of the progress of the legislation works shows that the Act on the Public Prosecution Service and the Regulations enacting the Act on the Public Prosecution Service were adopted after less than a month's work, without due thought, ignoring any opinions or positions of the lawyer community, non-governmental organisations, or the Sejm Office of Analyses, and skipping public consultations. In retrospect, this is probably nothing surprising against the observed legislation processes on other acts of law, but it was startling at the time, perhaps because the prosecution services were dying abandoned and in silence, unfortunately with all lawyer communities, primarily the prosecutors themselves, remaining mute. Perhaps, they deserved it to an extent; yet, they had not received proper support at a proper moment. Support came a bit later, and obviously words of true gratitude should be extended therefor.

Are the Acts truly future-proof, addressing the 21st century needs, as Bogdan Święczkowski used to repeat again and again, meeting the EU recommendations, guaranteeing the right to speak one's mind on topics connected with the functioning of the broadly construed judicial and law-and-order systems?

The Lex Super Omnia Association of Prosecutors devoted three of its previous reports available online to the functioning of the prosecution services under the rule of these allegedly modern acts of law.

II DEGRADATIONS, DELEGATIONS, WHAT ELSE?

The two acts of law: the Regulations enacting the Act on the Public Prosecution Service and the Act on the Public Prosecution Service itself, promulgated by the Parliament at an express pace and signed by the President came into force and effect on 4 March 2016.

At the time, many experienced and competent prosecutors voluntarily retired. Some of them had experienced working with the current management of the prosecution services, knew their stratagems, and were most likely guided by that experience when making the uneasy decision to retire from service.

Based on the data obtained it has been found that in the period between 1 January 2016 and 15 March 2016 166 person retired, including:

- 16 prosecutors of the Prosecutor General Office,
- 30 prosecutors of the Appellate Public Prosecution Service,
- 75 prosecutors of the Regional Public Prosecution Service,
- 45 prosecutors of the District Public Prosecution Service.

Following 15 March 2016, further 28 persons retired, which means that by 15 April 2016 194 persons in total had made the decision.

To visualise the scale of the phenomenon, the above data should be compared to the numbers of prosecutors of the ordinary organisation units of the prosecution services terminated on retirement terms in the years 2010 - 2015[1]:

- 2010 - 118 persons,
- 2011 - 118 persons,
- 2012 -125 persons,
- 2013 - 104 persons,
- 2014 - 128 persons,
- 2015 - 144 persons,
- 2016 - 305 persons,
- by 30 June 2017 - 128 persons.

The figures lead to the conclusion that in the period from 1 January 2016 to 15 March 2016, and then before 15 April 2016, the personnel of the prosecution services dwindled by 194 persons because of their decision to retire; in other words, over the period of an odd two months the decision was made by more persons than e.g. over the entire year 2015. The figure for the whole 2016 stood at 305 prosecutors, highest versus the years 2010 - 2015.

The retirement premiums for the prosecutors who retired in the period from 1 January 2016 to 15 March 2016 added up to PLN 14,481 thousand.

[1] The National Public Prosecution Service has data as of the year 2010.

The next step taken by the management of the National Public Prosecution Service was to demote prosecutors of the Prosecutor General Office and Appellate Public Prosecution Service.

To that aim, the act promulgating the Regulations enacting the Act on the Public Prosecution Service contains provisions dissolving the Prosecutor General's Office and the appellate public prosecution services. In reality, the dissolution, or actual liquidation, proved nominal in nature.

This is because the four-level organisational structure of the ordinary units of the prosecution services was retained, the same as the previous number of the district public prosecution services (357) and regional prosecution services (45). The number of divisional public prosecution service units did not change; their current number is the same as the 11 former appellate public prosecution service units. No change either was introduced to the functional scopes of all units, divisional public prosecution services included. Their locations, i.e. seats, remained the same too. Because of the identity of the tasks, the unit's organisational structure did not undergo any major modifications. What did change, was the numbering of the departments, another department was added to deal with financial and fiscal offences, and an independent section was formed for medical malpractice. One needs to stress that departments dealing with commercial crime had already been in place, e.g. at the Warsaw Appellate Public Prosecution Service, and their creation did not require any statutory changes save for a disposition on the organisational structure of the unit. Hence, the appellate public prosecution services were actually not liquidated, as their legal successor, the divisional public prosecutor, inherited the tasks and the authority unreduced at all, he also inherited all assets: the buildings, computer equipment, and other fittings, just as the liabilities, the fact corroborated in Art. 65 of the Regulations enacting the Act on the Public Prosecution Service. Further inherited was the organisational system and the prosecutor staff performing their official duties at the units. Moreover, one should note that the number of predicate jobs was not reduced compared to the number of posts in the former appellate public prosecution services. In general, the posts were retained in the same number, the fact corroborated by the data obtained from all divisional public prosecution services as at 4 March 2016 and 30 June 2017:

1. Lublin Divisional Public Prosecution Service - 31 and 31 predicate jobs,
2. Warsaw Divisional Public Prosecution Service - 55 and 55 predicate jobs,
3. Gdańsk Divisional Public Prosecution Service - 47 and 48 predicate jobs,
4. Katowice Divisional Public Prosecution Service - 45 and 44 predicate jobs,
5. Wrocław Divisional Public Prosecution Service - 39 and 40 predicate jobs,
6. Poznań Divisional Public Prosecution Service - 32 and 32 predicate jobs,
7. Kraków Divisional Public Prosecution Service - 32 and 32 predicate jobs,
8. Szczecin Divisional Public Prosecution Service - 28 and 28 predicate jobs,
9. Białystok Divisional Public Prosecution Service - 23 and 23 predicate jobs,
10. Rzeszów Divisional Public Prosecution Service - 17 and 17 predicate jobs,
11. Łódź Divisional Public Prosecution Service - 31 and 31 predicate jobs.

This apparent structural change of the prosecution services provided the basis for a peculiar verification of those prosecutors who fell into disfavour of the current management of the

prosecution services due to their stance, diligent performance of their official duties, and abidance by the law in the years 2005 - 2007.

Demotion affected 124 prosecutors in total. Among them were 19 prosecutors of the dissolved military prosecutor services, including those who took part in the investigation of the Smolensk plane crash. 4 of them (the press spokesman of the Chief Military Prosecutor's Office and the prosecutors who flew to Smoleńsk or Moscow after 10 April 2010) were dismissed from their prosecution positions, transferred to the personnel reserve, and assigned to perform their official duties at line military units, e.g. at the 10th Armoured Cavalry Brigade in Świętoszów and 2nd Mechanised Brigade in Złocieniec. The decisions were made immediately enforceable in view of a 'vital public interest' which remained unspecified, and in the reasons of the decisions it was laconically stated that they had been made 'to accommodate the needs of the Armed Forces'. The then Minister of National Defence, violating the statutory ban, used his own decision (in other words and act of internal regulations binding only in the armed forces) to transfer them to the personnel reserve (or the 'MND's freezer' reserved for regular army men) and at the same time ordered them to perform the duties of troopers or gunners in line military units stationed in nooks and crannies of Poland. When doing that, the prosecutors were handed in decrees signed by the Minister of Justice, Prosecutor General, of their transfer to district public prosecution services. From then on, they operated in the realities of two mutually exclusive acts of law, i.e. the MND decision which transferred them to the personnel reserve and assigned them to the line military units, and the decree of the Prosecutor General which transferred them to the district public prosecution services. The prosecutors reported at the district public prosecution services. Upon resignation of the Minister of National Defence, Antoni Macierewicz, decisions were issued to transfer the prosecutors out of the Ministry, to the civil institution of the prosecution services.

The demoted prosecutors did not receive the deeds of their appointment to the then held official positions, and were deprived of the right to a higher promotion tier. This was an additional sanction, this time of the financial nature.

The regulations adopted in the act of the **Regulations enacting the Act on the Public Prosecution Service** which did not define the causes of prosecutor demotions, or order providing the reasons of the decision, or confer the right to challenge the decision by appeal to the court, **violated**:

- Art. 2 of the Constitution which stipulates that the Republic of Poland is a democratic state under the rule of law, translating the rules of social fairness to practice,
- Art. 45(1) of the Constitution which guarantees each citizen the right to have his/her matter tried justly and publicly, without any undue delay, by the competent, independent, unbiased, and impartial court,
- Art. 77(2) of the Constitution which stipulates that no act of law can preclude anyone from claiming the violated freedoms or rights at court,
- Art. 6(1) of the Convention of 4 November 1950 for the protection of human rights

and fundamental freedoms which guarantees the right to fair trial.

In addition, violated were the principles of equal treatment and non-discrimination laid down in the Labour Code and stemming from Art. 32 of the Polish Constitution, which reads that all are equal before the law and have the right to be treated equally by the public authorities.

In this way, prosecutors were forced to resolve to take actions at court to have the substance of their employment relationship defined.

The prosecutor demotion action was the first and largest statutorily organised operation of persecuting public officials, prosecutors, consisting in imposing a sanction on them, extraordinary as it was not being defined in the catalogue of sanctions given in Art. 142 Act on the Public Prosecution Service, without holding the disciplinary procedure, and depriving them of the right of defence or of appeal from the court judgment.

Public officials acting in the name and on behalf of the Polish State were treated as things, their professional legacy ruined, their employee dignity, good name, and honour violated.

The situation of the demoted prosecutors was noted by Prof. Adam Bodnar, National Ombudsman, who filed a motion in the matter with the Constitutional Tribunal on 4 May 2016 pointing out that, e.g. a prosecutor demoted pursuant to the regulations of the Act on the Public Prosecution Service should be guaranteed the option of lodging an appeal with the court requesting verification of the potentially discriminating decision of transfer to a lower position.

The demotion decisions were also glaringly in contravention with the recommendations of the Council of Europe of 6 October 2000 on the role of public prosecution in the criminal justice system and with the opinion of the Consultative Council of European Prosecutors on the European standards and principles building the status of the prosecutor (the so-called Rome Charter) of 17 December 2014.

One should quote point XII of the document: 'The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review'.

LIST OF PROSECUTORS DEGRADED IN 2016.[2]

GENERAL PROSECUTOR'S OFFICE

1. Anna ADAMIAK - Prokurator Prokuratury Generalnej zdegradowana do Prokuratury Apelacyjnej w Warszawie.

[2] kolejność alfabetyczna

2. Juliusz BALCERAK - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Okręgowej w Poznaniu.
3. Jacek BILEWICZ - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Okręgowej Warszawa - Praga w Warszawie.
4. Sławomir GORZKIEWICZ - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa Śródmieście Północ w Warszawie.
5. Sławomir GÓRNICKI - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie;
6. Elżbieta GIELO - Prokurator Prokuratury Generalnej zdegradowana do Prokuratury Okręgowej w Warszawie.
7. Marek JAMROGOWICZ - Prokurator Prokuratury Generalnej, Zastępca Prokuratora Generalnego zdegradowany do Prokuratury Regionalnej w Krakowie, a następnie delegowany do Prokuratury Okręgowej w Tarnowie.
8. Andrzej JANECKI - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa - Wola w Warszawie.
9. Krzysztof KARSZNICKI - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Regionalnej w Łodzi.
10. Artur KASSYK - prokurator Prokuratury Generalnej, zdegradowany do Prokuratury Regionalnej w Warszawie.
11. Marzena KOWALSKA - Prokurator Prokuratury Generalnej Zastępca Prokuratora Generalnego zdegradowana do Prokuratury Okręgowej Warszawa - Praga w Warszawie.
12. Dariusz KUBERSKI - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Okręgowej w Bydgoszczy.
13. Tomasz LEJMAN - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Apelacyjnej w Gdańsku.
14. Irena Laura ŁOZOWICKA - Prokurator Prokuratury Generalnej zdegradowana do Prokuratury Okręgowej w Łodzi.
15. Lucjan NOWAKOWSKI - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Okręgowej w Piotrkowie Trybunalskim.
16. Piotr NIEZGODA - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Okręgowej w Krakowie.
17. Krzysztof PARCHIMOWICZ - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.
18. Marek STASZAK - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa Śródmieście - Północ.
19. Ireneusz SZELĄG - Prokurator Prokuratury Generalnej zdegradowany do Prokuratury Rejonowej Warszawa - Śródmieście.
20. Małgorzata WILKOSZ - ŚLIWA - Prokurator Prokuratury Generalnej zdegradowana do Prokuratury Rejonowej Warszawa - Ochota.

PROKURATURA APELACYJNA W WARSZAWIE

1. Małgorzata ADAMAJTYS - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowana do Prokuratury Rejonowej Warszawa - Praga Południe.
2. Alina JANCZARSKA - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowana do Prokuratury Okręgowej w Warszawie.
3. Dariusz KORNELUK - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Rejonowej Warszawa - Śródmieście.
4. Katarzyna KWIATKOWSKA - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowana do Prokuratury Okręgowej Warszawa - Praga w Warszawie, aktualnie delegowana do Prokuratury Rejonowej w Golubiu - Dobrzyniu.
5. Ewa LIZAKOWSKA - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowana do Prokuratury Okręgowej w Warszawie.
6. Robert MAJEWSKI - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Okręgowej w Warszawie.
7. Jerzy MIERZEWSKI - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Rejonowej Warszawa-Śródmieście - Północ.
8. Jarosław ONYSZCZUK - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Rejonowej Warszawa -Mokotów, aktualnie delegowany do Lidzbarka Warmińskiego.
9. Ryszard PĘGAL - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Okręgowej Warszawa - Praga w Warszawie.
10. Katarzyna SZESKA - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowana do Prokuratury Rejonowej Warszawa -Wola, aktualnie delegowana do Prokuratury Rejonowej w Jarosławiu.
11. Piotr WOŹNIAK - Prokurator Prokuratury Apelacyjnej w Warszawie zdegradowany do Prokuratury Okręgowej Warszawa - Praga w Warszawie.

PROKURATURA APELACYJNA W KATOWICACH

1. Jakub CEMA - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
2. Jan CZAPIK - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
3. Wojciech DUTKOWSKI - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
4. Kornelia JAGIEŁO-FOREMNY - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowana do Prokuratury Okręgowej w Katowicach.
5. Barbara JARCZYK - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowana do Prokuratury Okręgowej w Katowicach.
6. Grzegorz KORPAŁA - prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do prokuratury Okręgowej w Katowicach.

7. Andrzej KÓZKA - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Rejonowej Katowice - Wschód.
8. Andrzej KUKLIS - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
9. Mariusz ŁĄCZNY - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
10. Maciej MAKOWSKI - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Rejonowej Katowice - Północ - prokurator mieszka w miejscowości Wilkowice położonej za Bielskiem - Białą, natomiast został zdegradowany do prokuratury w Katowicach. Pan prokurator składał wniosek o przeniesienie go do jednej z prokuratur rejonowych w Bielsku - Białej, jednakże odmówiono mu, mimo wielokrotnych obwieszczeń o wolnych stanowiskach prokuratorskich w dwóch rejonach bielskich. Codziennie pokonuje 150 km (dojazd w jedną stronę 75 km).
11. Sebastian ROHM - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
12. Piotr SKRZYNECKI - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.
13. Izabela STOLARCZYK - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowana do Prokuratury Okręgowej w Katowicach.
14. Ewa ŚWIERCZ-DYDAK - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowana do Prokuratury Rejonowej Katowice - Wschód.
15. Mirosław TRACZ - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Rejonowej Katowice - Południe.
16. Marek WÓJCIK - Prokurator Prokuratury Apelacyjnej w Katowicach zdegradowany do Prokuratury Okręgowej w Katowicach.

Pan Tomasz Tadla - Prokurator Prokuratury Apelacyjnej w Katowicach był także zdegradowany do Prokuratury Okręgowej w Katowicach. Aktualnie Pan prokurator jest prokuratorem Prokuratury Regionalnej w Katowicach i pełni funkcję naczelnika Śląskiego Wydziału Zamiejscowego Departamentu ds. Przestępczości Zorganizowanej i Korupcji Prokuratury Krajowej.

PROKURATURA APELACYJNA W BIAŁYMSTOKU

1. Grzegorz GIEDRYS - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Okręgowej w Białymstoku.
2. Sławomir GŁUSZUK - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej Białystok-Północ w Białymstoku.
3. Joanna GÓRSKA - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowana do Prokuratury Rejonowej Białystok - Południe w Białymstoku.

4. Jolanta KORDULSKA - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowana do Prokuratury Rejonowej Białystok - Południe w Białymstoku.
5. Janusz KORDULSKI - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej w Białymstoku.
6. Sławomir LUKS - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej Białystok - Południe w Białymstoku.
7. Grzegorz MASŁOWSKI - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Okręgowej w Białymstoku.
8. Leszek MUSIAŁ - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej w Suwałkach.
9. Jan PRZYBYŁEK - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej Olsztyn - Północ w Olsztynie.
10. Leszek RUDNIK - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej w Suwałkach.
11. Alina SAPIEŻKO - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowana do Prokuratury Rejonowej w Białymstoku.
12. Andrzej TAŃCULA - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej w Augustowie.
13. Anatol TARASIUK - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej w Bielsku Podlaskim.
14. Bazyli TELENTEJUK - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej Białystok - Południe w Białymstoku.
15. Krzysztof WOJDAKOWSKI - Prokurator Prokuratury Apelacyjnej w Białymstoku zdegradowany do Prokuratury Rejonowej Białystok - Północ w Białymstoku.

PROKURATURA APELACYJNA WE WROCŁAWIU

1. Elżbieta CZEREPAK - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowana do Prokuratury Okręgowej we Wrocławiu.
2. Magdalena DMOCH - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowana do Prokuratury Rejonowej Wrocław - Psie Pole we Wrocławiu.
3. Teresa Łozińska-FATYGA - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowana do Prokuratury Okręgowej w Legnicy.
4. Wojciech KUBIŃSKI - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowany do Prokuratury Okręgowej we Wrocławiu.
5. Radosław RAJMONIAK - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowany do Prokuratury Okręgowej w Opolu.
6. Andrzej ROLA - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowany do Prokuratury Okręgowej we Wrocławiu.
7. Magdalena WASIAK - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowana do Prokuratury Okręgowej we Wrocławiu.
8. Hanna WOJCIECHOWSKA - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowana do Prokuratury Rejonowej w Oławie.

9. Piotr WÓJTOWICZ - Prokurator Prokuratury Apelacyjnej we Wrocławiu zdegradowany do Prokuratury Okręgowej w Legnicy.

PROKURATURA REGIONALNA W SZCZECINIE

1. Iwona CICHA - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowana do Prokuratury Rejonowej Szczecin - Zachód w Szczecinie.
2. Stanisław FELSZTYŃSKI - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowany do Prokuratury Rejonowej Szczecin - Niebuszewo w Szczecinie.
3. Rafał GAWINEK - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowany do Prokuratury Okręgowej w Szczecinie.
4. Marzena PATEREK - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowana do Prokuratury Okręgowej w Szczecinie.
5. Edyta SIELEWOŃCZUK - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowana do Prokuratury Rejonowej Szczecin - Niebuszewo w Szczecinie.
6. Christopher ŚWIERK - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowany do Prokuratury Rejonowej Szczecin - Zachód w Szczecinie.
7. Dariusz WIŚNIEWSKI - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowany do Prokuratury Rejonowej Szczecin - Śródmieście w Szczecinie.
8. Grażyna WILKANOWSKA-STAWARCZYK - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowana do Prokuratury Okręgowej w Szczecinie.
9. Janina RZEPIŃSKA - Prokurator Prokuratury Apelacyjnej w Szczecinie zdegradowana do Prokuratury Okręgowej w Szczecinie.

PROKURATURA REGIONALNA W LUBLINIE

1. Wiesław GRESZTA - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowany do Prokuratury Okręgowej w Lublinie.
2. Jacek KUŻMA - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowany do Prokuratury Okręgowej w Lublinie.
3. Andrzej LEPIESZKO - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowany do Prokuratury Okręgowej w Lublinie.
4. Andrzej POGODA - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowany do Prokuratury Okręgowej w Lublinie.
5. Elżbieta KSIĄŻEK-SADŁO - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowana do Prokuratury Okręgowej w Lublinie.
6. Dariusz SIEJ - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowany do Prokuratury Okręgowej w Lublinie.
7. Ewa SZKODZIŃSKA - Prokurator Prokuratury Apelacyjnej w Lublinie zdegradowana do Prokuratury Okręgowej w Lublinie.

PROKURATURA REGIONALNA W KRAKOWIE

1. Stanisław CZARNECKI - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Okręgowej w Kielcach.
2. Janusz KOWALSKI - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Okręgowej w Krakowie.
3. Dariusz MAKOWSKI - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Okręgowej w Tarnowie.
4. Katarzyna PŁOŃCZYK - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowana do Prokuratury Okręgowej w Krakowie.
5. Marek WEŁNA - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Rejonowej Kraków - Nowa Huta w Krakowie (po publicznych wypowiedziach Pana prokuratora na temat degradacji i wniesionej skargi do Strasburga, Zastępca Prokuratora Okręgowego w Krakowie na piśmie nakazała prokuratorom rejonowym, by spowodowali, aby prokuratorzy wypowiadali się w mediach tylko za zgodą przełożonych. W dniu 9 listopada 2016 r. Marek Wełna został bez swojej zgody delegowany przez Prokuratora Okręgowego w Krakowie, na okres 2 miesięcy do Prokuratury Rejonowej w Chrzanowie, decyzja to pomijała warunki rodzinne prokuratora związane z narodzinami jego kolejnego dziecka).
6. Krzysztof WÓJCIK - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Okręgowej w Krakowie.
7. Artur WRONA - Prokurator Prokuratury Apelacyjnej w Krakowie zdegradowany do Prokuratury Rejonowej w Tarnowie.

PROKURATURA REGIONALNA W RZESZOWIE

1. Jan ŁYSZCZEK - Prokurator Prokuratury Apelacyjnej w Rzeszowie zdegradowany do Prokuratury Okręgowej w Rzeszowie.
2. Bogusław OLEWIŃSKI - Prokurator Prokuratury Apelacyjnej w Rzeszowie zdegradowany do Prokuratury Rejonowej w Rzeszowie.

Ponadto zdegradowani zostali: Anna HABAŁO - Prokurator Prokuratury Apelacyjnej w Rzeszowie do Prokuratury Rejonowej dla miasta Rzeszowa (skazana prawomocnie na 3 lata i 6 miesięcy pozbawienia wolności, m.in. za czyny korupcyjne) i Robert PLOCH - Prokurator Prokuratury Apelacyjnej w Rzeszowie do Prokuratury Okręgowej w Rzeszowie (sprawa karna o przestępstwo z art. 178a § 1 k.k., zakończona prawomocnym wyrokiem).

PROKURATURA REGIONALNA W GDAŃSKU

1. Janusz KRAJEWSKI - Prokurator Prokuratury Apelacyjnej w Gdańsku zdegradowany do Prokuratury Okręgowej w Gdańsku.

2. Janusz KWIATKOWSKI - Prokurator Prokuratury Apelacyjnej w Gdańsku zdegradowany do Prokuratury Rejonowej Gdańsk-Śródmieście w Gdańsku.
3. Andrzej ŁOJKOWSKI - Prokurator Prokuratury Apelacyjnej w Gdańsku zdegradowany do Prokuratury Okręgowej w Gdańsku.
4. Włodzimierz PLUTA - Prokurator Prokuratury Apelacyjnej w Gdańsku zdegradowany do Prokuratury Rejonowej w Gdyni.

PROKURATURA REGIONALNA W ŁODZI

1. Krzysztof KOWALCZYK – Prokurator Prokuratury Apelacyjnej w Łodzi zdegradowany do Prokuratury Okręgowej w Łodzi, a następnie delegowany do Prokuratury Regionalnej w Łodzi.

PROKURATURA REGIONALNA W POZNANIU

1. Anna POZNAŃSKA - prokurator Prokuratury Regionalnej w Poznaniu zdegradowana do jednostki niższego szczebla.

NACZELNA PROKURATURA WOJSKOWA [3]

1. Zbigniew BADELSKI do Prokuratury Okręgowej w Warszawie.
2. Jarosław CIEPŁOWSKI do Prokuratury Okręgowej w Warszawie.
3. Anna CZAPIGO do Prokuratury Rejonowej Warszawa-Mokotów w Warszawie;
4. Dariusz GABRYSZEWSKI do Prokuratury Okręgowej w Warszawie.
5. Jerzy KRAWIEC do Prokuratury Okręgowej w Warszawie.
6. Jakub MYTYCH do Prokuratury Okręgowej w Poznaniu.
7. Waldemar PRASZCZYK do Prokuratury Rejonowej Poznań - Grunwald w Poznaniu.
8. Zbigniew RZEPA do Prokuratury Rejonowej Warszawa-Mokotów w Warszawie.
9. Roman SZUBIGA do Prokuratury Okręgowej w Warszawie.

WOJSKOWA PROKURATURA OKRĘGOWA W WARSZAWIE

1. Tomasz MACKIEWICZ do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.
2. Bożena RADZISZEWSKA - DESTOŃSKA do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.
3. Anna ROMANOWICZ do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.
4. Anatol SAWA do Prokuratury Rejonowej w Lublinie.
5. Jarosław SEJ do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.

[3] ustawowo równoważna z Prokuraturą Generalną

6. Krystyna SIECHNIEWICZ do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.
7. Marta RZEPA do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.

WOJSKOWA PROKURATURA OKRĘGOWA W POZNANIU

1. Marcin JĘDRUSZCZAK do Prokuratury Rejonowej Poznań - Grunwald w Poznaniu.
2. Artur MATKOWSKI do Prokuratury Rejonowej Poznań - Grunwald w Poznaniu.
3. Marcin MAKSJAN do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.

Pan prok. Marcin Maksjan po wygranym konkursie przeprowadzonym przez Krajową Radę Prokuratorów w grudniu 2015 r. dostał z rąk Prokuratora Generalnego Andrzeja Seremeta nominację na prokuratora Wojskowej Prokuratury Okręgowej w Poznaniu. Równolegle Naczelny Prokurator Wojskowy wysłał wniosek do Ministra Obrony Narodowej Antoniego Macierewicza o wyznaczenie na wojskowe stanowisko w tej jednostce Prokuratury. Minister Obrony Narodowej odmówił wyznaczenia na to stanowisko, naruszając tym samym art. 111 ust.1 ustawy o prokuraturze (Dz.U. z 2011 r., Nr 270, poz.1599 ze zm.). Pomimo tego, w kwietniu 2016 r., prok. Marcin Maksjan jako „prokurator byłej Wojskowej Prokuratury Okręgowej w Warszawie" (najprawdopodobniej omyłka pisarska, chyba miało w być „w Poznaniu") otrzymał od Prokuratora Generalnego Zbigniewa Ziobry przeniesienie do Prokuratury Rejonowej Warszawa - Mokotów w Warszawie.

BEZPRAWNE ZESŁANIE PROKURATORÓW WOJSKOWYCH DO „ZIELONYCH GARNIZONÓW":

W marcu 2016 r. Antoni Macierewicz - Minister Obrony Narodowej wydał decyzje o zwolnieniu niżej wymienionych osób ze stanowisk prokuratorskich i skierowaniu do służby w odległych
„zielonych garnizonach":

1. Gerard KONOPKA z Wojskowej Prokuratury Okręgowej w Poznaniu do Bartoszyc.
2. Marcin MAKSJAN z Wojskowej Prokuratury Garnizonowej w Warszawie (taki był formalnie jego wojskowy stan ewidencyjny) do Świętoszowa.
3. Waldemar PRASZCZYK z Naczelnej Prokuratury Wojskowej (Warszawa) do Hrubieszowa.
4. Zbigniew RZEPA z Naczelnej Prokuratury Wojskowej (Warszawa) do Złocieńca.
5. Janusz WÓJCIK z Wojskowej Prokuratury Okręgowej w Warszawie do Lidzbarka Warmińskiego.

The issuance of the decisions referred to above violated Art. 45(4) of the Act of 11 September 2003 on Professional Military Service.

The plans further included verification of the prosecutors of the regional public prosecution services. To that aim, a change of the name of the regional public prosecution services to field services was considered, although the idea was abandoned. Presumably, it was reasoned that the Act on the Public Prosecution Service contained such legal instruments which, once properly interpreted, would enable 'flexible allocation of the predicate staff' of the level.

The practice showed that the institution of prosecutor delegation was taken advantage of to that aim. Pursuant to Art. 106(3) of the Act on the Public Prosecution Service, in substantiated circumstances, considering the demand for personnel of the ordinary organisational units of the prosecution service, the Prosecutor General or the National Public Prosecutor may delegate a prosecutor without seeking his/her consent for the period of 12 months in any year to the prosecution unit in the locality where the delegated person resides, or to the prosecution unit in the locality being the seat of the prosecution unit employing the delegated person. A comprehensive analysis of Art. 106 of the quoted Act indicates that when doing so he should take into consideration the prosecutor's qualifications specified as the basis of the decision in § 1 of the said regulation.

Ensuing from the above regulations, delegations of the kind should be exceptional and take account of the competences of the delegated prosecutor, and the reason thereof should stem from the demand for personnel.

The response to parliamentary interpellation No. 9127 of 4 January 2017 reveals that 160 prosecutors were delegated without seeking their consent to equivalent organisational units of the prosecution service and to units of lower levels after 4 March 2016; 116 prosecutors have completed their delegation.

The figures, possibly incomplete, accumulated by the Lex Super Omnia Association of Prosecutors in accordance with the Act on Access to Public Information show that **in the period from 4 March 2016 to 31 December 2019 at least 60 prosecutors were transferred to units of lower levels as a peculiar disciplinary sanction** for a period of more than 3 years or shorter, all being equally severe to themselves and their nearest and dearest.

To give an example, one should name Prosecutor Waldemar Osowiecki, former Regional Public Prosecutor in Płock, i.e. of the unit which laid charges against Mr Zbigniew Ziobro. Following consecutive procedural actions, the proceedings were discontinued. In the times of the so-called 'good change' in the prosecution services, Prosecutor Waldemar Osowiecki was delegated to the Częstochowa – North District Public Prosecution Service in Częstochowa for the period from 11 July 2016 to 10 January 2017. Then, without his consent, he was delegated to the Płock District Public Prosecution Service for the period from 11 January 2017 to 10 January 2020, and since 11 January 2020 he has been delegated to the Ciechanów District Public Prosecution Service. He is still doing the delegation now. Noteworthy, the Prosecutor is the father of three minor children.

Delegated for a comparably long time to the Warsaw - Mokotów District Public Prosecution Service in Warsaw was also Mr Andrzej Piaseczny, prosecutor of the Warsaw Regional Public Prosecution Service. He now serves at the Warsaw Regional Public Prosecution Service.

One should also mention the delegation of Prosecutor Sławomir Piwowarczyk from the Łódź Regional Public Prosecution Service who was delegated to the Łódź – City Centre District Public Prosecution Service as of 3 April 2016. The duration of his delegations are extended on an on-going basis.

Mr Piotr Wójtowicz, prosecutor of the Wrocław Apellate Public Prosecution Service and former Regional Public Prosecutor in Legnica was first demoted in April 2016 from the Wrocław Apellate Public Prosecution Service to the Legnica Regional Public Prosecution Service (decision of Prosecutor General, Zbigniew Ziobro, ref. PK IX K 103.661.2016 of 11 April 2016); then by virtue of the decision issued by the Regional Public Prosecutor in Legnica, Zbigniew Harasimiuk who succeded Piotr Wójtowicz in the position of the Regional Public Prosecutor in Legnica (ref. PO IV WOS 1122.26.2017 of 26 May 2017) he was delegated to the Legnica District Public Prosecution Service for the term of 2 months. On 6 July 2017, the delegation was extended for another 4 months by the Deputy Prosecutor General, Marek Pasionek, acting in the place of the National Public Prosecutor (ref. PK IX K 1122.2522.2017). The causes of the delegation were not disclosed or served on the concerned.

The institution of prosecutor delegation is also employed to make prosecutors reflect on their approach inconsistent with the line binding in the prosecution services.

To give an example, one should point to the actions taken by the superiors of Mr Piotr Skiba, prosecutor at the Warsaw – City Centre District Public Prosecution Service, who commenced proceedings in the matter of insulting Prof. Małgorzata Gersdorf, the first President of the Supreme Court, by a journalist of a public TV station, Cezary Gmyz. The case was transferred to the Warsaw Regional Public Prosecution Service and the prosecutor was instantly delegated to the Grodzisk Mazowiecki District Public Prosecution Service for 12 months.

Ms Anna Chomiczewska, now prosecutor at the Złotoryja District Public Prosecution Service, for years appreciated head of the Legnica and Złotoryja District Public Prosecution Services, was dismissed from the position of the District Public Prosecutor in Legnica in March 2016. In May 2016, on her consent, she was delegated to the position of the Head of Investigation Division I of the Legnica Regional Public Prosecution Service where she personally conducted the investigation initiated on notification from judge Wojciech Łączewski in a stalking case (Art. 190a(2) of the Criminal Code). On 6 October 2016, by virtue of the decision of the National Public Prosecutor (file ref. PK IX K 103.4490.2016) the Prosecutor was dismissed from the position of the division head, following which, as of 9 November 2016 she resumed performing her professional duties at the District Public Prosecution Service because of the lapse of the term of her delegation to the Regional Public Prosecution Service and no extension thereof granted. The cause lay in her refusal to consent to the issuance of the order forbidding the judge, in his capacity of the aggrieved, to gain access to the files of the case. The case as such was transferred from Legnica to the Kraków Divisional Public Prosecution Service where it is still in progress.

Another example concerns the stance of Prosecutor Wojciech Pełeszok. He was delegated from the Warsaw Regional Public Prosecution Service to the Warsaw City Centre – North District Public Prosecution Service in Warsaw after he had, at a court sitting, declared he supported the request for temporary detention of a person arrested at the demonstration of 22 October 2020 following the judgment of the Constitutional Tribunal in the matter of abortion, as this was the official order he had received in writing, although personally he was against it.

Prosecutor Tomasz Nowicki of the Investigation Department, Warsaw - Praga Regional Public Prosecution Service in Warsaw, intended to commence an investigation in the matter of waived publication of a judgment of the Constitutional Tribunal. Together with the then Head of the Investigation Department, Prosecutor Józef Gacek, he informed Paweł Blachowski, the then Regional Public Prosecutor for Warsaw - Praga of the decision. Prosecutor Paweł Blachowski transferred prosecutor Tomasz Nowicki to the Commercial Crime Department, and as of 15 April 2016 he dismissed prosecutor Józef Gacek from the function of the Head of the Investigation Department, following which he transferred him to the Judicial Department.

Delegated too, were e.g.:

- Milan Danielewicz – prosecutor of the Ostrów Wlkp. Regional Public Prosecution Service, delegated to the Mława District Public Prosecution Service,
- Jarosław Jaczyński - prosecutor of the Lublin Divisional Public Prosecution Service, delegated to the Lublin – South District Public Prosecution Service in Lublin,
- Dariusz Kończyk - prosecutor of the Jelenia Góra Regional Public Prosecution Service, delegated to the Lubań District Public Prosecution Service,
- Małgorzata Kopczyńska - prosecutor of the Jelenia Góra Regional Public Prosecution Service, delegated to the Zgorzelec District Public Prosecution Service,
- Andrzej Litwińczuk – prosecutor of the Branch Department in Białystok to the Białystok North District Public Prosecution Service,
- Andrzej Markowski – prosecutor of the Lublin Divisional Public Prosecution Service, delegated to the Włodawa District Public Prosecution Service,
- Piotr Michalak - prosecutor of the Lublin Regional Public Prosecution Service, delegated to the Opole Lubelskie District Public Prosecution Service,
- Witold Niesiołowski - prosecutor of the Gdańsk Regional Public Prosecution Service, delegated to the Gdynia District Public Prosecution Service,
- Andrzej Padała – prosecutor of the Lublin Divisional Public Prosecution Service, delegated to the Kraśnik District Public Prosecution Service.
- Maciej Prabucki - prosecutor of the Jelenia Góra Regional Public Prosecution Service, delegated to the Lubań District Public Prosecution Service,
- Marcin Śliwiński - prosecutor of the Jelenia Góra Regional Public Prosecution Service, delegated to the Zgorzelec District Public Prosecution Service,
- Urszula Turzyńska - Schultz - prosecutor of the Gdańsk Regional Public Prosecution Service, delegated to the Gdynia District Public Prosecution Service,
- Henryk Żochowski – prosecutor of the Białystok Divisional Public Prosecution Service, delegated to the Wysokie Mazowieckie District Public Prosecution Service.

Still serving their delegations are, e.g.:

- Hanna Borkowska - prosecutor of the Gdańsk Regional Public Prosecution Service, delegated to the Gdańsk-City Centre District Public Prosecution Service in Gdańsk since 28 November 2016.
- Wojciech Łuniewski - prosecutor of the Warsaw Regional Public Prosecution Service, delegated to the Piaseczno District Public Prosecution Service,
- Dariusz Różycki – prosecutor of the Gdańsk Regional Public Prosecution Service, delegated to the Gdańsk - Oliwa District Public Prosecution Service since 10 December 2016.
- Dariusz Witek - Pogorzelski – prosecutor of the Gdańsk Regional Public Prosecution Service, delegated to the Gdynia District Public Prosecution Service.

One should note that the list of the prosecutors delegated in the disciplinary fashion is incomplete, since not all prosecution units provided their data; some of them declared that the requested information had been processed. Moreover, some prosecutors did not consent to having their personal data quoted in the report.

Another form of a *quasi* disciplinary sanction consists in **delegation to another organisational unit of the prosecution service away from the place of work or residence** for a period of up to 6 months without the prosecutor's consent.

To provide and example, delegation of the kind affected Mr Mariusz Krasoń, prosecutor of the Kraków Divisional Public Prosecution Service, delegated to the Wrocław - Krzyki West District Public Prosecution Service located 300 km away from his residence for the period of 6 months, i.e. from 8 July 2019 to 7 January 2020, even though he was taking care of his elderly parents.

A tragedy accompanied the delegation of prosecutor Dariusz Wituszko from the prosecutor services in Szczecin to Rzeszów 600 km away; the delegation ended in his death.

Delegated away from the place of his abode was Mr Zbigniew Szpiczko, prosecutor of the Białystok Regional Public Prosecution Service (member of the Lex Super Omnia Association of Prosecutors). Despite his very demanding family status which required ensuring care over his next of kin, he was delegated to the Suwałki District Public Prosecution Service away from his residence for the period from 11 December 2017 to 10 February 2018. Back in 2017, prosecutor Zbigniew Szpiczko was holding a multi-thread investigation connected with irregularities discovered in the local school complex. One of the side threads of the case concerned the legal counsel of the city police headquarters in Białystok, suspected of overstepping his authority. In December 2017, prosecutor Zbigniew Szpiczko applied to the court for conditional dismissal of the charges against the counsel. Meanwhile, he continued the main investigation. The management of the prosecution services did not agree with the motion, as they anticipated he would lodge an indictment against the counsel and that the latter would be put on trial. The prosecutor did not comply and requested that he would be given an amended order or excluded from the case; his request was not granted. Zbigniew Szpiczko was, already at the time, a member of the Lex Super Omnia Association of Prosecutors and the defence counsel in one of the first disciplinary cases laid against Krzysztof Parchimowicz,

President of Lex Super Omnia. In the period, the prosecutor was also on the team dealing with an investigation into forging signatures on the letters of support for the candidates of the National Movement before the elections to the local governments in 2014. The decision imposing delegation for two months was issued on 8 December 2017 by Elżbieta Pieniążek from the Białystok Divisional Public Prosecution Service. Despite the Prosecutor's request for amending the decision, prosecutor Elżbieta Pieniążek did not change it; later, the delegation was extended by another 4 months by the National Public Prosecutor, Bogdan Święczkowski.

Delegated on the same terms was also Mr Zbigniew Pustelnik, prosecutor of the Katowice Divisional Public Prosecution Service who, having found no reasons to continue the application of the temporary detention measure in one of his cases in December 2018, was delegated to the Zabrze District Public Prosecution Service for 6 months. Upon the lapse of the period, the National Public Prosecutor, Bogdan Święczkowski, delegated him again to the same unit, which violated the regulations of the Act on the Public Prosecution Service (Art. 106(1) and 106(2) of the cited act). Several days later, the National Public Prosecutor changed his delegation decision pointing to Art. 106(3) as the grounds for continuing the delegation at the Katowice District Public Prosecution Service.

The management board of the Lex Super Omnia Association of Prosecutors turned to the National Council of Prosecutors stating specific incidents of delegation and reporting them as a form of retorsion and infringement on the prosecutors' independence. In the letter of 23 May 2017, the National Council of Prosecutors at the Prosecutor General informed that it would only deal with the matter of infringing on prosecutors' independence on request from the specific person concerned. However, when a request of the kind was lodged by prosecutor Zbigniew Szpiczko, his delegation away from the place of his abode for the period of 6 months was not found to constitute an infringement on his independence as a prosecutor.

On 18 January 2021, seven prosecutors, members of the Lex Super Omnia Association of Prosecutors, were delegated without their consent to prosecution units away from the place of their usual abode:

1. Prosecutor Katarzyna Kwiatkowska from the Warsaw - Praga Regional Public Prosecution Service in Warsaw to the Golub - Dobrzyń District Public Prosecution Service (more than 180 km away from her residence),
2. Prosecutor Katarzyna Szeska from the Warsaw - Wola District Public Prosecution Service in Warsaw to the Jarosław District Public Prosecution Service (324 km away from her residence),
3. Prosecutor Ewa Wrzosek from the Warsaw - Mokotów District Public Prosecution Service in Warsaw to the Śrem District Public Prosecution Service (310 km away from her residence),
4. Prosecutor Jarosław Onyszczuk from the Warsaw - Mokotów District Public Prosecution Service in Warsaw to the Lidzbark Warmiński District Public Prosecution Service (260 km away from his residence),
5. Prosecutor Mariusz Krasoń to the Kraków - Podgórze District Public Prosecution Service,
6. Prosecutor Daniel Drapała from the Wrocław Regional Public Prosecution Service to the Goleniów District Public Prosecution Service (411 km away from his residence),
7. Prosecutor Artur Matkowski from the Poznań - Grunwald District Public Prosecution

Service to the Rzeszów District Public Prosecution Service (620 km away from his residence).

The information shared by prosecutor Jacek Skała, of the allegedly higher number, i.e. 18 delegated prosecutors, has not been corroborated so far, and the Prosecutor has not disclosed the personal data of the persons to the public. No such information can be provided either by the National Public Prosecutor, Mr Bogdan Święczkowski.

In reply to the interpellation from Kamila Gasiuk – Pichowicz, MP, dated 19 January 2021, in his letter of 4 May 2021, Mr Bogdan Święczkowski wrote that the requested information had been processed, and, quote: 'its compilation would require a review of the documentation covering the indicated period and an analysis of the personal files from across the country. One should add that the right to delegate prosecutors to take up work at other organisational units also rests with the divisional and regional public prosecutors'. It would be hard to understand that interpretation of the act on access to public information, were it not for the heretofore experience the Lex Super Omnia Association of Prosecutors has accumulated in addressing requests under the act at e.g. the National Public Prosecution Service, and similarity of the arguments used, not to go as far as claiming their identity. Nevertheless, it was surprising in view of the fact that the requested information concerned 19 days in the year 2021.

Hence, nobody knows how information on 18 prosecutors delegated away from their usual residence on 15 January 2021 made its way to the media. Is this, perhaps, the case of the left hand not knowing what the right hand is doing, or perhaps stating the number is impossible considering that only 7 prosecutors of the Lex Super Omnia Association of Prosecutors were delegated?

The legal basis of the decisions to delegate 7 members of the Lex Super Omnia Association of Prosecutors away from their place of abode was Art. 106(2) of the Act on the Public Prosecution Service. The gist of the regulation has to date formed the basis for the so-called promotion delegations, as suggested by its correlation to Art. 108 of the above-cited act. Pursuant to the reading of the Article, the prosecutor delegated to another organisational unit of the prosecution services (where the text semantically corresponds to Art. 106(2) of the act) is paid an increased remuneration following 6 months of the delegation, at the base tier prescribed for the unit, and if the prosecutor has already reached the level, at the next higher tier. The above regulation does not open the option of delegating a prosecutor away from his/her residence to a unit of equivalent or lower level. This is because if upon the lapse of the 6 months the prosecutor consented to the delegation based on the regulation of Art. 106(2) of the act, this would not carry the effect of his/her earning his/her salary at any higher tier. In this context, the decision of the National Public Prosecutor is unlawful in its essence and infringes on the act. This is because if one were to assume that the motivation behind the actions of the National Public Prosecutor is honest, namely the reason lies in supporting the units with personnel shortages, he should apply the regulation of Art. 106(3) of the Act on the Public Prosecution Service, which reads that in particularly well-grounded cases, if the personnel status requires so, he can delegate a prosecutor, though to a unit located farthest within the district where the unit employing him/her has its main offices. The reason is that the regulation, being a *lex specialis*, imposes major restrictions on delegating prosecutors for manning reasons, which is connected with a deviation from the general rule laid down in Art.

121(1) of the Act on the Public Prosecution Service and in its essence is intended to exclude the extraordinary hardship of delegation away from the place of abode, if not connected with promotion.

Art. 106(8) of the Act on the Public Prosecution Service indicates the clearly repressive nature of the regulation, not substantiated by the actual need for potential relocation of the prosecutor Staff; the Article stipulates that the delegation period is not inclusive of the time over which the delegated prosecutor did not perform his official duties because of an illness. Hence, in actual fact the reasons substantiating delegation of up to six months a year to another organisational unit of the prosecution services do not lie in the organisational needs of the prosecution services in view of the fact that the decision is not dependent on the organisational needs of the services (the legislator did not indicate any reason which would give the grounds for making the delegation decision). Pointing to the repressive nature of the institution too is the fact that there is no need to consider further desirability of delegation of the prosecutor who did not perform his official duties in the delegation period because of an illness.

Mis Ewa Bialik, press spokesperson of the National Public Prosecution Service, in her answers to the questions from journalists about delegation of the above listed prosecutors, given on 18 January 2021, voiced a position which also referred to Art. 106(3) of the Act on the Public Prosecution Service:

'The National Public Prosecution Service has made the decision to back those prosecution units which have suffered the gravest staffing problems due to the COVID 19 pandemic we are going through. The decision is meant to facilitate the proceedings of the smallest and most overworked prosecution units all over Poland. They will be aided by temporarily delegated prosecutors from larger units, also of higher levels. Their experience is anticipated to improve the efficiency of the understaffed units swiftly and effectively'.

In addition, one should note, to quote after the reply provided by Mr Bogdan Święczkowski, National Public Prosecutor, of 4 May 2021 to the interpellation from Ms Kamila Gasiuk – Pichowicz, MP: 'the decisions to delegate prosecutors were dictated by the understaffing of the indicated district public prosecution units. The decisions were preceded with an analysis of the staffing level versus post numbers of the units the analysis covered, and were guided by the actual number of staff and the case workload per predicate'.

The reply provided by the National Ombudsman on 7 April 2021 explains that the delegations were based on the need to ensure unperturbed operations of those organisational units of the prosecution which, quote: 'were most severely hit by staffing problems due to the current pandemic of the SARS-COV-2 virus'.

The data obtained based on the Act on access to public information show that as at 15 January 2021, the Kraków - Podgórze District Public Prosecution Service in Kraków had 33 predicate posts assigned, including 28 available to prosecutors and 5 to assistant prosecutors, where the official duties were actually performed by 23 prosecutors and 3 assistant prosecutors. The same data also show that 4 prosecutors were delegated from that unit to the Kraków Regional Public Prosecution Service. Had it not been done, there would have been one prosecutor's job vacant. The situation was similar at the City of Rzeszów District

Public Prosecution Service where, as at 15 January 2021, official duties were actually performed by 21 prosecutors out of 29 existing predicate jobs, provided that a dozen or so prosecutors had been delegated to the Regional Public Prosecution Service in 2020.

The reply provided by the Golub - Dobrzyń District Public Prosecution Service to the request from the Lex Super Omnia Association of Prosecutors filed under the Act on access to public information shows that the unit was allocated three predicate jobs, with two staffed. At the time prosecutor Katarzyna Kwiatkowska began her delegation, one of the prosecutors took a 6 months' medical leave. Thus, the delegation did not alleviate the allegedly tough situation of the unit in terms of its staffing level which remains unchanged. A similar situation was recorded for the Lidzbark Warmiński District Public Prosecution Service. The information obtained indicates that the unit has 4 predicate jobs at its disposal with 3 manned as at 15 January 2021.

Other district public prosecution units had single predicate jobs vacant; however the management of the units did not apply to the regional public prosecution services for staffing support considering that the predicate staffing was sufficient to ensure stable work organisation at the units. As goes for the Jarosław District Public Prosecution Service, on the other hand, the unit was fully staffed, the fact corroborated with the information obtained based on the Act on access to public information, which reveals that the Jarosław unit was allocated 9 predicate jobs and all were manned. The same was confirmed by prosecutor Marta Pętkowska, Regional Public Prosecutor in Przemyśl.

Moreover, one should point out that the heads of the units to which the 7 prosecutors were delegated had not applied to the Regional Public Prosecutor for staffing support, nor the Regional Public Prosecutors had filed any such requests with the National Public Prosecutor, the fact confirmed with the information obtained based on the Act on access to public information.

The reply of the National Public Prosecutor, Bogdan Święczkowski, of 2 May 2021 to the interpellation from Ms Kamila Gasiuk – Pichowicz, MP, further indicates that delegated away from their place of abode were prosecutors based in those units where, quote: 'the staffing level was stable. Before making the delegation decisions the epidemiological situation in the country had been taken into account'.

The data obtained based on the Act on access to public information reveal that delegated from the Warsaw - Wola District Public Prosecution Service in Warsaw in 2020, i.e. the unit from which prosecutor Katarzyna Szeska had been delegated, were: 3 prosecutors to the Warsaw Regional Public Prosecution Service, 1 prosecutor to the Warsaw Ochota District Public Prosecution Service, and 1 to the Warsaw City Centre District Public Prosecution Service. As at 15 January 2021, the actual employment level was: 36 prosecutors and 5 assistant prosecutors out of 45 allocated predicate jobs.

The Warsaw - Mokotów District Public Prosecution Service in Warsaw has 37 predicate jobs at its disposal. In the year 2020, three prosecutors were delegated to the Warsaw Regional Public Prosecution Service and one to the Warsaw Ursynów District Public Prosecution Service. In addition, two delegations to the Warsaw Regional Public Prosecution Service were extended, and the same concerns one delegation to the Warsaw Divisional Public Prosecution Service

and one to the National Public Prosecution Service. Back in 2020, 4 prosecutors were delegated to the Warsaw Mokotów District Public Prosecution Service. As at 15 January 2021, the actual staffing was 26 prosecutors and assistant prosecutors. Once prosecutors Ewa Wrzosek and Jarosław Onyszczuk had been delegated, the understaffing aggravated and stood at 13 vacant predicate jobs as at 18 January 2021.

The military departments of the Poznań district public prosecution services had 2 vacant predicate jobs. What is important, though, the data provided by the Poznań Regional Public Prosecution Service reveals that as at 15 January 2021 out of the 269 full time jobs allocated to the region 29 prosecutors were on delegations to units of higher levels. Actually staffed were 240 jobs.

With all certainty, it also needs to be stated that in most cases the cause of minor vacancies, compared e.g. to the Warsaw units, did not lie in the COVID 19 pandemic, and using it to provide reasons to the decisions of the National Public Prosecutor was unbecoming, to say the least.

Untrue too was found yet another argument raised in the statement of the press spokesperson of the National Public Prosecutor, which concerned the delegation of 7 prosecutors to the units, quote: 'more burdened with workload'. The same argument was repeated in the reply provided to the National Ombudsman by Bogdan Święczkowski, National Public Prosecutor.

For instance, the work results in statistical figures for the Golub - Dobrzyń District Public Prosecution Service where prosecutor Katarzyna Kwiatkowska was delegated, are very good, unlike those of the Commercial Crime Department of the Warsaw - Praga Regional Public Prosecution Service in Warsaw from which she was delegated. An analysis of the data obtained based on the Act on access to public information from the Golub - Dobrzyń District Public Prosecution Service for the year 2020 shows that a minor number of cases were outstanding and in arrears from the previous reporting period (31 cases), they had no long-term proceedings in progress (i.e. any proceedings which would take more than 1 year and up to 5 years), a modest number of new cases the unit would open (1082 cases), inquest being the dominating form of the preparatory proceedings (380 cases), and a large number of decisions refusing to initiate an inquest (608).

The situation is similar at the Lidzbark Warmiński District Public Prosecution Service. Their statistical data for 2020 show few outstanding cases in arrears from the previous reporting period (66 cases), no long-term proceedings (between 1 and 5 years), few new cases taken up by the unit (1312 cases), inquest being the dominating form of the conducted preparatory proceedings (568 cases), and a large number of decisions to refuse opening an inquest (646 cases).

The Szczecin Regional Public Prosecution Service refused to provide the requested information stating it had been processed.

The National Public Prosecutor considered it irrelevant that the temporarily delegated prosecutors left their sections, which would require the new officer to study a high number of cases or volumes of documentation of preparatory proceedings involving numerous people, often complex in terms of the factual and legal status. As it turns out, the good of the case,

swiftness and efficiency of the preparatory proceedings in progress are of no significance, despite the highest number of long-term proceedings taking more than 6 months recorded since 2014 (increase by 270%) and older ones (increase by 370 to 390%) whilst the rate of new cases remains comparable. Forgotten too, is the right of the rank and file citizen to have the case considered within a reasonable time frame, as ensuing from Art. 45(1) of the Constitution, and the right to have the case tried within a reasonable time, as proclaimed in Art. 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

The actual cause of staffing shortfalls suffered e.g. by the Warsaw units or the units in other large cities, lies in the irrational staffing policy pursued by the management of the Prosecution Services. '*Delegatiosis*' is the phenomenon commonly known among the prosecution services, consisting in delegating prosecutors to units of higher levels with disregard of numerous parameters, to name e.g. the number of cases in progress at the district public prosecution services, the criteria of promotion, the number of potentially available delegations considering the predicate staff resources in place. As at 31 December 2017, out of 4,077 manned prosecutor and assistant prosecutor jobs at the district public prosecution services, 646 prosecutors of the units were delegated to units of higher levels, including 31 to the National Public Prosecution Service, 68 to the divisional public prosecution services, and 547 to the regional public prosecution services. In the year 2018, the number increased by at least 286 prosecutors, and in 2019 by at least 270 prosecutors. Even if one assumes that some of those persons have returned back to their home prosecution units from their delegations, or have been promoted, the number of prosecutors delegated from the district public prosecution services to units of higher levels still triggers serious reservations, particularly that more than 98% new cases undertaken by the prosecution services in 2018, i.e. 1,067,764 cases, were registered with the district public prosecution services; the corresponding figure for 2019 stood at 1,109,608 cases.

This is a way to create staffing shortfalls then intended to substantiate delegation of other prosecutors to units of lower or the same level. One can observe it in the district public prosecution services where prosecutors from one unit within the specific region are delegated to another unit, most often for a statistical period of half a year or one year. It is them who bear the consequences of the irrational personnel policy which could be improved through nothing more than e.g. radical reduction of promoting delegations and adoption of the rule that the prosecutor's place of work is consistent with his/her official title.

Doubtlessly, rational administrators of budgetary funds, where both the Prosecutor General, and the National Public Prosecutor are ones, should take into consideration the financial costs of the personnel decisions they make, and actually they expend considerable funds on prosecutors delegated in the promotion mode. After 6 months of delegation a prosecutor delegated to a higher level acquires the right to a much higher salary in accordance with the rules laid down in Art. 108 of the Act on the Public Prosecution Service; the same term for prosecutors delegated to two departments of the National Public Prosecution Service, including its field branches, is 3 months. In extreme cases, a prosecutor of the district public prosecution service may in this way progress from tier 1 to tier 7.

The National Public Prosecution Service also pays the prosecutors delegated away from their residence in the mode of the *quasi* disciplinary sanction. This aspect is regulated in the Act

on the Public Prosecution Service and the Regulation of the Minister of Justice of 1 March 2019 on delegating prosecutors to the National Public Prosecution Service or the Minister of Justice, and the National School of Judiciary and Public Prosecution; the regulations cover the benefits owing to the prosecutors delegated away from their regular place of service (Journal of Laws 2019, it. 509). Applicable too is the Regulation of the Minister of Labour and Social Policy of 29 January 2013 on the amounts due to employees of state or local government budgetary units for business travels (Journal of Laws 2013, it. 167). Ensuing from the above regulations, a prosecutor is eligible for a monthly lump sum to cover the costs of accommodation, reimbursement of the costs of travel to his/her place of abode, a lump sum to cover the costs of commuting by public transport, and per diems.

In the situation, it would be cheaper and more rational to have at least some of the delegated prosecutors return to their home units, especially when the persons live in the nearest vicinity.

All delegation decisions are extremely brief, devoid of reasons, or the right to appeal from them, just as in the case of demotion decisions. Although, admittedly, the regulations of the Act on the Public Prosecution Service do not require any such element, no reasons of the delegation decisions, provided to the delegated prosecutors prevents them from verifying their reasonableness and, hence, their legality. Contrary to what the legislator intended, another aspect of the institution, namely the prosecutor's qualifications which should be taken into account when making a decision of the kind is forgotten or consciously neglected.

In the reply provided by Bogdan Święczkowski, National Public Prosecutor, to the National Ombudsman, the respondent said that the decisions to delegate prosecutors fall, quote: 'within the discretional authority of their superiors'. If we were to adopt this concept of the employer – prosecutor relationship, we would be left to conclude that the Polish law, including the superiority line pragmatics contained in the Act on the Public Prosecution Service, enables reducing employees to mere objects and disregard their reasonable interests and rights. This, however, would come down to negating the fundamental principles which underly the labour law applicable to prosecutors (Art. 130 of the Act on the Public Prosecution Service), as they are employees in the sense of the Labour Code. The principles are: equal treatment and non-discrimination, respect for the employee dignity, and personal rights of each prosecutor.

On 19 January 2021, Prof. Adam Bodnar, National Ombudsman, filed an inquiry with the Prosecutor General, Zbigniew Ziobro, and the National Public Prosecution Service concerning unexpected delegation of prosecutors, members of the Lex Super Omnia Association of Prosecutors, to organisational units of the prosecution services located hundreds of kilometres away from the home addresses of the delegated prosecutors. The Ombudsman pointed out that the Prosecutor General was obliged to respect the dignity and other personal rights of the employees and could not use his authority for purposes contradictory to the principles of social coexistence. He also raised the argument of the epidemic which hinders taking the most basic actions, to name e.g. a search for temporary accommodation. He noted that: 'the decisions of the Prosecutor General made with respect to the board members of the Lex Super Omnia Association of Prosecutors which has expressed critical opinions on the management of the prosecution services trigger even more doubt and can be perceived as retortion for their legal activities in the Association'.

Beyond doubt too is the fact that the regulations of Art. 106 of the Act on the Public Prosecution Service applicable to delegations without the prosecutor's consent do not meet international standards, and their practical application has proved that the concerns expressed by the international institutions in the creation of the deeds were more than substantiated.

The acts of international law require special transparency and following objective rules when delegating a prosecutor to perform his/her duties in another unit.

The Guide on the Status and Role of Prosecutors published by the United Nations Office on Drugs and Crime, and International Association of Prosecutors in 2014 (https://www.unodc.org/documents/justice-andprison-reform/HB_role_and_status_prosecutors_14-05222_Ebook.pdf) notes that decisions to transfer a prosecutor to another unit can impinge on his/her independence and carry a negative effect on his/her morale, which may result in a negative effect on the operational effectiveness of the entire prosecution service. It further notes that delegations must not be tantamount to professional demotion, since any such actions may only be taken by disciplinary courts, whereas permitting any such actions paves the way to far reaching misuse and intrudes on the prosecutors' internal independence.

That is why, Recommendation Rec. (2000)19 of the Council of Europe on the role of public prosecution in the criminal justice system of 6 October 2000 (https://rm.coe.int/16804be55a) requires that delegation of a prosecutor to another unit must be carried out according to fair and impartial procedures based on objective criteria. The Recommendations of the Council of Europe on the role of public prosecution in the criminal justice system of 6 October 2000, as well as the opinion of the Consultative Council of European Prosecutors on the European standards and rules which build the status of the prosecutor (the so-called Rome Charter) of 17 December 2014, point XII, note that, quote: 'The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review'. The Explanatory Note points out that the possibility to transfer a prosecutor without his/her consent should be regulated by law and limited to exceptional circumstances such as the urgent need of the service and taking into account the prosecutor's current position, specialisation, and family situation, with the possibility to appeal from the decision to an independent body.

International institutions pay special attention to prosecutor delegations without consent of the concerned, since this carries the risk of using delegation as an instrument of lawless pressure on prosecutors (European Commission for Democracy through Law, or the so—called Venice Commission, Report on the independence of the judicial and prosecutions systems: Part II – Prosecution, of 3 January 2011, https://rm.coe.int/1680700a60). According to the opinion of the Venice Commission, if the act of law permits delegating a prosecutor without his/her consent, it should also provide for appropriate guarantees so as to make sure that decisions of the kind do not turn into an implied disciplinary sanction imposed without disciplinary proceedings, especially when the delegation is to a unit lower in the hierarchy (M. Szeroczyńska, Międzynarodowy standard statusu i organizacji prokuratury a najnowsze zmiany

polskiego porządku prawnego, Czasopismo Prawa Karnego i Nauk Penalnych 2017, No. 2, pp. 125-126).

In addition, one should point to the ECHR's judgment in the case of Laura Kövesi v. Romania, which made reference to the growing importance of the instruments promulgated by the Council of Europe and the European Union concerning the need to ensure that prosecutors removed from their offices are guaranteed a fair court procedure independent of the executive or legislative authorities.

It was an extraordinary disciplining measure for the attorney of the National Public Prosecution Service to file an action with the court against prosecutor Katarzyna Kwiatkowska for an alleged infringement on the unit's rights, claiming the payment of PLN 250,000. The lodged statement of claim represented a typical legal action of the SLAPP type (Strategic Lawsuit Against Public Participation) aimed at hushing criticism by creating the so-called 'chilling effect' rather than winning the case.

One should note that the practice of SLAPP type actions was, on 25 November 2020, condemned by the European Parliament in its resolution.

Another problem which became apparent in the times of the 'good change' in the prosecution services affects the prosecutors on sick leaves for any period of up to one year, where the medical leave is then followed by the ZUS *[Social Insurance Institution]* decision pronouncing the concerned not permanently unable to work. In addition, on order from the National Public Prosecutor of 27 April 2017, all divisional and regional public prosecutors were obliged to lodge protests with the ZUS medical commission against the statements of the ZUS predicate physician of permanent incapacity to perform the service. As a consequence of the above, the Prosecutor General issued decisions refusing consent to retire prosecutors for health reasons without a detailed analysis of each and every case. Over the time, the prosecutors were deprived of their livehood and of the possibility to avail themselves to health insurance (e.g. Katarzyna Bosiakowska, prosecutor of the Warsaw Regional Public Prosecution Service delegated to the Warsaw - Żoliborz District Public Prosecution Service in Warsaw). Their health did not allow them to return to work, whilst at the same time, according to the Prosecutor General, it did not substantiate their retirement. In this way, retirement was hindered for prosecutor Mirosław Tracz; the lawsuit took almost 2 years following the moment he became eligible. In 3 cases, the Supreme Court granted the appeals from prosecutors and ordered reconsideration of their cases by the Prosecutor General. Late in 2018, the Prosecutor General restated his original decisions. Noteworthy is the decision of the Prosecutor General, dated 15 November 2018, issued with respect to prosecutor Andrzej Tańcula. In the decision, we read that granting the request would be disadvantageous since the prosecutor could not return to active service. This position is in glaring contradiction with the reading of the binding Act on the Public Prosecution Service. The legal regulations binding today stipulate that prosecutors in such a situation are eligible for 50% of the remuneration owing.

As concerns delegations, it also needs to be noted that the list of the delegated prosecutors incorporated in this report is not exhaustive, since individual units of the prosecution services refuse to provide data, and some prosecutors refused to have their personal data disclosed in apprehension of further repercussions from their superiors.

This study omits typical forms of persecution such as burdening prosecutors with disproportionate workloads, assigning duties which require prompt actions, changing their scopes of duties, calling off and changing their assistants, allocating them with premises which insult the dignity of the office, or other forms of impeding day-to-day dignified performance of duties, etc.

Yet another instrument of the group of prescriptive regulations which create an opportunity to affect the prosecutor's independence indirectly, is the adopted model of the disciplinary procedure, including the appointment of prosecutors to the functions of Deputy Disciplinary Ombudspersons, the issue discussed in the next chapter.

III LEGAL DEFECTIVENESS OF THE APPOINTMENT OF PROSECUTORS TO THE FUNCTIONS OF DEPUTY DISCIPLINARY OMBUDSPERSONS BY THE PUBLIC PROSECUTOR GENERAL AND NATIONAL PUBLIC PROSECUTOR IN THE YEARS 2016-2020, WHICH RESULTED IN ILLEGALITY OF THE ACTIONS TAKEN IN THE DISCIPLINARY SYSTEM

The regulations introduced by the legislator in the Act of 26 January 2016 on the Public Prosecution Service and applying to disciplinary liability of prosecutors and their liability under the terms of service put the sole authority to 'appoint' prosecutors to the functions in the Prosecution Services both new and previously unprovided for in the law, to name e.g. Deputy Disciplinary Ombudspersons for divisional districts in the hand of the Public Prosecutor General (Art. 153(1) of the Act on the Public Prosecution Service). In § 1 of the said regulation, the legislator stipulates that the Public Prosecutor General appoints the ombudspersons 'for the term of office', and in § 2 sets the duration of the term of office for 4 years. Equally important is the fact that in Art. 153(3), the legislator ensured independence to the persons performing the functions of the Disciplinary Ombudspersons with respect to their initiating and conducting explanatory proceedings and conferred onto them the authority to appear before the Disciplinary Court in the capacity of the accusers enjoying the right to file applications and declarations, and to apply for and support appeal measures. The legislator's intention to ensure independence to the Ombudspersons in their offices finds confirmation in Art. 153(4) of the Act on the Public Prosecution Service which introduces the general proscription of dismissing the ombudspersons before the lapse of their term of office, except for specific cases specified in the Act.

Meanwhile, the practice of appointing prosecutors to the prosecution functions of prosecutor Deputy Disciplinary Ombudspersons, as evolved in the years 2016 – 2020, blatantly infringes on the above statutory requirements.

The legal defectiveness of the reviewed practice stems from:

- the Public Prosecutor General's failure to comply with the statutory obligation of appointing prosecutor Deputy Disciplinary Ombudspersons for divisional districts for the 4-year term of office,
- the National Public Prosecutor's overstepping of his authority by impinging on the statutorily sole authority of the Public Prosecutor General to appoint and dismiss prosecutors, Deputy Disciplinary Ombudspersons for divisional districts and issuing deeds of temporary 'entrustment of the functions' non-existent in the act of law, and 'extensions of the term of office in the function' again irrespective of the law.

The text of the documents obtained by the Lex Super Omnia Association of Prosecutors based on the Act of 6 September 2001 on access to public information reveals that as concerns the prosecutors appointed to the functions of Deputy Disciplinary Ombudspersons for divisional districts, the Public Prosecutor General and the National Public Prosecutor did not issue deeds of 'appointment' for the statutorily prescribed 4-year term of office; they merely 'entrusted' 'the function' temporarily (usually for the period of 6 months), thus

deviating from the 4-year term set by the act of law.

In the Public Prosecutor General's ordinance No. 7 of 7 March 2016 on delegation of the authority to appoint prosecutors to functions in ordinary organisational units of the prosecution services: 'the Public Prosecutor General, Zbigniew Ziobro, authorised the National Public Prosecutor, Bogdan Święczkowski, to make and sign decisions appointing prosecutors to the functions in the ordinary organisational units of the prosecution services, except for the functions of the divisional public prosecutor, deputy divisional public prosecutor, regional public prosecutor, and deputy regional public prosecutor'. One should pay attention to the reading of the authorisation, as it is detailed and precise. It repeats the statutory regulation of Art. 15(4) of the Act on the Public Prosecution Service. So, the National Public Prosecutor can 'appoint' a prosecutor to a function, but cannot 'dismiss' him/her from his/her function. The above ordinance came into force and effect as of the day it was signed.

An analysis thereof indicates that the authority of the National Public Prosecutor covered only the right to 'appoint' to the function for the term of office, applicable to Deputy Disciplinary Ombudspersons for divisional districts. On the other hand, it did not cover 'entrustment of the functions' or dismissal from the functions. Hence, one must state that the Public Prosecutor General could not have conferred onto the National Public Prosecutor the authority to 'entrust the functions' of the Deputy Disciplinary Ombudspersons for divisional districts, since both in the then state of the law he was not, and in the current state of the law he is not competent to 'entrust the functions'. The exclusive authority of the Public Prosecutor General to 'appoint' and 'dismiss' disciplinary ombudspersons, as ensuing from Art. 153(1) of the Act of 26 January 2016 on the Public Prosecution Service, was corroborated in § 1(8) of Ordinance No. 4/16 (as well as in No. 21/17 and No. 23/18) of the Public Prosecutor General, dated 8 March 2016 (and correspondingly, dated 28 March 2017 and 30 July 2018) on determination of the scope of duties of the Public Prosecutor General, National Public Prosecutor, and the other deputies of the Public Prosecutor General. The same competence-setting deeds, in their § 2(1) and 2(4), authorise the First Deputy Public Prosecutor General, i.e. the National Public Prosecutor, Bogdan Święczkowski, to 'substitute for the Public Prosecutor General over the time of his absence or temporary inability to perform his duties', and to 'make and sign decisions related to appointments to the functions of deputy divisional public prosecutors, deputy regional public prosecutors, and deputy district public prosecutors, as well as decisions related to appointments to other functions in the prosecution services'. Ensuing from the above, the National Public Prosecutor, Bogdan Święczkowski, was not conferred the authority to make, 'in substitution for the Public Prosecutor General' any decisions with respect to Deputy Disciplinary Ombudspersons other than their 'appointment' to the function for the term of office.

To recapitulate the above, one must state that the letters 'entrusting' specific prosecutors with the 'functions' of Deputy Disciplinary Ombudspersons for individual divisional districts have no content which might carry the effect of legal effectiveness of the sovereign acts issued by the National Public Prosecutor. The revealed legal defectiveness of the above-indicated deeds carries the effect that the named prosecutors have no status of Deputy Disciplinary Ombudspersons for the specific divisional districts. Consequently, all actions taken by the persons named as Deputy Disciplinary Ombudspersons for individual divisional districts are made by persons with no authority, and in effect they must be found illegal.

The case of prosecutor Waldemar Moncarzewski from the Lublin Divisional Public Prosecution Service can serve an example and illustration of the defective procedure of entrusting the function of the Deputy Disciplinary Ombudsperson. Initially, in the letter of 19 May 2016 (ref. PK IX K 103.2478.2016) signed by the National Public Prosecutor, prosecutor Waldemar Moncarzewski 'was entrusted with the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district for the period from 25 May 2016 to 24 November 2016. The text of the said document indicates that the author, National Public Prosecutor, Bogdan Święczkowski, was acting 'on authority' from the Public Prosecutor General. In the following letter of 17 November 2016 (ref. PK IX K 103.5349.2016), prosecutor Waldemar Moncarzewski was 'extended the term of his entrusted function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district for the period from 25 November 2016 to 24 May 2017. The said document was signed by the Public Prosecutor General. The letter of 15 May 2017 (ref. PK IX K 1122.1954.2017) 'extended the term of the entrusted function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district, as held by prosecutor Waldemar Moncarzewski for the period from 25 May 2017 to 24 November 2017. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'in substitution for' the Public Prosecutor General. Subsequently, in the letter of 7 November 2017 (ref. PK IX K 1122.3680.2017) the 'term of the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district, entrusted to prosecutor Waldemar Moncarzewski 'was extended' for the period from 25 November 2017 to 24 May 2018. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'in substitution for' the Public Prosecutor General. Yet another letter of 8 May 2018 (ref. PK IX K 1122.1212.2018) 'extended the term of the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district, entrusted to prosecutor Waldemar Moncarzewski for the period from 25 May 2018 to 24 November 2018. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'on authority from' the Public Prosecutor General. The further letter of 6 November 2018 (ref. PK IX K 1122.954.2018) 'extended the term of the function of' the Deputy Disciplinary Ombudsperson for the Lublin divisional district entrusted to prosecutor Waldemar Moncarzewski for the period from 25 November 2018 to 24 May 2019. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'in substitution for' the Public Prosecutor General. In the letter of 9 May 2019 (ref. PK IX K 1122.1200.2019) the 'term of the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district, entrusted to prosecutor Waldemar Moncarzewski 'was extended' for the period from 25 May 2019 to 24 November 2019. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'in substitution for' the Public Prosecutor General. Yet another letter of 31 October 2019 (ref. PK IX K 1122.3032.2019) 'extended' the 'term of the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district, entrusted to prosecutor Waldemar Moncarzewski for the period from 25 November 2019 to 24 May 2020. The text of the said document reveals that the author, National Public Prosecutor, Bogdan Święczkowski, acted 'in substitution for' the Public Prosecutor General.

At this point, we need to remember that the ordinances issued based on Art. 13(3) of the Act on the Public Prosecution Service did not transfer the authority to 'entrust the functions' of Deputy Disciplinary Ombudspersons for divisional districts onto the National Public Prosecutor. In addition, an analysis of Ordinance No. 7/16 of 7 March 2016 on delegation of the authority

to appoint prosecutors to functions in ordinary organisational units of the prosecution services leads to the conclusion that the Public Prosecutor General delegated onto the National Public Prosecutor only the authority to 'appoint' to the functions of e.g. Deputy Disciplinary Ombudspersons for divisional districts and only for the term set in Art. 53(1) of the Act of 28 January 2016: Regulations enacting the Act on the Public Prosecution Service, namely:
- 60 days following the date the act comes into force and effect. With the act coming into force and effect as of 4 March 2016, the considered authority delegated to the National Public Prosecutor expired on 4 May 2016. Meanwhile, the content of the above-specified documents reveals that in the case of prosecutor Waldemar Moncarzewski the National Public Prosecutor did not 'appoint him', but only 'entrusted him with the function', moreover, he did so upon the lapse of the law-defined term of 60 days, i.e. only on 19 May 2016. It further needs to be highlighted that in both the initial deed, and in the subsequent deeds 'extending the term of the function', the set term was shorter than the 4-year term ensuing from the act of law.

One should note that in the letter of 23 April 2020, ref. PK IX K 1122.1239.2020, the National Public Prosecutor, Bogdan Święczkowski, 'appointed' prosecutor Waldemar Moncarzewski 'to the function' of the Deputy Disciplinary Ombudsperson for the Lublin divisional district as of 25 May 2020. The text of the said document shows that the author (National Public Prosecutor, Bogdan Święczkowski) acted 'in substitution' for the Public Prosecutor General. One needs to state that the above sovereign act of 23 April 2020 made an unsuccessful attempt to amend the earlier defective procedure of appointing to the function of the Deputy Disciplinary Ombudsperson for a divisional district. Even though the deed of 'appointment' issued by the National Public Prosecutor does not contain the phrase of 'entrusting the function' used in the earlier deeds, obviously wrong as it was because not stipulated in the law, and even though it does not set the time limit of the function term (shorter than 4 years), this time too, the National Public Prosecutor infringed on the exclusive authority of the Public Prosecutor General to appoint Deputy Disciplinary Ombudspersons for divisional districts, as conferred in Art. 153(1) of the Act of 28 January 2016 on the Public Prosecution Service.

The above infringements on the regulations enjoying the status of statutory acts of law result in legal ineffectiveness of the acts of 'entrusting (extending) the function' and of 'appointing', and in consequence carry further effects of legal defectiveness of all actions taken by the prosecutor (in the capacity of the Deputy Disciplinary Ombudsperson) the act concerns.

The data obtained by the Lex Super Omnia Association of Prosecutors indicate that over the validity period of the Act of 28 January 2016 on the Public Prosecution Service and up to this date, the Public Prosecutor General, Zbigniew Ziobro, and the National Public Prosecutor, Bogdan Święczkowski, issued legally defective acts 'temporarily entrusting the function' or 'extending the function term' to other Deputy Disciplinary Ombudspersons too.

Major legal doubts arise in connection with the suspected non-performance of duties by the Public Prosecutor General, consisting in appointing prosecutors for periods other than the law-required 4-year term of office, and with the suspected overstepping of authority by the National Public Prosecutor, consisting in 'temporary entrustment of function' and 'extension of the function term', both non-existent in the act of law, in the case of the prosecutors listed below:

- for the Łódź divisional district, this concerns: Marek Smus, Jadwiga Bissinger-Kopania, and Rafał Sławnikowski,
- for the Poznań divisional district, this concerns: Romuald Grzybek, Karolina Niemczyk, and Joanna Komolka,
- for the Szczecin divisional district, this concerns: Gabriela Stefaniak, Marcin Lorenc, and Magdalena Blank,
- for the Warsaw divisional district, this concerns prosecutor Małgorzata Ziółkowska-Siwczyk.

As concerns the Wrocław divisional district, major legal doubts arise in the case of prosecutors Artur Jończyk and Krystyna Zarzecka, consisting in the suspected non-performance of duties by the Public Prosecutor General considering that the prosecutors were not appointed for the law-required 4-year term of office, and in 'dismissal from function' of prosecutor Artur Jończyk with the statutory reasons infringed upon, as well as the suspected overstepping of authority by the National Public Prosecutor through 'interim entrustment of function' and 'extension of the function term'. As concerns the Rzeszów divisional district, major legal doubts arise in the case of prosecutors Jaromir Rybczak and Maciej Jaskulski, consisting in the suspected non-performance of duties by the Public Prosecutor General considering that the prosecutors were not appointed for the law-required 4-year term of office, and the suspected overstepping of authority by the National Public Prosecutor through 'extension of the function term' not provided for in the act of law and 'dismissal from function' of prosecutor Jaromir Rybczak with the statutory reasons and the sole authority of the Public Prosecutor General infringed upon.

The Lex Super Omnia Association of Prosecutors was not disclosed the text of the deeds appointing prosecutors to the function of Deputy Disciplinary Ombudspersons for the Divisional Public Prosecution Services: in Białystok – prosecutor Marek Suchocki, Gdańsk - prosecutor Katarzyna Brzezińska, Katowice - prosecutor Mariusz Gózd, and Kraków - prosecutor Małgorzata Ciężkowska-Gabryś.

Noteworthy, the correctness of the appointments of the prosecutor Deputy Disciplinary Ombudspersons was an issue pondered by the National Ombudsman and the media. In the letter of 6 May 2020 (ref. PK IX K 071.43.2020), the National Ombudsman, Adam Bodnar, turned to the Public Prosecutor General, Zbigniew Ziobro, with a request for information on the issue and for copies of the resolutions appointing prosecutors to the function. The National Ombudsman expressed the view that: 'it is reasonable to appoint disciplinary ombudspersons for full terms of office so that they are guaranteed full independence in the actions taken and that no apprehension arises that they may be dismissed the moment their actions are not accepted by their superiors'. Expressing concern about the prosecutors against whom disciplinary proceedings and explanatory procedures are initiated by the Disciplinary Ombudsperson of the Public Prosecutor General and his deputies, and in the interests of the very Disciplinary Ombudsperson of the Public Prosecutor General and his deputies who actively engage in the performance of the duties entrusted to them, the National Ombudsman formulated the following view: 'if disciplinary ombudspersons take actions without being properly appointed, one must conclude that they act overstepping their competences and the actions they take come down to abuse of power'.

As the National Ombudsman sees it: 'if disciplinary ombudspersons take actions without statutorily conferred authority, one must find their appointments defective in legal terms, and the prosecutor appointed to the office takes explanatory and disciplinary actions without the required legal grounds. Consequently, all those actions will be scarred with a legal defect, and this inevitably questions the correctness of the proceedings held and completed to date'.

In his presented line of argument, the National Ombudsman invoked the need to protect civil rights and respect the fundamental rules of a democratic state of law, as ensuing from the Constitution of the Republic of Poland.

In reply to the above inquiry, in his letter of 17 June 2020 the National Public Prosecutor, Bogdan Święczkowski, informed the National Ombudsman that: 'the procedure of appointing prosecutor disciplinary ombudspersons complies with the formal requirements laid down in the respective regulations of the law and is transparent'. The National Public Prosecutor expresses the view that the Public Prosecutor General holds the authority to appoint disciplinary ombudspersons 'for the term of office', as well as to 'temporarily entrust them with the duties of the disciplinary ombudsperson', which, as he sees it, stems 'not only from the regulations of the law, but also from years-long practice'. One should note that the National Public Prosecutor did not provide the National Ombudsman access to copies of the deeds appointing prosecutors to the function of prosecutor disciplinary ombudspersons.

The Lex Super Omnia Association of Prosecutors shares the doubts of the National Ombudsman about the suspected infringement on the law in the procedure of appointing prosecutor disciplinary ombudspersons.

Pursuant to the principle of legalism (rule of law) laid down in Art. 7 of the Constitution of the Republic of Poland, public authorities act based on the law and within the boundaries of the law. The doctrine of the constitutional law and the body of judgments of the Constitutional Tribunal contain repeatedly formulated thesis that presuming competencies of state authorities is forbidden. It has been pointed out that any actions of the authorities taken without their legal basis and outside the law or with the law boundaries infringed upon are

always illegal.

In addition, one should point to the institutional (of special significance) and guarantee-carrying nature of the set term of office, an attribute of the statutorily guaranteed independence of the prosecutors performing the functions. In a substantial number of the analysed cases, the 'incorrectly appointed' Deputy Disciplinary Ombudspersons for individual divisional districts held their function for a time shorter than the law-stipulated 4-year term of office, and their appointment to the function did not end in the way specified in Art. 153(4) of the Act on the Public Prosecution Service, i.e. upon the lapse of the 4-year term of office or dismissal in the particular cases specified in the Act of law. In other words, the duration of holding the function was, in contradiction with the regulations of the Act, made dependent solely on the will of the person who appointed the prosecutor to the function of the Deputy Disciplinary Ombudsperson.

It needs to be stressed that the statutorily-stipulated term of office must not be subject to arbitrary and discretionary restrictions and become the object of its instrumental perception and treatment by the persons managing the Prosecuting Services. The time of appointment to an independent function held for a term of office should doubtlessly be defined in the way specified in the deed of appointment to the function and in such a way as to enable its performance in absolute independence. Obviously, the revealed *contra legem* actions and the attempts made to 'evade' the essence of the term of office result in delegitimisation of the actions and consequently finding no authority to hold the function by the appointees.

The after-effect of the above appears to consist in the arisen substantiated suspicion that the illegally appointed Deputy Disciplinary Ombudspersons acted in overstepping their authority and to the detriment of the public interests and the private interests of the prosecutors subject to disciplinary actions they took.

Irrespective of the above comments on the illicit actions of the Public Prosecutor General and National Public Prosecutor in pursuance of their obligation to appoint prosecutor Deputy Disciplinary Ombudspersons for divisional districts, stemming from Art. 153(1) of the Act on the Public Prosecution Service, one should note the suspected infringement on the law, consisting in lawless allocation of duty allowance of at least 0.4 the base salary to the prosecutors appointed in the period from May 2016 to May 2019.

Noteworthy, the relevant Regulation of the Council of Ministers which defined the size of the duty allowance owing to prosecutors, Deputy Disciplinary Ombudspersons, was first issued as late as on 28 February 2019 and came into force and effect as of 1 May 2019.

IV THOSE 'EQAUAL AND MORE EQUAL' APPLICABLE TO DEPUTY DISCIPLINARY OMBUDSPERSONS – THE PRINCIPLE OF EQUAL TREATMENT OF PROSECUTORS.

One of the basic obligations of every prosecutor, also the one performing the duties of the disciplinary ombudsperson, are those of impartiality and equal treatment. This stems directly from the Act on the Public Prosecution Service where the regulation of Art. 6 reads: 'The prosecutor is obliged to take actions specified in acts of law being guided by the principle of impartiality and equal treatment of all citizens'. The obligation originates from the right of each and every citizen, guaranteed in Art. 32(1) of the Constitution which states that: 'Everyone is equal in law. Everyone has the right to be treated equally by the public authorities'.

Are the prosecution services today, including deputy disciplinary ombudspersons, guided by the principle of impartiality and equal treatment of the citizens, prosecutors being citizens too?

On 11 January 2020, the streets of Warsaw witnessed a **March of a Thousand Robes**. In this way all legal circles, the fact adding to its impact and value, protested against the threat to independence of the Polish courts, expressing commitment to the *trias politica* principle and protest against the threat that a rank and file citizen will have no access to an independent court. As the organisers of the protest wrote in the first lines of their invitation to the event, the purpose was to give expression to the protest against gagging the lawyers and to express respect for the national and European laws. The Lex Super Omnia Association of Prosecutors was a co-organiser of the event. Many prosecutors took part in the March of a Thousand Robes. The meeting they took part in had no political patrons.

Symptomatically, the prosecutors marching in their red sashes arm in arm with lawyers in attires draped in violet, green, blue, as well as white-and-red, were greeted with words of special recognition. The nice words, though, reminded of the sad truth of the actual margin of independence of the prosecutor.

The reaction of the management of the prosecuting services, or at least some of the superiors of those prosecutors who decided to take part in the protest, came soon. At this point, it must be stated clearly that the latter decided to exercise one of the fundamental civil rights in our country: the freedom of assembly.

The Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Warsaw divisional district, prosecutor Małgorzata Ziółkowska - Siwczyk, commenced explanatory proceeding provided for in Art. 154(1) of the Act on the Public Prosecution Service as early as in January 2020; the procedure aimed at identifying the circumstances prerequisite for declaring features of a disciplinary offence perpetrated by prosecutor Katarzyna Gembalczyk from the Warsaw Regional Public Prosecution Service in connection with her participation in the March of One Thousand Robes of 11 January 2020 in the her official attire. In the letter of 21 January 2020, prosecutor Małgorzata Ziółkowska - Siwczyk notified prosecutor Katarzyna Gembalczyk of the possibility for her to file a written declaration or explanation in connection with the initiated preliminary actions, quote: 'aimed at

identifying the circumstances prerequisite for declaring features of a disciplinary offence consisting in the prosecutor's wearing, during the public meeting in Warsaw on 11 January 2020, the prosecutor's official attire, namely the robe, in contravention of its designation ensuing from the regulations of Art. 36 (6) of the above-cited act and of § 1(1) of the Regulation of the Minister of Justice, dated 7 July 2016 concerning determination of the official attire of prosecutors participating in court trials...'. The statement of the Lex Super Omnia Association of Prosecutors in reply to the actions of the disciplinary ombudsperson taken in connection with the prosecutors' participation in the March of One Thousand Robes notes that the letter did not specify what the impropriety (abuse) came down to. That was the first formal call of the type addressed at a prosecutor participating in the March of One Thousand Robes. Later, it turned out it was not the only one. Letters of similar content were received by further prosecutors of the Warsaw Regional Public Prosecution Service: Elżbieta Gielo and Dariusz Ślepokura.

It turned out that an urgent need to clarify the legality of prosecutors' participation in the March of One Thousand Robes was noticed not only by the disciplinary ombudspersons, but their superiors too. The superiors, being also superior in the disciplinary reporting line of the prosecutors, also took actions, though perhaps less formal. Prosecutor Damian Gałek from the Nowa Sól District Public Prosecution Service received an oral call to provide explanation of his use of the robe during the March of One Thousand Robes. The order to provide the explanation by prosecutor Damian Gałek came from the Zielona Góra Regional Public Prosecution Service. This was not the end of the story, though, since in the letter of 23 January 2020 prosecutor Damian Gałek, just like the prosecutors from Warsaw, was summoned to give a statement by the Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Poznań divisional district, Ms Joanna Komolka.

Explanatory proceedings, as decribed above, were initiated not only by the Deputy Disciplinary Ombudspersons of the Public Prosecutor General for the Warsaw and Poznań divisional districts. The Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Kraków divisional district, Ms Małgorzata Ciężkowska-Gabryś, sent a call similar to those described above to prosecutor Mariusz Krasoń from the Kraków Divisional Public Prosecution Service.

The ombudspersons for discipline named above proved exceptionally active and engaged in prosecuting, not to go as far as to say 'hunting', the prosecutors who took part in the March of One Thousand Robes. The word 'hunting' is not used here accidentally, since calls addressed to specific prosecutors must have been preceded with analysis of the film and photographic documentation of the March. In the context, one faces the question whether determination of the kind was born out of their own ponderings, or on inspiration by others.

Perhaps the answer should be looked for in the statement made by the National Public Prosecutor, Bogdan Święczkowski, in the programme entitled 'The Journalist Poker' broadcast on the Republica TV [Telewizja Republika] on 29 January 2020.

Bogdan Świeczkowski stated, quote: 'The actions of the Lex Super Omnia Association of Prosecutors are getting more and more serious, and we have to consider certain matters in the category of offences. What I mean is e.g. the misuse of objects being the state property, i.e. the robes, since some members of the Association wore them during the protest. We are

now in the course of analysing whether perhaps it already was an element of appropriation'.

Can the position of the National Public Prosecutor be defended in terms of the arguments of law?

The features of the offence or misdemeanour of appropriation (the robe prices ranging from PLN 339 to PLN 689, which is of significance for a lawyer in the context of a prohibited act of bi-type nature) are absolutely clear in the context of the considered facts. The quoted words of the National Public Prosecutor, even if reflecting his first reaction, do not stand criticism in legal terms. The impression they left is that they came as expression of emotion and irritation, a negative attitude towards independent prosecutors, and the actions taken must be perceived as attack on prosecutors' independence, where the independence is also construed as the right to express an assessment of the way the law enforcement system or the bodies of the prosecution services function, even if the assessment is as different as day and night from the views presented even by the top superiors.

At this point, it is worth remembering the causes of the March of One Thousand Robes. Its organisers wrote: 'In December 2019 we witnessed an unprecedented intensity of actions taken by disciplinary ombudspersons, escalation of a campaign of slander against judges, unprecedented attacks from representatives of the executive powers agaist the First President of the Supreme Court and Judges of the Supreme Court, and finally the Sejm's adoption of the so-called muzzle act intended to restrict the freedom of speech of the judges and penalise them severely in a highly discretionary manner.' In this particular context it is worth putting side by side the words of the National Public Prosecutor and the position of the disciplinary ombudsperson of the judges of common courts, Judge Piotr Schab who, when asked on the radio (RMF FM) whether any disciplinary proceedings would be initiated against the judges who had participated in the 'March of One Thousand Robes', said: 'At the moment I can see no grounds for taking any actions of the disciplinary nature in connection with the event'. Asked further by the reporter, he stated as follows: 'one needs to have clear causes to find that a judge's behaviour could have constituted a grave violation of the law or an offence against the dignity of the office'. At the moment, he said, 'no such causes exist'.

For the sake of comparison, let us present the incident of October 2020 which also took place in Warsaw with its prime figure, prosecutor Marta Choromańska from the Warsaw Divisional Public Prosecution Service. According to the reports in the media, on 20 October 2020 prosecutor Marta Choromańska took part in the meeting of the National Guard on the stairs leading to St Andrew Church in Plac Trzech Krzyży in Warsaw, organised by Robert Bąkiewicz, chief of the March of Independence association. Robert Bąkiewicz explained to the media that the idea was to protect shrines from mass protests. What needs to be emphasised is the fact that the formation of the National Guard came as a response to the public appeal from a politician, the person heading the political party currently in power in Poland. Just to remind you, the March of One Thousand Robes was an initiative of the lawyer circles, and the organisers appealed: 'Please, do not bring any banners, placards, or slogans. Just flags.' The prosecutor apparently took part in the public meeting on 27 October 2020, and it was already on 28 October 2020 that the National Public Prosecutor distributed a letter among all divisional public prosecution services country-wide concerning the participants of the then current protests stressing that: 'any behaviour of anyone organising an illegal demonstration, or instigating one, or calling for participation therein, should be assessed primarily in the context

of exhausting the features of an act prohibited by Art. 165(1)(1) of the Criminal Code in terms of bringing danger to the lives and health of many by causing an epidemiological risk'. Now, one should contrast the above with the fact that prosecutor Marta Choromańska did not suffer any consequences of her activity. In reply to parliamentary enquiry No. 1897 concerning participation of the prosecutor from the Warsaw Divisional Public Prosecution Service in the public meeting initiated by an organisation of political nature, the National Public Prosecutor Bogdan Święczkowski replied in his letter of 19 January 2021 that: 'activities of a prosecutor in the sphere of freedom of conscience and religion are not activities of political nature, and as such are not subject to appraisal by the superiors'. The National Public Prosecutor did not find the behaviour of prosecutor Marta Choromańska in violation of the regulations. Similarly, in reply to parliamentary interpellation No. 15116 lodged with the Minister of Justice in the matter of prosecutors' participation in events of political nature, as exemplified by the prosecutor's participation in the defence of the church in Warsaw, the National Public Prosecutor, Bogdan Święczkowski, stated as follows in the letter of 29 December 2020: 'the spheres of freedom of conscience and religion do not classify as political activity', and in this way found the interpellation objectless.

Noteworthy, the described cases are not the only ones where prosecutors are summoned in disciplinary procedures for participation in public meetings. In July 2017, prosecutor Piotr Wójtowicz from the Legnica District Public Prosecution Service took part in a protest held in front of the Regional Court in Legnica in defence of independence of courts. The Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Poznań divisional district discontinued the proceedings initiated in the case concluding that a prosecutor may participate in peaceful meetings, and participation in an assembly of the kind is not the same as political activity. As concerns the prosecutor's words spoken at the meeting, the Deputy Ombudsperson found them sarcastic and out of place, though at the same time found their social harmfulness marginal. However, the National Public Prosecutor, Bogdan Święczkowski, appealed from the decision. Noteworthy, an appeal from it was also lodged by prosecutor Piotr Wójtowicz who negated the correctness of the legal basis of discontinuance of the proceedings. What deserves noting is the fact that the defence counsels of prosecutor Piotr Wójtowicz before the disciplinary court pointed to double standards of the Prosecution Services and claimed they served as an instrument of repression against prosecutors. To avoid groundlessness, one should mention the specific facts referred to by the defence counsels of prosecutor Piotr Wójtowicz who accused the National Public Prosecutor claiming he was prosecuting a prosecutor for participation in a peaceful meeting while he himself had actively been involved in backing the governing party and called directly for voting for the party, and run for the elections to the regional assembly and parliamentary elections, his candidature on the lists of the party. Ultimately, the disciplinary court did not grant the appeal from Bogdan Święczkowski but the one lodged by the prosecutor finding his participation in the manifestation in defence of free courts devoid of any features of a disciplinary offence. However, the National Public Prosecutor, Bogdan Święczkowski, has filed a cassation appeal in the matter which remains uncognised as yet.

As concerns compliance with the equal treatment obligation (or rather non-compliance therewith), one can present further examples.

The so-called 'case of two towers' gained wide coverage in public opinion. The verification proceedings in the case, following the filing of the offence notification, lasted almost 9 months. The specificity of the case consisted in the fact that the notification concerned the person heading the political party which governs Poland. On the background of the case one should present the regulation of the Code of Criminal Procedure relating to the duration of the verification procedure. Speaking of the procedure we mean proceedings the purpose of which is to find out whether the data provided in the notification of the offence give grounds to initiation of the preparatory proceedings, i.e. an investigation or inquest. To that aim, as the regulation of Art. 307(1) of the Code of Criminal Procedure stipulates, one can require supplementary data to those provided in the offence notification within the set term, or verify the facts in this respect. In the verification proceedings no evidence of expert opinion is taken, or any actions requiring the taking of a record, except for reception of oral notification of offence or request for prosecution. It is a rule that witnesses are not interviewed in the verification proceedings. The only exception is that the data provided in the notification of offence may be supplemented in the form of taking the witness' statement, though only from the person reporting the offence. The decision as to the initiation of an nvestigation or refusal to initiate it should be issued no later than within 30 days following the receipt of the notification.

Obviously, the literature on the topic commonly assumes that the procedural term set in Art. 307(1) of the Code of Criminal Procedure is instructional in nature. This means that if the time limit is exceeded, no procedural consequences follow, although one should mention the regulation of Art. 306(3) of the Code of Criminal Procedure which reads that if the natural person or institution who/which filed a notification of an offence is not notified of initiation or refusal to initiate an investigation within 6 weeks, he/she/it can lodge a complaint with the prosecutor superior or appointed to supervise the unit with which the notification was first filed.

The fact that no procedural decision was made in the described case for the period of nearly 9 months was broadly commented on in the public space. The commentators, frequently lawyers, formulated a number of critical comments thereon. The purpose of the authors of this 'Report' is not to address the comments, but to draw attention to a different aspect of the case. In that particular instance, the management of the Prosecution Services saw no irregularity in the duration of the verification proceedings which evidently and strikingly exceeded the time limit prescribed for proceedings of the kind (which, as admitted above, is instructional in nature), or at least the management of the prosecution services did not express any criticism or even 'regret' because of the delay in the public space. Furthermore, in reply to the interpellation from Krzysztof Brejza, MP of 14 May 2019, prosecutor Agata Gałuszko – Górska, Deputy National Public Prosecutor, remarked, quote: 'the decision to initiate preparatory proceedings, as stipulated in Art. 303 of the Code of Criminal Procedure, is issued, if a substantiated suspicion arises that an offence was actually perpetrated. In the case of the notification from Gerard Birgfellner no such facts have to date been found. This makes continued verification procedure necessary. The deadline set in Art. 307(1) of the Code of Criminal Procedure is instructional in nature'.

The above should be contrasted with the fact that in other cases when the instructional deadline set for the verification procedure was exceeded, the prosecutors were burdened with disciplinary consequences.

Prosecutor Krzysztof Parchimowicz was penalised with the disciplinary sanction of admonition imposed by the Regional Public Prosecutor in Warsaw on 20 March 2019 for ill efficiency of the proceedings given the reference number PR 1 DS 679.2016, conducted by the Warsaw Mokotów District Public Prosecution Service in Warsaw. The sanction of admonition was imposed for the disciplinary fault consisting in obvious and gross infringement on the law the prosecutor was said to have committed in such a way that being the lead prosecutor in case ref. PR 1 Ds 679.2016 at the Warsaw Mokotów District Public Prosecution Service in Warsaw, in contravention of § 119(2) of the Regulation of the Minister of Justice of 7 April 2016, i.e. the Rules of internal procedure of common organisational units of the prosecution services, and of Art. 307 of the Code of Criminal Procedure, he started the proceedings in the notification of an offence which reached the Prosecution Office on 5 August 2016 as late as on 12 December 2016, where the period of idleness he was found guilty of was assumed to start running on 2 September 2016. The prosecutor ordered taking measures under the verification proceedings the deadline for which elapsed on 4 September 2016, and doing so he simultaneously infringed on the obligation to resolve the matter within a reasonable time, as expressed in Art. 2(1)(4) of the Code of Criminal procedure. This added up to the offence contemplated in Art. 137(1) of the Act on the Public Prosecution Service. In the decision of 3 October 2019, the Disciplinary Court granted the objection filed by prosecutor Krzysztof Parchimowicz and discontinued the proceedings in the case. The Court found that prosecutor Krzysztof Parchimowicz had not committed any major or blatant infringement on the efficiency of supervising and conducting the proceedings of the reference No. PR 1 Ds 679.2016. The Court argued that there were no reasons to find the prosecutor guilty considering the prosecutor's annual leave, medical leaves, and his performance of other duties.

Nevertheless, the Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Warsaw divisional district found it proper to file an appeal in the case against prosecutor Krzysztof Parchimowicz.

Here is the question which arises: was it of any significance for the decision and if so how significant was the fact that at the time prosecutor Krzysztof Parchimowicz was the president of the board of the Lex Super Omnia Association of Prosecutors and his critical remarks on the management of the Prosecution Services appeared in the public space?

In contrast to the above, one should mention another case (which alongside the one described above lingers in the public space as the case of 'two towers'), where exceeded instructional deadline prescribed for the verification procedure did not carry any negative consequences from the management of the Prosecution Services or the disciplinary ombudsperson, and where several months' long verification proceedings seem to be deemed a standard not infringing on the regulations of the criminal procedure.

Here, we mean the notification of an offence filed with the Prosecution Services in July 2020 by the President of the Supreme Audit Office who accused his deputy of overstepping his authority. Asked by a journalist of progress in the case about 6 months following the filing of the notification, the press spokeswoman of the Warsaw Regional Public Prosecution Service answered that 'verification operations are being taken in the case'. Further into her statement, she reasoned that 'the term referred to in Art. 307(1) is instructional in nature. The

decision as to further course of the proceedings shall be made upon completion of the verification operations regulated by the previously cited regulation'. Hence, the prosecution authorities ponder the question of a reasonable term in one case, and do not do so in another case.

Upon presentation of the two cases, it is worth stating that in the event a disciplinary superior prosecutes or reviews the files of one prosecutor or a selected group of prosecutors, he/she should be able to name the criteria he/she is guided by when initiating explanatory and disciplinary proceedings with respect to some prosecutors, and not taking any steps with respect to others, and should be able to name them today.

The answer had better be convincing, since such questions are already asked and more likely than not one should anticipate them ever more often in the future.

Deputy disciplinary ombudspersons demonstrate fairly high activity and engagement in initiating explanatory and disciplinary proceedings with respect to the prosecutors, members of the Lex Super Omnia Association of Prosecutors, who speak constructively but critically of the effects of the so-called good change in the prosecution services. In the interview of 24 January 2016 for the Gazeta Prawna daily, Mr Bogdan Święczkowski claimed that the new legal regulation of Art. 137(2) of the Act on the Public Prosecution Service introduced to the Act, was to apply e.g. to prosecutors speaking critically of, quote: 'their own firm'. He added that earlier on the grounds could be found in infringement on the dignity of the office. One can only complement Mr Bogdan Świeczkowski's statement saying that despite the lapse of 5 years from the interview, the regulation does not apply to situations as indicated above.

The management of the Prosecution Services and Deputy Disciplinary Ombudspersons should be reminded that according to the Constitution of the Republic of Poland and the Associations Law, prosecutors, just like all other citizens, enjoy freedom of expression and association. These are the fundamental rights ensuing from the European Convention of Human Rights and Fundamental Freedoms. Opinion No. 9 (2014) of the Consultative Council of European Prosecutors, dated 17 December 2014, on the standards and principles building the status of the prosecutor, as well as Recommendation Rec. (2000) of the Council of Europe of 6 October 2000 on the role of public prosecution in the criminal justice system explicitly state that prosecutors have the right to participate in public debates on topics concerning the law, judicial system, and protection of human rights. The above was confirmed by the ECHR in the judgment of 5 May 2020 in the case of Laura Kovesi versus Romania. Regretfully, one can see that the above arguments are of no significance to Bogdan Święczkowski, National Public Prosecutor, who might have forgotten or is unaware that Polish prosecutors are also European prosecutors. He prefers the simple method of the 'stick' he hurls at random aiming at subjugating the defiant prosecutors.

The current National Public Prosecutor, Bogdan Święczkowski, when ordering his disciplinary ombudspersons to take specific actions, seems reluctant to see that his activities outside the prosecution services have become a reference for assessing whether a specific activity of a prosecutor represents an infringement on the dignity of the prosecutor's office in informal relations.

The profuse activity of the current superior officer of the prosecution services, in which he

engaged in the years 2008 – 2015 and which, in line with the principle, remained outside the matters of interest to the disciplinary ombudsperson, exemplifies all kinds of extra-professional actions of the public prosecutor.

The best examples in this respect seem the activities of the current National Public Prosecutor who (as publications in the media indicate), when running for the regional assembly of the Śląskie Voivodship and the Parliament supported by the 'Prawo i Sprawiedliwość' political party, being a retired prosecutor, participated in election meetings and gave support to another candidate of the same political group, aspiring to the function of an MP.

During one of such election meetings, Bogdan Święczkowski apparently expressed his views on voting for the political party of 'Prawo i Sprawiedliwość'. When running for a mandate of a councilor of the regional assembly of the Śląskie Voivodship, he took part in a press conference organised in Będzin in November 2010. Information on the event was posted on one of the Internet portals. The photograph intended to document its course shows the current National Public Prosecutor presenting himself against the logotype of the political party.

Another publication posted on the swidnica24.pl Internet portal reports that Bogdan Święczkowski allegedly told a journalist of the medium that 'he had been unrightfully retired as a prosecutor'. Allegedly too, he said that 'political ambitions are more important, the question of a real impact on the judicial system'. He pointed to the postulates of his campaign such as dismissal of the then current 'officers of Platforma Obywatelska', depriving judges of their immunities and supervising their work. The publication was illustrated with a photo of the current National Public Prosecutor who presented himself wearing a T-shirt with the following inscription: 'Tusk Vision Network; I DO NOT WATCH IT; I DO NOT READ SH…T.

During the elections to the Sejm, in the early October 2011 the current National Public Prosecutor is said to have taken part in a meeting of the campaign nature organised in Kędzierzyn Koźle by Patryk Jaki running for the elections from the list of the 'Prawo i Sprawiedliwość' party. The meeting is said to have begun with Bogdan Święczkowski supporting the candidature of the politician, where both posed against election materials bearing the logotype of the political party of 'Prawo i Sprawiedliwość', and a respective photograph illustrating the event was published on the website of the 'Nowa Trybuna Opolska' daily.

Moreover, on the website of one of the national TV stations a journalist publication was uploaded with a recorded fragment of the meeting of Bogdan Święczkowski as a councilor of the regional assembly of the Śląskie Voivodship, which took place in Częstochowa in July 2010. During the meeting, asked how the Prawo i Sprawiedliwość party intended to convince its electors to back its programme, the current National Public Prosecutor is said to have replied: 'I urge taking the vote; vote for this sole and only power which will let Poland survive'.

In the light of the presented examples of the activity of the National Public Prosecutor which, to an extent define the peculiarly construed 'standard' of the prosecutor's behaviour out of office, the disciplinary proceedings against other prosecutors, as presented in this study, may be perceived as embodiment of the prosecutor's double behavioural standards not only by the prosecutor circles, but by the general public as well.

Presenting the described facts, the authors of this 'Report' submit it to the readers' review so as to arrive at an answer to the following question: is the current management of the prosecution services guided by the principle of impartiality and equal treatment of the citizens who join the ranks of the very services? The answer is of non-trivial significance. After all, compliance with the principle of impartiality and equal treatment is the obligation of each and every prosecutor. Hence, one should ask the following question: how should a lawyer assess failure to perform the duty, if it occurs?

V THE SO-CALLED DISCIPLINARY CHAMBER OF THE SUPREME COURT

Opisanym w niniejszym raporcie szykanom wobec walczących o niezależność prokuratorów wychodzi naprzeciw orzecznictwo Izby Dyscyplinarnej Sądu Najwyższego, która zmieniając dotychczas wypracowaną, jednolitą linię orzeczniczą, prezentuje pogląd, że sąd II instancji jest uprawniony do uchylenia immunitetu prokuratorowi w sytuacji skierowania przez oskarżyciela zażalenia na uchwałę odmawiającą zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej.

Dodatkowo Izba Dyscyplinarna, wyrażając stanowisko o braku przeszkód procesowych w wydaniu reformatoryjnego orzeczenia, w przywołanej powyżej sytuacji uznaje, że od uchwał o wyrażeniu zgody na pociągnięcie do odpowiedzialności karnej, wydanych przez sąd II instancji, wskutek uwzględnienia środka odwoławczego wywiedzionego na niekorzyść, nie przysługuje odwołanie.

Dla zobrazowania tego problemu należy przypomnieć, że na gruncie poprzednio obowiązującej ustawy o prokuraturze z 20 czerwca 1985 r. (Dz. U. 2011 Nr 270, poz. 1599, z póź. zm.), która podobnie jak aktualne uregulowania wskazywała w art. 54 ust. 13, że do postępowania przed sądem dyscyplinarnym i odwoławczym sądem dyscyplinarnym w sprawach o zezwolenie na pociągnięcie prokuratora do odpowiedzialności karnej stosuje się przepisy o postępowaniu dyscyplinarnym, ukształtowała się jednolita linia orzecznicza Izby Karnej Sądu Najwyższego, zgodnie z którą, z uwagi na treść art. 454 § 1 kpk (reguła *ne peius)*, stosowanego odpowiednio w postępowaniu dyscyplinarnym, sąd odwoławczy nie mógł skazać prokuratora, który został uniewinniony w pierwszej instancji lub co do którego w pierwszej instancji umorzono lub warunkowo umorzono postępowanie. Kierując się treścią tego przepisu Sąd Najwyższy uznał, że reguła *ne peius* nie pozwala również na uwzględnienie zażalenia, wniesionego na uchwałę sądu I instancji w przedmiocie odmowy zezwolenia na pociągnięcie do odpowiedzialności karnej i wydanie reformatoryjnego rozstrzygnięcia, uchylającego immunitet.

Orzecznictwo Sądu Najwyższego i jego niekwestionowany autorytet w okresie przed objęciem rządów w Polsce przez tzw. „dobrą zmianę" powodował, że w sytuacji zaskarżenia uchwały o odmowie wyrażenia zgody na pociągnięcie prokuratora do odpowiedzialności karnej, uchylano zaskarżone orzeczenie i przekazywano sprawę sądowi I instancji do ponownego rozpoznania, nie łamiąc zasady *ne peius* (vide: wyrok Sądu Najwyższego z dnia 27 sierpnia 2007 r., sygn. SNO 47/07, OSNKW 2007, nr 11, poz. 83, Biul. SN 2007, nr 11, poz. 17; uchwała Sądu Najwyższego z dnia 3 października 2014 r., sygn. SNO 48/14, LEX 1523257).

Po utworzeniu Izby Dyscyplinarnej Sądu Najwyższego orzecznictwo w tym zakresie uległo zmianie.

Pomijając w tym momencie rozważania, że Izba Dyscyplinarna Sądu Najwyższego nie spełnia wymogu bezstronnego i niezależnego sądu i odnotowując tylko, że w dniu 11 sierpnia 2020 r. Izba Karna Sądu Najwyższego wydała, w następstwie rozpoznania kasacji w sprawie

adwokatów, obwinionych z art. 80 Prawa o adwokaturze w zw. z § 6, 8, 49 Zbioru Zasad Etyki Adwokackiej i Godności Zawodu, postanowienie I KK 90/19 wskazując, że: „Zgodnie z art. 27 § 1 pkt 1 ustawy z dnia 8 grudnia 2017 r. o Sądzie Najwyższym sprawy dyscyplinarne sędziów i przedstawicieli innych zawodów prawniczych rozpoznawane są w Izbie Dyscyplinarnej Sądu Najwyższego. Kasacja od orzeczenia wydanego przez Wyższy Sąd Dyscyplinarny Adwokatury powinna być, zgodnie z tym przepisem ustawy, rozpoznawana w Izbie Dyscyplinarnej.", tym nie mniej „W wymienionych orzeczeniach Trybunału Sprawiedliwości Unii Europejskiej i Sądu Najwyższego wskazano okoliczności, które podają w wątpliwość niezależność i bezstronność sądów dyscyplinarnych orzekających w ramach Izby. Okoliczności te mają uniwersalny charakter i nie ograniczają się do postępowań dyscyplinarnych prowadzonych przeciwko sędziom. W tym stanie rzeczy, do czasu wydania orzeczenia w przedmiocie wniosku Komisji Europejskiej do Trybunału Sprawiedliwości Unii Europejskiej, bez względu na interpretację ograniczeń przedmiotowych wskazanych w postanowieniu z 8 kwietnia 2020 r., Izba Dyscyplinarna powinna powstrzymać się od orzekania we wszystkich kategoriach należących do jej właściwości spraw. Sytuacja w tym zakresie mogłaby ulec zmianie także na skutek ewentualnych zmian ustawowych eliminujących sformułowane w orzeczeniach zastrzeżenia. Do tego czasu rozpoznanie sprawy przez Sąd Najwyższy, ale nie w ramach Izby Dyscyplinarnej, wyeliminuje możliwość kontestowania orzeczenia w przyszłości, co leży w interesie stron postępowania i wymiaru sprawiedliwości.", wskazać należy, że z internetowej bazy orzeczeń Sądu Najwyższego wynika, iż w Izbie Dyscyplinarnej w okresie od momentu jej powstania do końca 2020 r. wydano łącznie co najmniej 5 uchwał, którymi zmieniono zaskarżone uchwały sądu dyscyplinarnego I instancji o odmowie zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej i wyrażono zgodę na uchylenie immunitetu prokuratorom (sygn. akt I DO 32/19, I DO 51/19, II DO 10/20, II DO 11/20 i II DO 39/20). Tym samym zanegowano, obowiązującą niezmiennie w procedurze karnej zasadę *ne peius* uznając, że brak jest podstaw do jej stosowania w ramach postępowania delibacyjnego.

W tym miejscu należy ponownie odwołać się do uchwały Sądu Najwyższego z dnia 3 października 2014 r., sygn. SNO 48/14, w której rozpoznając sprawę zgody na pociągnięcie sędziego do odpowiedzialności karnej Sąd stwierdził, że: „zgodnie z art. 454 § 1 kpk. stosowanym odpowiednio w postępowaniu dyscyplinarnym (art. 128 usp), Sąd Odwoławczy nie może skazać skarżonego, który został uniewinniony w pierwszej instancji lub co do którego umorzono postępowanie. Kierują się treścią tego przepisu Sąd Najwyższy uznał, że reguła *ne peius* nie pozwala na uwzględnienie jedynego wniosku Prokuratora dotyczącego reformatoryjnego rozstrzygnięcia. W wyroku z 27 sierpnia 2007 r., sygn. SNO 47/07 wskazano, że: „tylko tytułem przypomnienia wypada wskazać, że od wielu lat nie budzi najmniejszych wątpliwości stosowanie w postępowaniu dyscyplinarnym, nie tylko opartym o przepisy ustrojowe dotyczące sędziów, ale także i przepisy ustrojowe dotyczące innych zawodów prawniczych, reguły gwarancyjnej określanej nazwą zakazu *reformationis in peius*. Za rzecz oczywistą uznaje się, że także w postępowaniu dyscyplinarnym sędziów sąd odwoławczy może orzec na niekorzyść obwinionego tylko wtedy, gdy wniesiono na jego niekorzyść środek odwoławczy, a także tylko w granicach zaskarżenia, chyba że ustawa stanowi inaczej (art. 434 § 1 zd. 1 k.p.k. w zw. z art. 128 u.s.p.)…Dodajmy, że obowiązywanie reguł uregulowanych w art. 434 § 1 i 2 k.p.k. oraz w art. 443 k.p.k. przeniesiono także na grunt takich postępowań o charakterze represyjnym, jak np. – pozostając na gruncie Prawa o ustroju sądów powszechnych – postępowanie w przedmiocie zezwolenia na pociągnięcie sędziego do

odpowiedzialności karnej…Powszechnie akceptowane jest też stosowanie w postępowaniach o charakterze represyjnym w tych sytuacjach, gdy wniesiony został środek odwoławczy na niekorzyść podmiotu poddanego odpowiedzialności w danym typie postępowania, reguły *ne peius* określonej w art. 454 § 1 k.p.k. Warto już w tym miejscu wywodu wskazać, że recepcja na grunt innych postępowań represyjnych wskazanej normy *ne peius* nastąpiła nie tylko w tych sytuacjach, gdy przepis art. 454 § 1 k.p.k. może być bez żadnych zmian w jego dyspozycji zastosowany w danym rodzaju postępowaniu (tj. gdy dany typ postępowania przewiduje wydanie orzeczenia w formule: „uniewinnienie/umorzenie" w opozycji do „skazania").".

Dodatkowo należy wskazać, że zgodnie z treścią art. 163 a § 2 ustawy z dnia 28 stycznia 2016 r. Prawo o prokuraturze od orzeczenia sądu dyscyplinarnego drugiej instancji służy odwołanie do innego składu tego sądu, jeżeli orzeczeniem sądu dyscyplinarnego drugiej instancji obwinionemu wymierzono karę dyscyplinarną, pomimo wydania w tej sprawie przez sąd dyscyplinarny pierwszej instancji orzeczenia uniewinniającego lub umarzającego postępowanie dyscyplinarne. Przepis art. 163a § 2 tej ustawy jest w istocie rzeczy odpowiednikiem przepisu art. 426 § 2 kpk i statuuje on wyjątek od zasady niezaskarżalności orzeczeń sądu odwoławczego, dający możliwość kontroli poziomej orzeczeń reformatoryjnych, w pewnych kategoriach spraw i wniesienia odwołania do innego równorzędnego składu sądu odwoławczego. Przepis ten stwarza uprawnienie do kontroli orzeczenia sądu dyscyplinarnego, na mocy którego skazano obwinionego na karę dyscyplinarną w sytuacji, gdy sąd pierwszej instancji wydał wyrok uniewinniający lub umarzający postępowanie. Jednocześnie przepis art. 135 § 14 powołanej powyżej ustawy stanowi, podobnie jak to miało miejsce pod rządami poprzedniej ustawy, że w zakresie nieuregulowanym, w sprawach o wyrażenie zgody na pociągnięcie prokuratora do odpowiedzialności karnej, stosuje się odpowiednio przepisy o postępowaniu dyscyplinarnym. Nie budzi zatem żadnej wątpliwości, zważywszy choćby na treść cytowanych powyżej orzeczeń, że zawarta w przepisie art. 135 § 14 Prawa o prokuraturze reguła odpowiedniego stosowania przepisów postępowania dyscyplinarnego uzasadnia przyjęcie stanowiska o możliwości zaskarżenia zgodnie z art. 163a § 2 Prawa o prokuraturze, również reformatoryjnego orzeczenia Izby Dyscyplinarnej dotyczącego uchylenia immunitetu. Wobec powyższego zasadnym jest uznanie, iż w przypadku, gdy sąd dyscyplinarny I instancji wydał uchwałę o odmowie zgody na pociągnięcie prokuratora do odpowiedzialności karnej, a w II instancji uchwała została zmieniona i immunitet został mu uchylony, od uchwały takiej przysługuje odwołanie w trybie art. 163a § 2 Prawa o prokuraturze.

Podkreślenia przy tym wymaga, iż sytuacja procesowa prokuratora, wskutek wydania orzeczenia o uchyleniu mu immunitetu, ulega radykalnej zmianie, albowiem pomimo pierwotnej uchwały Sądu Dyscyplinarnego czy aktualnie Wydziału I Izby Dyscyplinarnej o odmowie wydania zezwolenia na pociągnięcie go do odpowiedzialności karnej, po zmianie ww. uchwały prokuratorowi zostaną przedstawione zarzuty i w stosunku do niego będzie prowadzone postępowanie karne.

Opinię o przysługującym środku odwoławczym potwierdza również Rzecznik Praw Obywatelskich prof. Adam Bodnar, który w piśmie VII.510.170.2019.PKR z dnia 17 grudnia 2019 r. wskazał., że „odpowiednie stosowanie art. 163a § 2 ustawy Prawo o Prokuraturze do postępowania w sprawie zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej oznacza, że od orzeczenia sądu dyscyplinarnego drugiej instancji wyrażającego zgodę na pociągnięcie prokuratora do odpowiedzialności karnej służy odwołanie do innego składu sądu wówczas, gdy w pierwszej instancji sąd odmówił takiej zgody". Rozwiązanie takie, jak wskazuje RPO, ma na celu zapewnienie prawa do obrony i realizację zasady dwuinstancyjności postępowania tak, aby orzeczenie niekorzystne dla prokuratora nie stawało się natychmiast prawomocne, lecz podlegało kontroli instancyjnej.

Tymczasem Izba Dyscyplinarna stoi na stanowisku, że od orzeczenia reformatoryjnego sądu II instancji uchylającego immunitet prokuratorowi nie służy środek zaskarżenia i pozostawia odwołania prokuratorów bez rozpoznania, stwierdzając, że reguły odpowiedniego stosowania przepisów, w tym wypadku przepisów o postępowaniu dyscyplinarnym nie dopuszczają adaptacji art. 163a § 2 Prawa o prokuraturze do postępowania delibacyjnego (na przykład postanowienia w sprawach o sygn.: II DO 63/20 i II DO 100/20).

Uzasadnieniem takich decyzji są, zdaniem Izby Dyscyplinarnej, różnice dotyczące postępowania dyscyplinarnego i delibacyjnego, jak choćby taka, jak to że: „wyrażenia zgody na pociągnięcie do odpowiedzialności karnej prokuratora (analogicznie sędziego) nie można jednak utożsamić z orzeczeniem sądu dyscyplinarnego w sprawie dyscyplinarnej prokuratora, na podstawie którego obwinionego prokuratora uznano za winnego i wymierzono mu karę", które stanowią jej zdaniem o niedopuszczalności złożenia odwołania na podstawie art. 163a § 2 Prawa o prokuraturze (postanowienie o sygn. II DO 100/20). Stwierdzenie wydawałoby się oczywiste. Odrębność postępowania w sprawie wyrażenia zgody na pociągnięcie prokuratora do odpowiedzialności karnej od postępowania dyscyplinarnego, nie powinna kończyć rozważań, a wręcz przeciwnie, powinna stać się dopiero asumptem do poczynienia przez Izbę Dyscyplinarną analizy, czy niedopuszczalność adaptacji przepisu art. 163a § 2 Prawa o prokuraturze do postępowania delibacyjnego, jej zdaniem, wynika z:

- bezprzedmiotowości regulacji,
- charakteru tej normy prawnej,
- zupełności regulacji postępowania delibacyjnego,
- całkowitej sprzeczności z przepisami przewidzianymi dla postępowania delibacyjnego,
- z rodzaju podmiotu uprawnionego do dokonania określonej czynności.

Tymczasem Izba Dyscyplinarna uchyla się od swej powinności, poprzestając na stwierdzeniu, że odpowiednie stosowanie określonych przepisów nie jest czynnością o charakterze jednolitym i w ramach trzech możliwych kategorii – zasad odpowiedniego stosowania przepisów, dopuszczalnym jest zastosowanie przepisów bez żadnych zmian w ich dyspozycji, zastosowanie przepisów, dopiero po ich odpowiednich modyfikacjach i w końcu brak możliwości ich zastosowania. Taka postawa Izby Dyscyplinarnej nie powinna jednak dziwić,

jeżeli zważy się, że brak jest argumentów do obrony stanowiska o niedopuszczalności odwołania.

W konsekwencji, wobec takiej interpretacji prawa przez Izbę Dyscyplinarną, prokuratorzy zostali pozbawieni z jednej strony gwarancji wynikającej z zasady *ne peius*, a z drugiej możliwości odwołania się od decyzji, która dopiero w drugiej instancji uchyla im immunitet. Identyczna konkluzja dotyczy decyzji, podejmowanych przez Izbę Dyscyplinarną wobec sędziów.

Należy ponadto odnotować stanowisko zaprezentowane przez Tomasza Janeczka - aktualnie Prokuratora Regionalnego w Katowicach oraz Adama Rocha, byłego prokuratora, powołanego do Izby Dyscyplinarnej, którzy w artykule opublikowanym w Prokuraturze i Prawie 2017/4/124-145, pt. „Odpowiedzialność karna, odpowiedzialność za wykroczenia oraz zawieszenie w czynnościach prokuratora w świetle Prawa o prokuraturze" podali, że: „Ustawa nie rozstrzygnęła wątpliwości wiążących się ze stosowaniem reguły *ne peius* w postępowaniu dyscyplinarnym, ze szczególnym uwzględnieniem postępowania delibacyjnego. Jakkolwiek dotychczasowe orzecznictwo Sądu Najwyższego zdaje się wskazywać na możliwość skazania w postępowaniu dyscyplinarnym na najsurowszą karę dyscyplinarną dopiero przez sąd *ad quem*, to jednak równie jasne wydaje się być stanowisko Sądu Najwyższego odnośnie braku normatywnych podstaw do podejmowania ewentualnej decyzji o wyrażeniu zgody na pociągnięcie do odpowiedzialności karnej przez sąd II instancji, wskutek uwzględnienia środka odwoławczego wywiedzionego na niekorzyść."

Pomijając już, że stanowisko o możliwość skazania w postępowaniu dyscyplinarnym na najsurowszą karę dyscyplinarną dopiero przez sąd *ad quem* jest raczej sprzeczne z orzecznictwem Sądu Najwyższego (wyrok z 27 sierpnia 2007 r., sygn. SNO 47/07 „W postępowaniu dyscyplinarnym sędziów, toczącym się na podstawie przepisów Rozdziału 3 ustawy z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Dz. U. Nr 98, poz. 1070 ze zm.), w którym stosuje się odpowiednio przepisy Kodeksu postępowania karnego, przy orzekaniu przez organ *ad quem* obowiązują wszystkie te reguły *ne peius*, które mogą znaleźć zastosowanie w tym typie postępowania. Dla postępowania toczącego się na podstawie przepisów Prawa o ustroju sądów powszechnych jest to nie tylko reguła, zgodnie z którą sąd dyscyplinarny drugiej instancji nie może skazać obwinionego, który został uniewinniony w pierwszej instancji lub co do którego w pierwszej instancji umorzono postępowanie (art. 454 § 1 k.p.k. w zw. z art. 128 u.s.p.), ale także reguła, zgodnie z którą sąd dyscyplinarny drugiej instancji nie może zaostrzyć wymiaru kary przez wymierzenie bezpośrednio w instancji odwoławczej kary najsurowszej w katalogu kar przewidzianym dla tego postępowania, to jest kary złożenia sędziego z urzędu (art. 454 § 3 k.p.k. w zw. z art. 128 u.s.p.)", to nawet w opinii beneficjentów „dobrej zmiany" w wymiarze sprawiedliwości, a w tym prokuratora, powołanego do orzekania w Izbie Dyscyplinarnej, brak jest również w świetle aktualnej ustawy Prawo o prokuraturze, prawnej możliwości uchylenia immunitetu prokuratorowi przez sąd II instancji, w sytuacji uprzedniej uchwały nie wyrażającej takiej zgody.

Znamiennym jest jednak fakt, że pomimo takiego, publicznie prezentowanego stanowiska Adam Roch był sprawozdawcą składu Izby Dyscyplinarnej orzekającej jako sąd II instancji, który w dniu 11 czerwca 2019 r., wydał uchwałę, sygn. akt I DO 11/19, wyrażającą zgodę na pociągnięcie do odpowiedzialności karnej, wskutek uwzględnienia środka odwoławczego

wywiedzionego na niekorzyść sędziego.

Pozostając jeszcze przez chwilę przy problematyce Izby Dyscyplinarnej, dla szerszego zobrazowania skali i powagi problemów prawnych, jakie wywołuje jej orzecznictwo, jednocześnie cały czas zastrzegając, że niniejszy raport nawet nie pretenduje do całościowej oceny tej Izby, prowadzącej jednakże do uznania, że nie spełnia ona wymogu niezawisłego i bezstronnego sądu w rozumieniu tak prawa krajowego, jak i prawa unijnego, a co za tym idzie nie ma legitymacji do rozstrzygania sporów prawnych, należy podnieść, że w dniu 14 lutego 2020 r. weszła w życie ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Dz.U. 2020.190) – tzw. „ustawa kagańcowa". Nowelizacją tą rozszerzono właściwość Izby Dyscyplinarnej na sprawy o zezwolenie na pociągnięcie do odpowiedzialności karnej lub tymczasowe aresztowanie sędziów, asesorów sądowych, prokuratorów i asesorów prokuratury (art. 27 § 1 pkt 1a Ustawy o Sądzie Najwyższym). Zatem do chwili nowelizacji do właściwości Izby w zakresie odpowiedzialności prokuratorów należały tylko sprawy dyscyplinarne prowadzone na podstawie ustawy ustrojowej o prokuraturze. Powyższe sprawiało, że Izba Dyscyplinarna nie miała kognicji do orzekania w sprawach uchylenia immunitetu prokuratorom, podobnie zresztą, jak i sędziom.

Uzasadniając brak właściwości Izby Dyscyplinarnej do orzekania w sprawach o uchylenie immunitetu w okresie przed nowelizacją należy zwrócić uwagę, że postępowanie w przedmiocie wyrażenia zgody na pociągnięcie prokuratora do odpowiedzialności karnej ma specyficzny charakter. Nie jest wprawdzie postępowaniem karnym w ścisłym znaczeniu, lecz otwiera możliwość prowadzenia postępowania karnego w stosunku do konkretnej osoby. Nie może przy tym być uznane za postępowanie dyscyplinarne, albowiem odrębność postępowania w sprawie wyrażenia zgody na pociągnięcie prokuratora do odpowiedzialności karnej, od postępowania dyscyplinarnego, została podkreślona między innymi poprzez jego uregulowanie w rozdziale 3 Prawa o prokuraturze, który wyraźnie w swoim tytule rozróżnia odpowiedzialność karną, dyscyplinarną i służbową prokuratorów, ale co istotniejsze, przez użycie w przepisach ją regulujących określenia „odpowiednio", w zakresie stosowania wobec niego przepisów postępowania dyscyplinarnego. Przedmiotem postępowania immunitetowego jest bowiem wyrażenie zgody na rozpoczęcie ścigania karnego, a więc otwarcie drogi dla procesu karnego, co jednakże nie przesądza o fakcie popełnienia zarzucanego czynu (odmiennie, niż to ma miejsce w postępowaniu dyscyplinarnym). W oparciu o przepis art. 171 Prawa o prokuraturze do postępowania tego w zakresie nieuregulowanym stosuje się odpowiednio przepisy postępowania karnego. Podkreślić przy tym należy, że przepisy kodeksu postępowania karnego, mimo braku wyraźnej podstawy prawnej, były stosowane odpowiednio w sprawach immunitetowych także przed zmianą ustawy o prokuraturze. Najwyraźniej sądy dyscyplinarne kierowały się w tym względzie podobieństwem tego postępowania do postępowania karnego. Tak też odniósł się do tej kwestii Sąd Najwyższy - Sąd Dyscyplinarny w wyroku z dnia 23 stycznia 2008 r. w sprawie o sygn. SNO 91/07 wskazując, że: „celem postępowania o zezwolenie na pociągnięcie sędziego do odpowiedzialności karnej, czyli o tak zwane uchylenie immunitetu sędziowskiego, nie jest przesądzenie o odpowiedzialności karnej sędziego (kwestii popełnienia czynu, winy i kary), bo jest to materia zastrzeżona do wyłącznej kompetencji sądu w ramach normalnego postępowania karnego… Dlatego też przepisy (zasady) postępowania karnego dotyczące ustalenia popełnienia czynu i uznania winy należy stosować odpowiednio …Odpowiedniość

stosowania tych przepisów wynika przede wszystkim z tego, że w tym postępowaniu nie orzeka się o popełnieniu czynu, winie i karze, a jedynie o przesłance uchylenia immunitetu, czyli o „dostatecznie uzasadnionym podejrzeniu popełnienia przestępstwa". Analogicznie postępowanie to traktował Trybunał Konstytucyjny w wyroku z dnia 28 listopada 2007 r., sygn. akt K 39/07.

W aspekcie systemowym nie budziło wątpliwości, że sądem odwoławczym od orzeczeń sądu dyscyplinarnego I instancji w przedmiocie wyrażenia zgody na pociągnięcie prokuratora do odpowiedzialności karnej był Sąd Najwyższy, co nie oznaczało jednak, że kompetencja ta przed nowelizacją należała do Izby Dyscyplinarnej. Nie wynikało to bowiem z obowiązujących regulacji ustrojowych Sądu Najwyższego, zaś przepisy branżowe, w tym ustawa Prawo o prokuraturze nie mogły stać się w tym przypadku punktem odniesienia. Trzeba bowiem zwrócić uwagę, co podkreśla się w doktrynie oraz orzecznictwie, że postępowanie w przedmiocie zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej ściśle związane jest z postępowaniem karnym i to przepisy kodeksu postępowania karnego wymagają uzyskania stosownego zezwolenia, aby w ten sposób usunąć negatywną przesłankę postępowania, uniemożliwiającą prowadzenie postępowania karnego przeciwko prokuratorowi.

O ile zatem art. 145 § 1 pkt 2 Prawa o prokuraturze wskazywał właściwość funkcjonalną sądu, w tym przypadku Sądu Najwyższego, dla rozpoznawania odwołań od orzeczeń sądu pierwszej instancji, w sprawach wskazanych w rozdziale 3 „Odpowiedzialność karna, dyscyplinarna i służbowa prokuratorów", to wskazanie w opisanym przepisie składu sądu, w jakim ma nastąpić rozpoznanie przedmiotowej sprawy (2 sędziów Izby Dyscyplinarnej i 1 ławnika Sądu Najwyższego) nie mogło być czynnikiem determinującym właściwość Izby uprawnionej do rozpoznania tych spraw. Właściwość ta jest bowiem określana nie przez pryzmat sędziego lub składu, a określonego sądu, którym w przedmiotowych sprawach był Sąd Najwyższy. Dopiero przepisy ustrojowe (związane z określonym przedmiotem regulacji) w ramach tego sądu statuują właściwość przedmiotową, a te co należy przypomnieć wskazywały, zgodnie z art. 27 § 1 ustawy o Sądzie Najwyższym, że do właściwości Izby Dyscyplinarnej (poza innymi sprawami nie związanymi z prokuratorami) należały tylko sprawy dyscyplinarne. Zasadniczą kompetencją Izby Dyscyplinarnej było zatem rozpoznawanie spraw dyscyplinarnych, prowadzonych na podstawie ściśle wskazanych ustaw ustrojowych, w tym ustawy Prawo o prokuraturze. Wprawdzie w art. 27 § 2 tejże ustawy zostały określone kompetencje dwóch wydziałów Izby Dyscyplinarnej, jednak nie wolno zapominać, że właściwość rzeczowa tej Izby, jak i jej wydziałów powinna być określana przez pryzmat zapisu z § 1, statuującego właściwość Izby Dyscyplinarnej tylko do spraw dyscyplinarnych. Tym samym określona w art. 27 § 4 pkt 1 ustawy o Sądzie Najwyższym właściwość Wydziału Drugiego do rozpatrywania odwołania od orzeczeń sądów dyscyplinarnych pierwszej

instancji winna być rozpatrywana łącznie z główną kompetencją Izby Dyscyplinarnej, jaką były sprawy dyscyplinarne. Powyższe stanowi, że Wydział Drugi był właściwy do rozpoznawania odwołań od orzeczeń sądów dyscyplinarnych pierwszej instancji, wydanych tylko w sprawach dyscyplinarnych, nie zaś delibacyjnych.

W tym kontekście należy odnieść się do charakteru oraz istoty postępowania w przedmiocie wydania uchwały o zezwoleniu na pociągnięcie prokuratora do odpowiedzialności karnej. Mając na względzie omawiany charakter postępowania w przedmiocie zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej, okoliczność, iż postępowanie w tym przedmiocie ściśle związane jest z postępowaniem karnym, a także treść art. 24 ustawy o Sądzie Najwyższym przekazującego do właściwości Izby Karnej sprawy rozpoznawane na podstawie ustawy z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego (Dz. U. z 2018 r. poz. 1987 i 2399 oraz z 2019 r. poz. 150), uzasadnione jest stwierdzenie, że w istocie do rozpoznawania w drugiej instancji spraw o uchylenie immunitetu prokuratorowi właściwa była Izba Karna Sądu Najwyższego.

Dodatkowym wzmocnieniem argumentacji o braku kognicji Izby Dyscyplinarnej do orzekania w sprawach immunitetowych prokuratorów jest fakt, że zgodnie z obowiązującym do 14 lutego 2020 r. stanem prawnym do właściwości Izby Dyscyplinarnej, poza sprawami z zakresu prawa pracy i ubezpieczeń społecznych dotyczącymi sędziów Sądu Najwyższego oraz z zakresu przeniesienia sędziego Sądu Najwyższego w stan spoczynku, należały sprawy dyscyplinarne prokuratorów i innych zawodów prawniczych (art. 27 § 1 pkt 1-3 ustawy o Sądzie Najwyższym). Struktura Izby Dyscyplinarnej, tak jak to jest obecnie, była dwuwydziałowa i składa się z Wydziału Pierwszego i Drugiego. Wydział Pierwszy, rozpatrywał w szczególności sprawy sędziów Sądu Najwyższego oraz sędziów i prokuratorów, dotyczące przewinień dyscyplinarnych, wyczerpujących znamiona umyślnych przestępstw ściganych z oskarżenia publicznego oraz przewinień wskazanych we wniosku, o którym mowa w art. 97 § 3, natomiast Wydział Drugi rozpatrywał w szczególności odwołania od orzeczeń sądów dyscyplinarnych pierwszej instancji w sprawach sędziów i prokuratorów oraz postanowień i zarządzeń zamykających drogę do wydania wyroku, kasacje od orzeczeń dyscyplinarnych i odwołania od uchwał Krajowej Rady Sądownictwa (art. 27 § 3 i 4 ustawy o Sądzie Najwyższym).

Tym samym, w ustawowym opisie kognicji zarówno Izby Dyscyplinarnej, jak i poszczególnych jej wydziałów, brak było kompetencji do rozpatrywania odwołań od orzeczeń immunitetowych. Orzeczenie o uchyleniu lub odmowie uchylenia immunitetu prokuratora nie jest bowiem ani orzeczeniem dyscyplinarnym, ani też nie leży w sferze uchwał podejmowanych przez KRS. Art. 27 § 4 pkt 1 Ustawy o Sądzie Najwyższym przewidywał kognicję w zakresie odwołań od orzeczeń sądów dyscyplinarnych pierwszej instancji w sprawach sędziów i prokuratorów oraz postanowień i zarządzeń zamykających drogę do wydania wyroku, kasacje od orzeczeń dyscyplinarnych i odwołania od uchwał Krajowej Rady Sądownictwa. Tymczasem orzeczenie w przedmiocie uchylenia lub odmowy uchylenia immunitetu zapada w formie uchwały. Nie mamy tu więc do czynienia ani z postanowieniem, ani tym bardziej z zarządzeniem. Z kolei od uchwały tej przysługuje zażalenie, a nie odwołanie, o którym mowa w art. 27 ustawy o Sądzie Najwyższym. Zażalenia nie są natomiast objęte właściwością Izby Dyscyplinarnej.

Uznanie więc, że Izba Dyscyplinarna korzystała z kompetencji do orzekania w zakresie spraw immunitetowych prokuratorów prowadziło do niedopuszczalnego rozszerzenia kompetencji organu władzy publicznej poprzez przyjęcie domniemania, że taka kompetencja istnieje. Kompetencja taka została w istocie rzeczy uznana za istniejącą w drodze przyjętego arbitralnego domniemania. Oznacza to, że Izba Dyscyplinarna Sądu Najwyższego niezależnie od tego, że nie jest sądem w rozumieniu tak prawa krajowego, jak i prawa unijnego, nie korzystała ponadto z kompetencji do orzekania w sprawach immunitetowych, skoro orzeczenia immunitetowe nie zostały w sposób jasny wskazane w ustawie jako wchodzące w zakres jej kognicji.

Powyższa argumentacja przemawia za tym, że Izba Dyscyplinarna Sądu Najwyższego nie miała kompetencji w okresie przed nowelizacją ustawy o Sądzie Najwyższym, do orzekania w II instancji, w przedmiocie uchylenia immunitetu prokuratorskiego. Co więcej, zgodnie z art. 14 ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw do czynów popełnionych przed dniem wejścia w życie tej ustawy stosuje się przepisy o odpowiedzialności dyscyplinarnej w brzmieniu dotychczasowym. Tym samym we wszystkich sprawach, w których postępowanie o uchylenie immunitetu dotyczy czynów popełnionych przed 14 lutego 2020 r. Izba Dyscyplinarna nie jest w dalszym ciągu właściwa do rozpoznania zażaleń na uchwały w przedmiocie immunitetu prokuratorskiego, o czyn popełniony przed dniem 14 lutego 2020 r.

Stanowisko o braku kognicji Izby Dyscyplinarnej do orzekania w sprawach immunitetowych, prezentowane w pismach procesowych prokuratorów co prawda nie było oficjalnie zauważane i aprobowane przez Izbę Dyscyplinarną, a wręcz przeciwnie - lekceważone, tym nie mniej wymusiło na rządzących zmiany legislacyjne, które powyżej zostały zasygnalizowane. Dokonane zmiany w pełni potwierdziły słuszność poglądu, że Izba Dyscyplinarna Sądu Najwyższego nie miała kompetencji w okresie do 14 lutego 2020 r. do orzekania w II instancji, w przedmiocie uchylenia immunitetu prokuratorskiego. Tym niemniej w obiegu prawnym w dalszym ciągu pozostają orzeczenia podjęte w poprzednim stanie prawnym, których skutkiem są czynności procesowe podejmowane wobec prokuratorów, łącznie ze skierowaniem do sądu aktu oskarżenia. Konsekwencją prawną wydania orzeczenia o uchyleniu immunitetu przez sąd nienależycie obsadzony, co stanowi bezwzględną przesłankę odwoławczą, powinno być wznowienie postępowania (art. 542 § 3 kpk. w zw. z art. 439 § 1 pkt 2 kpk.). Tymczasem obowiązujące w tym przedmiocie przepisy i linia orzecznicza Izby Dyscyplinarnej Sądu Najwyższego, zresztą podobnie jak uprzednio Izby Karnej z okresu, gdy pełniła ona rolę Sądu Dyscyplinarnego, uznaje wniosek o wznowienie postępowania od prawomocnych decyzji o uchyleniu immunitetu za niedopuszczalny z mocy prawa i wnioski takie pozostawia bez rozpoznania (*vide*: postanowienie Izby Dyscyplinarnej Sąd Najwyższy z dnia 23 września 2020 r.).

Problem braku kognicji Izby Dyscyplinarnej do rozpoznawania zażaleń na uchwały w przedmiocie zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej

zauważyła w końcu sama Izba Dyscyplinarna, która w postanowieniu z dnia 20 października 2020 r., sygn. II DZP 3/20 wskazała, że po zmianach dokonanych ustawą z dnia 20 grudnia 2019 r. do właściwości Izby Dyscyplinarnej należą sprawy o zezwolenie na pociągnięcie do odpowiedzialności karnej lub tymczasowe aresztowanie sędziów, asesorów sądowych, prokuratorów i asesorów prokuratury.

Powyżej zaprezentowane uwagi wskazują, że Izba Dyscyplinarna jest niezwykle istotnym ogniwem w represjonowaniu prokuratorów i stanowi jego domknięcie na etapie krajowym.

Dla zobrazowania całości zjawiska instrumentalnego tworzenia przepisów prawa i wykorzystywania sądu do represjonowania prokuratorów konieczne jest wskazanie, że zapisami „ustawy kagańcowej" wprowadzono kolejne zmiany, niewątpliwie ograniczające prawo do rzetelnego procesu i prawo do obrony, również w ramach procedury dyscyplinarnej oraz delibacyjnej.

Po pierwsze, zgodnie ze zmienionym art. 26 § 2 ustawy z dnia 8 grudnia 2017 r. o Sądzie Najwyższym, do właściwości Izby Kontroli Nadzwyczajnej i Spraw Publicznych Sądu Najwyższego przekazano rozpoznawanie wniosków lub oświadczeń dotyczących wyłączenia sędziego albo o oznaczenie sądu, przed którym ma się toczyć postępowanie, obejmujących zarzut braku niezależności sądu lub braku niezawisłości sędziego. Sąd rozpoznający sprawę, do którego wpłynął taki wniosek, ma obowiązek przekazać go niezwłocznie Prezesowi Izby Kontroli Nadzwyczajnej i Spraw Publicznych, celem nadania mu dalszego biegu, przy czym przekazanie wniosku nie wstrzymuje biegu toczącego się postępowania. Art. 26 § 3 w/w ustawy wskazuje, że wniosek taki pozostawia się bez rozpoznania, jeżeli obejmuje ustalenie oraz ocenę zgodności z prawem powołania sędziego lub jego umocowania do wykonywania zadań z zakresu wymiaru sprawiedliwości.

Konsekwencją prowadzonych zmian jest powszechna praktyka, że w sprawach dyscyplinarnych i delibacyjnych rozpoznanie wniosków o wyłączenie sędziego, opartych na wyżej wskazanych przesłankach, następuje już po wydaniu decyzji merytorycznej, nawet przez sąd II Instancji.

Po drugie, w Ustawie prawo o prokuraturze dodano § 4 w art. 155, zgodnie z którym sąd dyscyplinarny prowadzi postępowanie pomimo usprawiedliwionej nieobecności zawiadomionego obwinionego lub jego obrońcy, chyba że sprzeciwia się temu dobro prowadzonego postępowania dyscyplinarnego. Powyższe uregulowanie wespół z normą artykułu 157a Prawa o prokuraturze, która wyłącza stosowanie przepisu art. 117 § 2 kpk, gwarantującego nie przeprowadzanie czynności w sytuacji, jeżeli osoba uprawniona nie stawiła się, a brak dowodu, że została o niej powiadomiona oraz jeżeli zachodzi uzasadnione przypuszczenie, że niestawiennictwo wynikło z powodu przeszkód żywiołowych lub innych wyjątkowych przyczyn, a także wtedy, gdy osoba ta usprawiedliwiła należycie niestawiennictwo i wnosi o nieprzeprowadzanie czynności bez jej obecności, czyni prawo do obrony, w jego warstwie materialnej, zupełnie iluzorycznym.

Dodatkowo należy wskazać, że zgodnie z art. 156 § 2 Prawa o prokuraturze ustanowienie lub zmiana obrońcy nie może stać się przyczyną przerwania lub odroczenia rozprawy, natomiast

§ 3 Prawa o prokuraturze stanowi, że jeżeli obwiniony nie może brać udziału w postępowaniu przed sądem dyscyplinarnym z powodu choroby, wyznacza się, na jego wniosek, obrońcę z urzędu. Niewątpliwie regulacja ta dodatkowo godzi w prawo do obrony, wyrażone dyspozycją art. 6 kpk i powinno być skutecznie kwestionowane, choćby z uwagi na jego sprzeczność z art. 42 ust 2 Konstytucji.

Dokonane zmiany legislacyjne i wykształcona praktyka narusza nie tylko zapisy Konstytucji, w tym jej art. 45 ust. 1, ale również szereg postanowień Europejskiej Konwencji Praw Człowieka, a w tym prawo do niezawisłego i niezależnego sądu, prawo do skutecznego środka odwoławczego, prawo do rzetelnego postępowania przed niezawisłym i bezstronnym sądem oraz prawo do obrony, zagwarantowane w art. 5, 6, 7, 13, 18 EKPCz i art. 2 Protokołu 7 do EKPCz.

Należy zatem założyć, że tego rodzaju naruszenia prawa, będą stanowiły podstawę skutecznych skarg, kierowanych do Europejskiego Trybunału Praw Człowieka.

Dodatkowo należy odnotować, że „ustawą kagańcową" rozszerzono katalog przewinień służbowych (dyscyplinarnych) oraz katalog kar dyscyplinarnych.

Aktualnie zgodnie z art. 137 § 1 Prawa o prokuraturze przewinieniem służbowym, poza oczywistą i rażącą obrazą przepisów prawa oraz uchybieniem godności urzędu są:

- działania lub zaniechania mogące uniemożliwić lub istotnie utrudnić funkcjonowanie organu wymiaru sprawiedliwości lub prokuratury (art. 137 § 1 pkt 2),
- działania kwestionujące istnienie stosunku służbowego sędziego lub prokuratora, skuteczność powołania sędziego, lub prokuratora, lub umocowanie konstytucyjnego organu Rzeczypospolitej Polskiej (art. 137 § 1 pkt 3),
- działalność publiczna nie dającą się pogodzić z zasadą niezależności prokuratora (art.
  137 § 1 pkt 4).

Natomiast zgodnie z art. 142 § 1 pkt 2a) i 2b) Prawa o prokuraturze ustanowiono dodatkowe kary w postaci obniżenia wynagrodzenia zasadniczego o 5% - 50% na okres od sześciu miesięcy do dwóch lat oraz kary pieniężnej w wysokości podlegającego wypłacie za miesiąc poprzedzający wydanie prawomocnego wyroku skazującego jednomiesięcznego wynagrodzenia zasadniczego powiększonego o przysługujący prokuratorowi dodatek za długoletnią pracę, dodatek funkcyjny i dodatek specjalny.

Odnotować przy tym należy, że za popełnienie przewinienia dyscyplinarnego określonego w art. 137 § 1 pkt 2-4 można wymierzyć tylko karę przeniesienie na inne miejsce służbowe lub wydalenie ze służby prokuratorskiej. W przypadku mniejszej wagi można wymierzyć karę, o której mowa w art. 142 § 1 pkt 2a, 2b lub 3, tj. karę usunięcia z zajmowanej funkcji, przy czym nie ma możliwości odstąpienia od wymierzenia kary lub orzeczenia łagodniejszej kary upomnienia lub nagany.

Powyższe zestawienie wskazuje, że rozszerzenie katalogu przewinień dyscyplinarnych oraz kar dyscyplinarnych możliwych do orzeczenia ma na celu wyeliminowanie prospołecznej i propaństwowej działalności prokuratorów, mającej na celu przedstawianie rzeczywistej

sytuacji w wymiarze sprawiedliwości oraz wskazywanie na niekonstytucyjny, dewastacyjnych charakter wprowadzanych zmian legislacyjnych.

Omawiając problematykę szykan wobec prokuratorów nie sposób nie odnotować, że ustawa z dnia 28 stycznia 2016 r. - Prawo o prokuraturze wprowadziła nowe, nieznane wcześniej rozwiązania, dotyczące odpowiedzialności prokuratorów, które zakwalifikowano jako odpowiedzialność służbową i unormowano w Rozdziale 3 w Dziale IV, zatytułowanym „Odpowiedzialność karna, dyscyplinarna i służbowa prokuratorów.".

Obecnie w ramach odpowiedzialności służbowej, poza uprzednio już istniejącym środkami w postaci wytknięcia uchybienia w razie stwierdzenia oczywistej obrazy prawa przy prowadzeniu sprawy oraz kary porządkowej upomnienia za przewinienie dyscyplinarne mniejszej wagi, nieuzasadniające wszczęcia postępowania dyscyplinarnego, dodano kolejne dwa w postaci zwrócenie uwagi na piśmie w razie stwierdzenia istotnego uchybienia w zakresie sprawności postępowania (art. 139 § 1 Prawa o prokuraturze) oraz zwrócenie uwagi na piśmie prokuratorowi rejonowemu, okręgowemu, regionalnemu, Prokuratorowi Krajowemu oraz pozostałym zastępcom Prokuratora Generalnego, w razie stwierdzenia istotnych uchybień w zakresie kierowania prokuraturą albo sprawowania nadzoru (art. 139 § 7 i 8 Prawa o prokuraturze).

Wprowadzenie kolejnego środka odpowiedzialności prokuratora stwarza dużo szersze pole dyscyplinarnego oddziaływania na prokuratorów, szczególnie w jednostkach z większym obciążeniem i dopiero złożenie zastrzeżenia przez ukaranego prokuratora otwiera drogę do sądowej kontroli zwróconej uwagi. Podnoszony przy tym argument, że stosowanie tego środka ma zapobiec zbędnemu uruchamianiu czasochłonnej i kosztownej procedury dyscyplinarnej jest zupełnie nieprzekonywujący, a jednocześnie niebezpiecznie analogiczny z uzasadnieniem w zakresie proponowanej nowej procedury postępowania mandatowego.

Konieczne jest ponadto wskazanie, że ustawa Prawo o prokuraturze wprowadziła dodatkową możliwość zawieszenia prokuratora w czynnościach, które może być zastosowane bez konieczności wszczynania wobec jego osoby postępowania dyscyplinarnego. I tak, zgodnie z art. 151 § 1 i 2 ustawy, w przypadku prawomocnego zezwolenia na pociągnięcie prokuratora do odpowiedzialności karnej można zawiesić prokuratora w czynnościach do czasu prawomocnego zakończenia postępowania. Uprawnienie to przysługuje przełożonemu dyscyplinarnemu, przy czym zawieszenie w czynnościach jest obligatoryjne, w przypadku, gdy wydane zezwolenie na pociągnięcie prokuratora do odpowiedzialności karnej dotyczy przestępstwa umyślnego ściganego z oskarżenia publicznego, zagrożonego karą co najmniej 5 lat pozbawienia wolności. Od decyzji o zawieszeniu w czynnościach przysługuje odwołanie do Sądu Dyscyplinarnego przy Prokuratorze Generalnym, od orzeczenia którego odwołanie nie przysługuje. Przełożony dyscyplinarny może w każdym czasie uchylić zawieszenie w czynnościach, przy czym w sytuacji, gdy wydane zezwolenie na pociągnięcie prokuratora do odpowiedzialności karnej dotyczy przestępstwa umyślnego ściganego z oskarżenia publicznego, zagrożonego karą co najmniej 5 lat pozbawienia wolności, zawieszenie nie może być uchylone do czasu prawomocnego zakończenia postępowania.

Art. 151 Prawa o prokuraturze, co wielce istotne, w żaden sposób nie ogranicza czasu trwania zawieszenia, a więc może ono być stosowane do czasu prawomocnego zakończenia postępowania karnego, przy czym jest to konieczne jak wyżej wskazano, w razie przestępstw zagrożonych karą co najmniej 5 lat pozbawienia wolności. Nie przewiduje się również potrzeby jego przedłużania, a tym samym, w przeciwieństwie do zawieszenia prokuratora w czynnościach służbowych w trybie art. 150 Prawa o prokuraturze, brak jest jakiejkolwiek kontroli zasadności jego dalszego stosowania.

W razie zawieszenia prokuratora w czynnościach służbowych Sąd Dyscyplinarny przy Prokuratorze Generalnym na wniosek przełożonego dyscyplinarnego może obniżyć do 50% wysokość wynagrodzenia prokuratora na czas trwania tego zawieszenia (art. 152 § 1 Prawa o prokuraturze). Od postanowienia w przedmiocie obniżenia wynagrodzenia przysługuje odwołanie.

VI SLOW AGONY OF THE PROSECUTORS' SELF-GOVERNMENT AND OF THE NATIONAL COUNCIL OF PROSECUTORS

Samorząd prokuratorski składający się z organów kolegialnych utworzony został w celu zapewnienia prokuratorom możliwości samostanowienia, ochrony oraz realnego wpływu na funkcjonowanie prokuratury jako instytucji stojącej na straży praworządności i odpowiedzialnej za ściganie przestępstw. Samorząd, który powinien stanowić jeden z filarów niezależności prokuratorów przez lata ulegał słusznym przemianom idącym w kierunku realizacji powyższych założeń. Od 2016 roku zaobserwować można jednak stopniową jego marginalizację i celowe deprecjonowanie. Wszystko to zmierza w kierunku uczynienia z prokuratury instytucji całkowicie zależnej od decyzji prokuratora krajowego oraz kierownictwa resortu sprawiedliwości, czyli *de facto* woli partii rządzącej, z pominięciem wypracowanych przez lata mechanizmów chroniących niezależność prokuratorów, która umożliwia prawidłową realizację ustawowych zadań prokuratury.

Kształt samorządu prokuratorskiego na przestrzeni ostatnich kilku lat uległ istotnej modyfikacji. Zmiany wprowadziła „nowa" ustawa Prawo o prokuraturze z 2016 roku oraz ostatnio, ustawa ją zmieniająca z 2020 roku, tzw. „ustawa covidowa", powoli i konsekwentnie sprowadzając tym samym samorząd do roli atrapy.

Przykładem powyższego jest zmiana w zakresie działalności organu samorządu, jakim jest zgromadzenie prokuratorów prokuratury regionalnej. Zgromadzenie to jest istotnym organem samorządu prokuratorskiego. Obowiązująca ustawa Prawo o prokuraturze nadaje zgromadzeniu prokuratorów prokuratury regionalnej kompetencje do m.in. wyboru przedstawiciela do Krajowej Rady Prokuratorów oraz wyboru członków Sądów Dyscyplinarnego przy Prokuratorze Generalnym. Wybór ten ma doniosłe znaczenie dla funkcjonowania prokuratury. Bezspornym jest, iż wybór członków sądu dyscyplinarnego prokuratorów lub przedstawicieli do Krajowej Rady Prokuratorów jest bezpośrednio związany z uprawnieniami, jak i obowiązkami prokuratorów i ma doniosłe znaczenie w sferze publicznoprawnej. Reguluje bowiem skład osobowy istotnych organów prokuratury jako organu państwowego, od decyzji których zależy funkcjonowanie instytucji, która stać ma na straży praworządności. Istotne pozostaje również, iż członkowie sądu dyscyplinarnego jako jedyni posiadają uprawnienie do wydawania orzeczeń, których skutkiem może być wydalenie prokuratora z zawodu.

Zgodnie z art. 46 § 1 ustawy Prawo o prokuraturze w brzmieniu sprzed zmian wprowadzonych artykułem 31 ustawy z dnia 14 maja 2020 roku o zmianie niektórych ustaw w zakresie działań osłonowych w związku z rozprzestrzenianiem się wirusa SARS-CoV-2 (Dz. U. z 2020 r. poz.875) „w prokuraturze regionalnej działa zgromadzenie prokuratorów, które składa się z delegatów prokuratorów prokuratury regionalnej oraz delegatów prokuratorów prokuratur okręgowych i rejonowych działających na obszarze działania prokuratury regionalnej. Delegatów prokuratorów prokuratury regionalnej wybiera, w liczbie równej połowie liczby prokuratorów prokuratury regionalnej, zebranie prokuratorów prokuratury regionalnej.

Delegatów prokuratorów prokuratur okręgowych, w liczbie równej jednej trzeciej liczby prokuratorów prokuratury regionalnej, wybierają zebrania prokuratorów prokuratur okręgowych i zebrania prokuratorów prokuratur rejonowych. Delegatów prokuratorów prokuratur rejonowych, w liczbie równej dwóm trzecim liczby prokuratorów prokuratury regionalnej, wybierają zebrania prokuratorów prokuratur rejonowych. Delegatów wybiera się na okres 4 lat".

W myśl tych przepisów delegaci zostali już wybrani w wyżej opisany sposób, a ich kadencja, na podstawie przepisów „ustawy covidowej", uległa przedłużeniu z uwagi na istniejący stan epidemii. Z dniem 16 maja 2020 roku przywołana ustawa (tzw. Tarcza 3.0) zmieniła bowiem treść art. 46 § 1 ustawy Prawo o prokuraturze w ten sposób, iż „w prokuraturze regionalnej działa zgromadzenie prokuratorów, które składa się z delegatów prokuratorów prokuratury regionalnej oraz delegatów prokuratorów prokuratur okręgowych i rejonowych działających na obszarze działania prokuratury regionalnej. Delegatami prokuratorów prokuratury regionalnej są zastępcy prokuratora regionalnego oraz pozostali delegaci wybierani w łącznej liczbie równej połowie liczby prokuratorów prokuratury regionalnej przez zebranie prokuratorów prokuratury regionalnej. Delegatami prokuratorów prokuratur okręgowych, w są prokuratorzy okręgowi oraz pozostali delegaci w łącznej liczbie równej jednej trzeciej liczby prokuratorów prokuratury regionalnej, wybierają wybierani przez zebrania prokuratorów prokuratur okręgowych i zebrania prokuratorów prokuratur rejonowych. Delegatami prokuratorów prokuratur rejonowych, są prokuratorzy rejonowi oraz pozostali delegaci w łącznej liczbie równej dwóm trzecim liczby prokuratorów prokuratury regionalnej, wybierają wybierani przez zebrania prokuratorów prokuratur rejonowych. Delegatów pochodzących z wyboru wybiera się na okres 4 lat".

Pismem z dnia 26 czerwca 2020 r. sygn. PK I BP 025.13.2020 Dyrektor Biura Prezydialnego Prokuratury Krajowej Tomasz Szafrański przedstawił pogląd, że od dnia 16 maja 2020 r. w skład zgromadzenia prokuratorów w prokuraturze regionalnej wchodzą z mocy prawa zastępcy prokuratora regionalnego oraz prokuratorzy okręgowi i prokuratorzy rejonowi z obszaru regionu. Nadto wskazał, że epizodyczny charakter regulacji spowodowanej zagrożeniem epidemią COVID-19 wyłącza obowiązek przeprowadzenia wyborów delegatów do zgromadzenia prokuratorów prokuratury regionalnej i równocześnie przedłuża kadencję dotychczasowych delegatów do czasu wyboru nowych, co powinno nastąpić w terminie do 90 dni od odwołania stanu epidemii. Jednocześnie, mimo, że nie można przeprowadzić wyboru delegatów do zgromadzenia, to można zwołać posiedzenia zgromadzenia prokuratorów w tym nowym składzie, jeśli zaistnieją przesłanki, o których mowa w art. 47 Prawa o prokuraturze. W piśmie tym nie odniesiono się w żadnym zakresie do liczbowego (niezmienionego przecież) składu zgromadzenia. W dalszym ciągu przepis art. 46 § 1 ustawy Prawo o prokuraturze wyznacza liczbowy skład zgromadzeń. Parametr ten nie uległ zmianie, natomiast wprowadzona zmiana legislacyjna, a w zasadzie interpretacja tej zmiany, dokonana przez Dyrektora Biura Prezydialnego, przy braku przepisów wprowadzających i praktyka postępowania poszczególnych prokuratorów regionalnych oznacza, że liczba członków zgromadzenia uległa faktycznej zmianie. Poza delegatami z wyboru, w zgromadzeniu już teraz, pojawili się bowiem, uzyskujący ten status wprost z ustawy prokuratorzy pełniący określone funkcje. Liczba osób biorących udział w zgromadzeniach, do czasu przeprowadzenia nowych wyborów, po ustaniu okresu pandemii, przekracza więc ustawowy limit. W ten sposób, przy tak ukształtowanych składach zgromadzeń faktycznie już

teraz oraz w przyszłości, przy nie zmienionej przecież liczbie członków zgromadzeń, uzyskano możliwość wpływu na istotne decyzję samorządu, bowiem podejmowane one będą w większości przez osoby pozostające, z racji pełnionych funkcji, w uzależnieniu od kierownictwa prokuratury. W składach zgromadzeń delegatów, pochodzących z wyborów, będzie mniej nie tylko w porównaniu ze stanem obowiązujących od 2016 r. ale także tym jaki funkcjonował przed nastaniem tzw. „dobrej zmiany" w prokuraturze, a zatem w tak krytykowanym przez obecne kierownictwo prokuratury okresie. Nadto w zgromadzeniach kosztem właśnie tych delegatów pochodzących z wyborów zasiądą prokuratorzy pełniący określone funkcje kierownicze.

Organ samorządu prokuratorskiego, składający się uprzednio z delegatów, wybieranych przez prokuratorów, staje się więc organem prokuratorów sprawujących funkcje kierownicze w jednostkach prokuratury. Tym samym nie jest już samorządowy, lecz funkcyjny. Jednocześnie podnoszone w roku 2016 głośno argumenty dotyczące potrzeby zmiany składu osobowego zgromadzeń prokuratorów w sposób zwiększający reprezentację prokuratorów z podstawowych - rejonowych komórek organizacyjnych, okazały się w praktyce pustosłowiem, bowiem ta reprezentacja została przekreślona nie tylko w praktyce, lecz także w cytowanym przepisie, wolą kierownictwa prokuratury, Ministerstwa Sprawiedliwości i władzy ustawodawczej. Dodatkowo wprowadzanie takiej zmiany pod płaszczykiem walki z pandemią jest dobitnym przykładem instrumentalnego traktowania stanu zagrożenia epidemicznego do wprowadzania szeregu zmian nie mających żadnego związku z sytuacją zagrożenia epidemicznego. Pokazuje także, że kształt zgromadzeń prokuratorskich ma być „powolny" woli kierownictwa prokuratury, a nie stanowić miejsce, w którym mogą być wymieniane poglądy prokuratorów i rozwiązywane problemy związane z funkcjonowaniem instytucji. Prokuratorzy utracili forum, na którym mogli podejmować działania zmierzające do obrony swojej niezależności. Takie czynności podejmowano w przeszłości, bowiem znane są przykłady inicjowania dyskusji w ramach zgromadzeń prokuratorów w sprawach prokuratorów opisywanych w nierzetelnych przekazach medialnych. Prokuratorzy, mogąc w sposób swobodny, nieskrępowany, bez obaw o podejmowanie względem nich czynności „dyscyplinujące" zajmować stanowisko, zabierali głos w tych sprawach, formułując względem kierownictwa jednostek oczekiwania co do wdrożenia działań w obronie prokuratorów. Taki przebieg miało m.in. jedno ze Zgromadzeń Prokuratorów w Prokuraturze Apelacyjnej w Krakowie, gdy medialnie podważano profesjonalizm i uczciwość prokuratora, zajmującego się sprawą przestępstw gospodarczych związanych z funkcjonowaniem jednego z krakowskich przedsiębiorstw.

Jednocześnie ta sama, cytowana powyżej ustawa w art. 66 ust. 2 ustanowiła, iż w okresie obowiązywania stanu zagrożenia epidemicznego lub stanu epidemii wyborów delegatów, o których mowa w art. 46 § 1 ustawy zmienianej w art. 31 (tj. ustawy Prawo o prokuraturze), nie przeprowadza się, a kadencja dotychczasowych delegatów ulega przedłużeniu do dnia wyboru delegatów na nową kadencję. Wybory delegatów na nową kadencję przeprowadza się w terminie 90 dni od dnia odwołania stanu zagrożenia epidemicznego lub stanu epidemii ogłoszonego z powodu COVID-19.

Z powyższego wprost wynika, iż dopiero po ustaniu stan epidemii i przeprowadzeniu wyborów zostanie ukształtowane zgromadzenie w nowym składzie, składające się z mniejszej liczy delegatów pochodzących z wyboru przy jednoczesnym większym udziale prokuratorów

funkcyjnych. Dopiero to nowe zgromadzenia będzie zgodne z aktualnie obowiązującą treścią art. 46 § 1 ustawy prawo o Prokuraturze.

Do tego czasu wszystkie uchwały winny być podejmowane przez zgromadzenie w dotychczasowym (ukształtowanym przepisami przed zmianami z roku 2020) składzie, albowiem z uwagi na stan epidemii kadencja delegatów nie wygasła, a uległa przedłużeniu do czasu ustania tego stanu lub wyboru nowych kandydatów na kolejną 4 letnią kadencję, na nowych już zasadach. Jednocześnie tylko taki skład zgromadzenia czyni zadość wymogom, co do liczby członków zgromadzenia, określonym w art. 46 § 1 ustawy Prawo o prokuraturze.

Na gruncie aktualnie obowiązującego prawa nie ma wątpliwości, iż to delegaci w liczbie i składzie wybranym uprzednio, aż do czasu zakończenia ich kadencji są obecnie jako jedyni uprawnieni do podejmowania wiążących uchwał przez zgromadzenie prokuratorów.

Tak się jednak nie stało. Obrazują to ostatnie uchwały zgromadzeń, które zapadły w poszczególnych zgromadzeniach prokuratorów w Prokuraturach Regionalnych na terenie całego kraju w ostatnim kwartale roku 2020. Przy czym nie we wszystkich zgromadzeniach dokonano zmiany ich składów, pozwalając na podejmowanie decyzji w dotychczasowych składach (np. w Katowicach). Tam, gdzie dokonano zmiany składu, tam uchwały zostały podjęte przez składy zgromadzeń nieznane ustawie, bowiem w sposób mieszany uwzględniający „starych" delegatów oraz „nowych", którzy dopiero winni zostać wyłonieni. Tym samym składy organów stały się niezgodne z ustawą. Liczba uczestników zgromadzeń przekraczała limit ustawowy. Uchwały, które w nich zapadły zostały zatem wydane z rażącym naruszeniem prawa i są nieważne. Brak przepisów wprowadzających te, nowe przepisy, nie jest żadnym uzasadnieniem dla obrony takiej sytuacji i przeprowadzenia zgromadzeń z udziałem nowych, nieprawidłowo powołanych członków. Konsekwencją takiego stanu rzeczy jest możliwość kwestionowania chociażby wszystkich orzeczeń sądu dyscyplinarnego wydanych z udziałem osób wybranych przez tak wadliwie ukształtowane zgromadzenia.

Zmiany nie ominęły też Krajowej Rady Prokuratorów, którą powołano jako organ, stojący przede wszystkim na straży niezależności prokuratorów oraz wykonujący szereg niezwykle istotnych zadań z punktu widzenia funkcjonowania prokuratury.

Wystarczy zauważyć, iż od czasu wejścia w życie „nowego" prawa o Prokuraturze organ ten zebrał się 4 razy w 2016 roku, 5 razy w 2017 roku i 1 raz w 2018 roku (dane ze strony internetowej www.pk.gov.pl). Przez ten czas rada nie zaopiniowała, mimo iż wynika to z jej ustawowych kompetencji, żadnych projektów aktów normatywnych dotyczących prokuratury oraz projektów wytycznych Prokuratora Generalnego. Nie podjęła też uchwał w przedmiocie okresowych ocen realizacji zadań prokuratury. W dniu 12 grudnia 2017 roku Rada uchwaliła „Zbiór zasad etyki zawodowej prokuratorów", wydając uprzednio uchwałę w sprawie apelu Zarządu Stowarzyszenia Prokuratorów Lex Super Omnia, dotyczącego opiniowania i konsultacji opracowywanego przez Krajową Radę Prokuratorów przy Prokuratorze Generalnym Zbioru zasad etyki zawodowej prokuratorów, w której stwierdziła brak uzasadnienia dla poddawania tego projektu szerszym konsultacjom lub opiniom.

Warta wspomnienia pozostaje także uchwała rady z dnia 14 lutego 2017 roku w sprawie stanowiska Krajowej Rady Sądownictwa z dnia 10 lutego 2017 roku w przedmiocie zagrożeń

niezawisłości sędziowskiej związanych z działalnością prokuratury, wyrażająca głęboką dezaprobatę dla stanowiska KRS wskazującego, że dokonanie przeszukania pomieszczeń wykorzystywanych przez sędziego czy żądanie wydania przez niego rzeczy wymaga uprzednio uchylenia immunitetu. Rada takie stanowisko uznała za nieuprawnione.

Pozostałe uchwały rady dotyczyły w większości kwestii wskazania przedstawiciela do komisji egzaminacyjnej egzaminu prokuratorskiego i naboru na aplikację (3), wskazania członków rady programowej KSSiP (3), zaopiniowania wniosków prokuratora o dalsze zajmowanie stanowiska prokuratora (6), a także dodatków funkcyjnych dla członków sądu dyscyplinarnego, ustalenia liczby członków sądu dyscyplinarnego oraz wskazania przedstawiciela do udziału w spotkaniu z przedstawicielami Komisji Weneckiej.

Dla porównania w latach 2010-2015 Krajowa Rada Prokuratorów podjęła szereg istotnych uchwał i działań chociażby związanych z opiniowaniem projektów legislacyjnych, czy wręcz popieraniem inicjatyw co do potrzeby zmian ustawowych (np. ustawy o Krajowej Radzie Prokuratorów), uchwałę nr 468/2012 z dnia 19 września 2012 r. w sprawie uchwalenia zbioru zasad etyki zawodowej prokuratorów, czy też uchwały rozstrzygające indywidualne sprawy prokuratorów w zakresie spraw indywidualnych prokuratorów, badając czy doszło do naruszenia ich niezależności (np. w sprawę odsunięcia od prowadzenia śledztw prokuratora, który chciał postawić zarzuty m.in. szefowi ABW, czy też prokuratora, wobec którego przełożeni mieli podejmować działania mogące stanowić o mobbing).

Już chociażby powyższe, pobieżne zestawienie wskazuje jak olbrzymia zmiana jakościowa dokonała się w orędzie działalności organu mające w swym założeniu stać na straży niezależności prokuratorów. Obecna Rada nie zajęła się na przestrzeni wszystkich lat swego funkcjonowania, w żadnej ze swych kadencji, żadnym takim przypadkiem, nie zajęła jakiekolwiek stanowiska w sprawie indywidualnej prokuratorów, nigdy nie stanęła w obronie niezależności prokuratora. Temat ten jest dla aktualnej Rady nieistniejący i to mimo licznych, podnoszonych zarówno w mediach, publikacjach, czy też wnioskach niektórych członków Rady przykładach możliwych naruszeń. Rada nie realizuje więc swego podstawowego zadania, opisanego art. 43 § 1 Ustawy z dnia 28 stycznia 2016 roku - Prawa o prokuraturze. To pierwsze z zadań Rady, najważniejsze a jednak w praktyce jej działania całkowicie zapomniane. Rada nie realizuje też innych zadań o charakterze merytorycznym, wskazanych w § 2 cytowanego przepisu. Jedyne zadania podejmowane przez Radę dotyczą spraw personalnych i kadrowych. Zadanie zrealizowane, polegające na ponownym uchwaleniu zasad etyki obarczone jest niestety wadą, bowiem decyzje w tym przedmiocie podjęła poprzednio funkcjonująca Rada, a działająca w roku 2017 Rada I kadencji z uwagi na sposób jej ukształtowania, nie posiadała właściwej legitymacji. W dniu 6 marca 2017 r. Zarząd Stowarzyszenia Prokuratorów Lex Super Omnia wystąpił do Krajowej Rady Prokuratorów przy Prokuratorze Generalnym z wnioskiem o udostępnienie projektu „Zbioru zasad etyki zawodowej prokuratorów", który od czerwca 2016 r. był przedmiotem prac Rady. Wystąpienie zostało skierowane wobec uznania, że Rada nie posiada kompetencji do procedowania w tej kwestii, a nadto nie pochodzi z wyborów, przez co nie dysponuje mandatem wymaganym od organu samorządu zawodowego.

Pani prokurator Agata Gałuszka-Górska, zastępca Prokuratora Krajowego poinformowała wówczas Stowarzyszenie, że Rada uznała, iż projekt nie będzie poddany zewnętrznym konsultacjom. Skład Rady stanowi reprezentację wszystkich środowisk prokuratorskich, jej

uchwały są wyrazem ocen tego organu samorządności prokuratorskiej i trudno sobie wyobrazić logikę poddawania projektów takich decyzji i ocen konsultacjom lub opiniom zewnętrznych instytucji. Autorka pisma zauważyła nadto, że nic nie stoi na przeszkodzie, aby Stowarzyszenie dokonało oceny zbioru - po jego uchwaleniu przez Radę. Zarząd Stowarzyszenia stwierdził wówczas, że Przewodniczący Rady - Prokurator Generalny i Rada *in gremio* ignorują obowiązek współpracy z organizacjami zrzeszającymi prokuratorów, wynikający z treści art. 3 § 1 pkt 13 ustawy Prawo o prokuraturze. Sytuacja ta wskazuje także na to, że Rada nie tylko nie realizowała i nie zamierza nawet realizować obowiązku współpracy, ale sama w swym mniemaniu uznawała się za organ reprezentujący wszystkich prokuratorów, mimo, że skład Rady I kadencji został ukształtowany zarządzeniem Prokuratora Generalnego i żaden z jego członków nie pochodził z wyboru.

Po raz kolejny także czas epidemii okazał się dla decydentów dobrym momentem do wprowadzenia, drobnych, acz doniosłych zmian w sposobie funkcjonowania Krajowej Rady Prokuratorów. Pod pozorem walki ze skutkami epidemii wspomniana powyżej tzw. „Tarcza 3.0" dodała do ustawy prawo o Prokuraturze przepisy wydłużające kadencję Rady z 2 do 4 lat oraz umożliwiające przeprowadzenie posiedzenia Rady w sposób zdalny, przy wykorzystaniu środków umożliwiających porozumiewanie się na odległość, o ile przewodniczący Rady (Prokurator Generalny) tak zarządzi. Wyeliminowano też zakaz pełnienia funkcji wice-przewodniczącego rady przez dłużej niż dwie kadencję. Ostatnia kadencja Rady winna wygasnąć 20 maja 2020 roku, lecz na mocy wspomnianych przepisów potrwa dwa lata dłużej.

Poza zmianą, dotyczącą możliwości prowadzenia posiedzeń Rady *on line*, wprowadzone nowe regulacje należy ocenić krytycznie, bowiem jedynym ich celem jest utrzymanie obecnego stanu i statusu Rady. Jest to ze wszech miar czytelne, gdy dostrzeże się, iż w czasie trwania stanu pandemii zdecydowano się i przeprowadzono zgromadzenia w Prokuraturach Regionalnych celem wyboru nowych członków sądów dyscyplinarnych, a w Krakowie wybrano także nowego członka Rady na zwolnione miejsce. Natomiast nie dopuszczono do wyboru nowych członków Rady, tylko podjęto niczym nieuzasadnioną decyzję o przedłużeniu kadencji Rady w obecnym składzie. Dla przypomnienia warto tylko wskazać, że wyboru miały dokonać te same zwołane przecież zgromadzenia. Innego, niż utrzymanie składu Rady w obecnym kształcie i to mimo zmieniających się zewnętrznych warunków, uzasadnienia takiej decyzji nie sposób odszukać, bo przecież nie był nią zapewne czynnik polityczny, podejmujący w tym zakresie działania przed wyborami prezydenckimi i to w obliczu wizji zmiany układu sił politycznych i zmian w ośrodkach decyzyjnych. O taką motywację kierownictwa prokuratury, z założenia apolitycznej, nie można podejrzewać. A może to błąd?

RECAPITULATION

This Report comes as the first attempt to provide a comprehensive picture of all issues related to persecution of independent prosecutors by the political power heading the prosecution services, and to present the sequence of consecutive actions whilst naming the repressed and indicating the intensity of the phenomenon, its methods and forms of execution.

This is of extreme significance, since the actions were intended by the Public Prosecutor General, Zbigniew Ziobro, and his First Deputy National Public Prosecutor, Bogdan Święczkowski, to marginalise those prosecutors whom they found defiant and not bowing before the authorities due to their independence.

At this point, one should remember that back in 2016 the management of the prosecution services proudly signing under the slogan of 'a good change in prosecution services' actually succeeded in triggering a peculiar earthquake, demoting 114 experienced prosecutors to organisational units of lower levels in the procedure raising constitutional doubts. This was an action by all means unparalleled and unprecedented, since for the sake of individual interests of the power in authority ruling via controllable prosecution services many prosecutors were deprived of their professional achievements and employee dignity.

Later years revealed clearly that the main purpose of the so-called reform in the prosecution services was to rotate the personnel. Over a brief period the prosecution services were totally restructured with promotions to high positions of the nearest acquaintances and young prosecutors prevailingly lacking ideology to whom quick promotion, power, and the resulting personal profits were more important than the content of the prosecutor oath. Indeed, one of the main assumptions underlying the alleged reform of the prosecution services came down to using functional changes for the creation of a group of people who would take actions and decisions consistent with the expectations of their political patrons without any reservations.

Thus, making the degradation decisions the management of the prosecution services was certain that the impact of that restrictive personnel decisions would be strong enough to marginalise the prosecutors who did not inspire confidence and wipe out any thought of independence. A message of the kind came straight from the lips of the prominent activists of the 'good change'.

It turned out, however, that their way of thinking was ungrounded, since attempts at hushing the circles of independent prosecutors have proved unsuccessful. The prosecutors grouped around the association registered in 2017 under the name Lex Super Omnia (law above all). The association engaged in very difficult but open struggle to retain certain operating standards of the prosecution services, all explicitly stated in the statute-defined goals ensuing from the EU recommendations or the opinion of the Venice Commission on the currently binding Act on the Public Prosecution Service.

The Management of the National Public Prosecution Service noted in disbelief the lawsuits filed by several prosecutors with the common courts and the substantive positions they presented, which undermined the arguments of the prosecution management concerning the possibility and effectiveness of questioning the demotion or delegation decisions.

As a surprise too, came the presentation of substantive and extremely diligent reports of the Association, which revealed superficiality of the introduced changes and most of all no success of the so-called good change in the prosecution services. Even more surprising was the appearance of prosecutors in the public space and open criticism of representatives of the good change in the prosecution services and the actions they took.

Our astonishment, on the other hand, is caused by the fact that the management of the prosecution services, having an immense body of officers at their disposal, has been unable to address the accusations formulated and the errors and irregularities pointed to in a substantive manner. This inability has frustrated the management of the National Public Prosecution Service and after a period of belittling the Lex Super Omnia Association of Prosecutors the time has come for reflection and taking actions of the retortion and chicane nature, connected with initiation of official proceedings, first explanatory, then disciplinary against the prosecutors actively engaged in the association. One of the first proceedings of the kind were the ones concerning the posting of a critical message on the Lex Super Omnia website; the message criticised the actions of the prosecution services, and specifically of the Divisional Public Prosecutor in Katowice who, in an official communication, condemned the judge presiding over a criminal case of particular interest to the Minister of Justice, Public Prosecutor General. Shortly afterwards, repressive actions were taken with respect to those prosecutors who became the faces of the independent organisation, most of all prosecutor Krzysztof Parchimowicz against whom many disciplinary charges were pressed, some of them absurd, in connection with his public statements. In consequence, he has become a person doing the so-called 'disciplinary tourism' which forces him to participate in the measures of disciplinary ombudspersons all over the country, and then engage in disciplinary trials. Chicanes of the kind have affected many prosecutors, although one cannot claim they are symptoms of any system-based line of action; instead, they rather represent irrational and emotional behaviours. All of them have been presented in this report.

The report also gives us an opportunity to show the prosecutor circles that there are equal and more equal when it comes to bearing disciplinary responsibility, including support from the National Public Prosecutor, Bogdan Święczkowski, or his Deputy, prosecutor Agata Gałuszko - Górska.

Irrespective of the above, in specific cases politically important for those in rule, criminal proceedings have been initiated against prosecutors making procedural decisions accused of white-collar crime and succeeding in waiving their immunity through judgments of the body called the Disciplinary Chamber. Of course, cases of the kind come as yet another signal indicating that any action discordant with the political expectations can be anticipated to trigger similar repercussions. Actions of the kind, violating prosecutors' independence, have been intended to carry a chilling effect, just like many other measures such as delegations, also away from the usual place of abode.

Well known is the fact that the prosecution services have one instrument which enables swift execution of the penalty imposed, without the need to wait for the judgment of the disciplinary court and the accompanying procedures. It is the individual decision of the Public Prosecutor General or National Public Prosecutor to delegate a prosecutor to a unit of a lower level, and by far the most powerful 'gun', namely the decision to delegate a prosecutor without his/her consent kilometres away from his/her usual place of abode. Initially, the measure was used sparingly and discretionally, however helplessness of the management of the prosecution services in cases of independent prosecutors has encouraged the National Public Prosecutor, Bogdan Święczkowski, to make yet another unprecedented decision to delegate seven prosecutors to distant organisational units without stating any reasons and all at the same time, i.e. in January 2021. Curiously, the delegations have affected the lead representatives of the Lex Super Omnia Association of Prosecutors.

The decisions, however, did not manifest the power of the rulers; on the contrary, they came as a specific symptom of helplessness with respect to independent prosecutors. They did not achieve their intended goal, since in the meantime further prosecutors joined the association.

Probably one of the actions of the National Public Prosecutor ranking next to last and his attempts to wipe out independent prosecutors consisted in bringing an action of the SLAPP type (*strategic lawsuit against public participation*) against the acting president of the management board of the Lex Super Omnia Association of Prosecutors, Ms Katarzyna Kwiatkowska, and claiming compensation of PLN 250 000 from her for alleged damage to the reputation of the prosecution services. The goal of the action is not to win the court case, but to silence criticism by creating the so-called 'chilling effect'. In actual fact, however, this is an expression of weakness of the management of the prosecution services represented by Zbigniew Ziobro and Bogdan Święczkowski, and of the falling myth of their strong characters.

The years of their rule show that they are unable to engage in discussion with the opponents and their authority is built only on fear and institutional bribery. Their 'courage' ends in the at the threshold of their study, since they never find time to appear before the Labour Court and name the criteria which guided them in their demotion decisions.

The array of repressive measures presented in this study, as well as the number of individuals (incomplete as it is) affected with retortions of various kinds visualise the scale of the phenomenon and at the same time make the reader realise that the persecution affects primarily those who are the name persons of the Lex Super Omnia Association of Prosecutors and are not afraid to stand up openly to confront Zbigniew Ziobro and Bogdan Święczkowski.

In other words, this report is more than a chronicle picturing the nature and the scope of the chicanes employed with respect to the few independent prosecutors, it also appeals to the prosecutor circles, our peers aware of the misdeeds happening in the prosecution services, of violation of prosecutor's independence, to actively join and support the prosecutors fighting for law and order in Poland and for modern and independent prosecution services.

This is because the more opposing voices and open protest, the greater hope for stopping chicanes and retortions, so easily targeted at a specific group of people.

We should all hope that the chicanes described in this report will not prove an element

demotivating decent individuals in the prosecution circles from joining the effort aimed at achieving independent and politics-free prosecution services; we should hope that they will trigger the opposite effect proving that despite negative consequences it is worth to contribute to the building of a new institution.

The prosecutors who respect the content of their oath will not be broken by retortions and chicanes!

'Honour is a luxury which can only be afforded by a free man'

Lois McMaster Bujold

LIST OF PERSECUTED PROSECUTORS - MEMBERS OF THE LEX SUPER OMNIA ASSOCIATION OF PROSECUTORS

- **Jacek Bilewicz** – prosecutor of the former General Public Prosecutor's Office, transferred to the position of a prosecutor at the Warsaw - Praga Regional Public Prosecution Service in Warsaw; member of the management board of the Lex Super Omnia Association of Prosecutors; explanatory proceedings because of a publication on the prosecution services in the 'Rzeczpospolita' daily; no features of disciplinary offence found.

- **Justyna Brzozowska** – prosecutor of the Warsaw Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; the Deputy Disciplinary Ombudsperson for the Kraków divisional district raised a disciplinary charge against her, identical with the criminal charge described below; the proceedings are in progress. On 20 September 2017, the National Public Prosecutor requested consent for holding prosecutor Justyna Brzozowska criminally liable in connection with her refusal to initiate an investigation in case ref. VI Ds. 190/15 and claiming that the offence referred to in Art. 231(1) of the Criminal Code in conjunction with Art. 239(1) of the Criminal Code had taken place. The offence allegedly consisted in not taking evidence in the case ref. VI Ds. 190/15 and aiding three persons identified by their names and connected with reprivatisation processes to avoid criminal liability. In the opinion of the National Public Prosecutor the behaviour carried the consequence of acting to the detriment of the judicial system. On 17 November 2017, the Disciplinary Court denied the request and did not waive her immunity. The resolution of the Court was then appealed from by the National Public Prosecutor and Disciplinary Ombudsperson of the Public Prosecutor General. The appellate Disciplinary Court quashed the resolution of the Court of the First Instance (because one of the judges had not studied the classified materials) and referred the matter back for reconsideration. On 21 March 2019, the Disciplinary Court again refused its consent for holding the prosecutor criminally liable noting yet again that the case did not demonstrate any features of an offence falling under Art. 231(1) of the Criminal Code and Art. 239(1) of the Criminal Code. On 5 December 2019, members of the Disciplinary Chamber at the Supreme Court issued the consent for holding prosecutor Justyna Brzozowska criminally liable for an offence classified under Art. 231 of the Criminal Code. The case was run by the Department of Internal Affairs of the National Public Prosecution Service under the case ref. PK XIV Ds. 7.2020. On 20 December 2020, the indictment was lodged with the District Court for Warsaw – Mokotów in Warsaw.

- **Daniel Drapała** – prosecutor of the Wrocław Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors. In January 2021 delegated away from his usual place of abode for the period of 6 month to the Goleniów District Public Prosecution Service.

- **Józef Gacek** – prosecutor of the Warsaw - Praga Regional Public Prosecution Service

in Warsaw, member of the Lex Super Omnia Association of Prosecutors. On 6 November 2019, the Disciplinary Court at the Public Prosecutor General in Warsaw issued resolution ref. PK I SD 69.2019 which did not permit holding prosecutor Józef Gacek criminally liable in connection with the suspicion of his having committed offences connected with the holding of the preparatory proceedings ref. V Ds 13/12 at the Warsaw-Praga Regional Public Prosecution Service in Warsaw in the matter of the so-called civil thread of the Smolensk catastrophe, i.e. of having perpetrated an offence falling under Art. 231(1) of the Criminal Code. On 22 July 2020, on complaint from the Regional Public Prosecutor in Radom, the Disciplinary Chamber of the Supreme Court issued resolution II DO 10/20, in which it changed the above resolution of the disciplinary court and permitted a criminal action against prosecutor Józef Gacek for an offence falling under Art. 231(1) of the Criminal Code. Interrogated too in the proceedings are other prosecutors, members of the management board of the Association. On 20 November 2020, prosecutor Józef Gacek was presented with the charge of having committed the offence falling under Art. 231(1) of the Criminal Code. The criminal proceedings held by the Radom District Public Prosecution Service are in progress.

- **Damian Gałek** – prosecutor of the Nowa Sól District Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; as the result of a reservation filed with respect to the reproaches concerning obvious and blatant violation of the regulations of the law, issued by the Regional Public Prosecutor in Zielona Góra, two proceedings were registered with the Disciplinary Court at the Public Prosecutor General: ref. PK I SD 37.2020 in which the Disciplinary Court lifted the reproach, and ref. PK I SD 44.22020, in which in its decision of 22 June 2020, the Disciplinary Court did not grant the reservation to the reproach and in the decision of 2 February 2021 dismissed the complaint against the above decision; moreover, he was summoned by the disciplinary ombudsperson to make an explanatory statement on his participation in the March of One Thousand Robes in Warsaw wearing the prosecutor's robe in January 2020.

- **Katarzyna Gembalczyk** – prosecutor of the Warsaw Regional Public Prosecution Service, member of the management board of the Lex Super Omnia Association of Prosecutors; disciplinary proceedings concern an insult on the dignity of the prosecutor's status, i.e. the offence falling under Art. 137(1) of the Act on the Public Prosecution Service in connection with her decision to publish a note entitled: 'Position in the matter of instrumental initiation of investigations' on the Association's website; the note criticised the action taken by Tomasz Janeczek, prosecutor of the National Public Prosecution Service holding the office of the Divisional Public Prosecutor in Katowice; this is because he identified the given name and surname of the judge the investigation initiated at the prosecution was to concern (case ref. PK I SD 9.2019) in a message on the unit's website; the proceedings are in progress; she was also summoned by the disciplinary ombudsperson to given an explanatory statement in the matter of her participation in the March of One Thousand Robes in Warsaw in the prosecutor's robe in January 2020.

- **Elżbieta Gielo** – prosecutor of the former Public General Prosecutor's Office, currently retired, member of the Lex Super Omnia Association of Prosecutors; summoned by the

disciplinary ombudsperson to give an explanatory statement on her participation in the March of One Thousand Robes in the prosecutor's robe in January 2020,

- **Jacek Kaucz** – pronounced guilty of a critical statement on the introduced organisational and legal changes, made in the interview of March 2016 given to a journalist of the 'Gazeta Prawna' daily. In his interview immediately following the first demotions he provided an assessment of the regulations governing the reinstating and reversing prosecutors on/to full retirement and identified the beneficiaries of the regulations by their given names and surnames. In the disciplinary proceedings, his words were found unworthy of a prosecutor, however the claim was not accompanied by a reflection on whether the criticised regulations actually infringe on the dignity of the beneficiaries. Disciplinary ombudspersons discontinued the proceedings twice because of marginal harmfulness of the act; with appeals filed by the National Public Prosecutor on the one hand and the guilty on the other hand, the matter was to be considered for the third time by the disciplinary ombudsperson; the proceedings against prosecutor Jacek Kaucz were discontinued following his death in March 2019.

- **Robert Kmieciak** – prosecutor of the Zielona Góra District Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; in reply to the objection lodged by the guilty against the disciplinary sanction of admonition imposed on him by the Regional Public Prosecutor in Zielona Góra (case PO I IV WOS 1160.10.2019) for participation in a rally in defence of free courts, disciplinary proceedings are now in progress against prosecutor Robert Kmieciak, conducted by the acting deputy of the Disciplinary Ombudsperson of the Prosecutor General for the Wrocław divisional district (case ref. RP IV RD 7.2020) where he is charged with insulting the dignity of the office in connection with the above event. In the case ref. 4 Ds 343/2019, the Szczecin Niebuszewo District Public Prosecution Service in Szczecin is holding an investigation on the alleged overstepping of authority by Robert Kmieciak, District Public Prosecutor in Zielona Góra. The case represents the proceedings resumed for a subsequent time and previously discontinued, initiated on notification from the Trade Union of Prosecutors and Prosecution Employees. The proceedings involve taking interviews of prosecutors from the Zielona Góra district, including those holding managerial functions both earlier and now, as well as employees of secretarial offices.

- **Dariusz Korneluk** - former Appellate Prosecutor in Warsaw, transferred to the position of a prosecutor at the Warsaw – City Centre District Public Prosecution Service in Warsaw; member of the management board of the Lex Super Omnia Association of Prosecutors; disciplinary proceedings on insult on the dignity of the prosecutor's office in connection with the decision to publish a note entitled: 'Position in the matter of instrumental initiation of investigations' on the Association's website; the note criticised the action taken by Tomasz Janeczek, prosecutor of the National Public Prosecution Service holding the office of the Divisional Public Prosecutor in Katowice; this is because he identified the given name and surname of the judge the investigation initiated at the prosecution was to concern in a message on the unit's website; the proceedings are in progress; other explanatory proceedings were initiated because of a statement given in the 'Czarno na białym' programme of TVN24 but no features of a disciplinary offence were found. He was repeatedly interrogated pursuant to Art. 183(1) of the Code of

Criminal Procedure in the proceedings held by the Radom Regional Public Prosecution Service under the ref. No. PO I Ds. 41.2017 on alleged irregularities in the case investigated under the case ref. V Ds. 13/12 by the Warsaw - Praga Regional Public Prosecution Service in Warsaw and concerning the Smolensk civil thread. Charges in the same case have been raised against prosecutor Józef Gacek.

- **Piotr Kowalik** – prosecutor of the Warsaw Praga South District Public Prosecution Service in Warsaw, member of the Lex Super Omnia Association of Prosecutors; disciplinary proceedings ref. PO V WO 1160.34.2018 'concerning failure to file a written declaration to satisfy the obligation stemming from the reading of Art. 103a(1) of the Act on the Public Prosecution Service'.

- **Mariusz Krasoń** – prosecutor of the Kraków Divisional Public Prosecution Service, member of the management board of the Lex Super Omnia Association of Prosecutors; explanatory proceedings because of his statement for the 'Gazeta Wyborcza' daily following the rally organised in defence of 'free courts' on 23 July 2017, and his interview for TVN24 where he pointed out that prosecutors were not provided protection from the coronavirus pandemic; summoned by the disciplinary ombudsperson to give an explanation of his participation in the March of One Thousand Robes in Warsaw in the prosecutor's robe in January 2020. Delegated in connection with the operations of the Association for 6 months away from his place of abode, to the Wrocław - Krzyki District Public Prosecution Service, then delegated to units of the district level in Kraków.

- **Katarzyna Kuklis** – former Regional Public Prosecutor in Bielsko - Biała, currently prosecutor at the Bielsko – Biała Regional Public Prosecution Service; member of the Lex Super Omnia Association of Prosecutors – explanatory proceedings for formal flaws in the course of one of the meetings of the Collegium of the Bielsko Biała Regional Public Prosecution Service years back; on 10 October 2017, in the case ref. PK I SD 78.2017, the Disciplinary Court considered an appeal lodged by the First Deputy Public Prosecutor General, National Public Prosecutor, from the decision refusing initiation of the proceedings, where the Court quashed it and referred the matter for reconsideration; on 30 January 2018, deputy disciplinary ombudsperson refused commencement of the proceedings once again, and the decision is valid and final.

- **Katarzyna Kwiatkowska** – prosecutor of the former Appellate Public Prosecution Service in Warsaw, transferred to the position of a prosecutor at the Warsaw - Praga Regional Public Prosecution Service in Warsaw; delegated away from her usual abode in connection with her activities in the Lex Super Omnia Association of Prosecutors to the Golub - Dobrzyń District Public Prosecution Service; as of 23 February 2021 she has been sued by the National Public Prosecution Service for alleged damage to the reputation of the office (a SLAPP claim for compensation of PLN 250 000); interrogated pursuant to Art. 183(1) of the Code of Criminal Procedure in the proceedings held by the Ostrołęka Regional Public Prosecution Service under the ref. No. PO 1 Ds. 1.2020 in the case concerning the filing, by members of the management board of the Lex Super Omnia Association of Prosecutors in Warsaw on 12 September 2019 a report on an actually not committed offence and accusing falsely the Minister of Justice of an offence said to have been committed on 6 December 2016, namely overstepping his authority with the

view of enabling prosecutors of the National Public Prosecution Service to reap a financial gain, where the transgression consisted in the issuance of a disposition to delegate prosecutors to the National Public Prosecution Service or Ministry of Justice and the National School of Judiciary and Public Prosecution and to grant benefits to prosecutors delegated to do their service away from the place of usual residence in transgression of the statutory delegation as laid down in Art. 112 of the Act on the Public Prosecution Service, in effect of which in the period from March 2018 to 9 August 2018 prosecutors of the National Public Prosecution Service were paid undue monthly benefits of the accommodation lump sum allowance adding up to the aggregate sum of PLN 2,329,315.85, which represented actions to the detriment of the State Treasury, i.e. an offence perpetrated by the Minister of Justice, classified as falling under Art. 231(2) of the Criminal Code, i.e. an offence under Art. 238 of the Criminal Code in concurrence with Art. 234 of the Criminal Code in conjunction with Art. 11(2) of the Criminal Code.

- **Tadeusz Marek** – prosecutor of the Białystok Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; explanatory proceedings in connection with the investigation in the matter of forging signatures on the letters of support for the Election Committee of the National Movement in the elections to the local governments in 2014.

- **Artur Matkowski** – prosecutor of the military department serving at the Poznań - Grunwald District Public Prosecution Service. In January 2021 delegated away from his place of abode to the City of Rzeszów District Public Prosecution Service for the period of 6 months.

- **Beata Mik** – retired prosecutor of the Public General Prosecutor's Office, member of the Lex Super Omnia Association of Prosecutors; penalised by the disciplinary court with the sanction of admonition for publication (free of charge) articles on legal topics in the 'Rzeczpospolita' daily; acquitted on appeal from the Court Disciplinary Chamber; prosecutor Beata Mik died in 2020.

- **Bogusław Olewiński** – prosecutor of the former Appellate Public Prosecution Service in Rzeszów, transferred to the position of a prosecutor at the Rzeszów District Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; explanatory proceedings were conducted against the prosecutor because of his statement for TVN24; no features of a disciplinary offence were found.

- **Jarosław Onyszczuk** - former Deputy Appellate Prosecutor in Warsaw, transferred to the position of a prosecutor at the Warsaw - Mokotów District Public Prosecution Service in Warsaw; member of the management board of the Lex Super Omnia Association of Prosecutors; repeatedly initiated explanatory proceedings in connection with his engagement in the Association because of publications in journals and statements for the media with no features of a disciplinary offence found in any case; in January 2021 delegated away from the place of his abode, to the Lidzbark Warmiński District Public Prosecution Service. He was repeatedly interviewed pursuant to Art. 183(1) of the Code of Criminal Procedure in the course of the proceedings conducted by the Radom Regional Public Prosecution Service under the file ref. PO I Ds. 41.2017 on alleged

irregularities scarring the case ref. V Ds. 13/12 of the Warsaw - Praga Regional Public Prosecution Service in Warsaw concerning the civil Smolensk thread which he had supervised. Charges in the same case have been raised against prosecutor Józef Gacek.

- **Waldemar Osowiecki** – former Regional Public Prosecutor in Płock, currently a prosecutor delegated to the Ciechanów District Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors. In 2016, delegated for 6 months away from the place of his residence, to the Częstochowa District Public Prosecution Service, whilst in difficult life situation.

- **Iwona Palka** - former Appellate Prosecutor in Katowice, currently retired; member of the management board of the Lex Super Omnia Association of Prosecutors; explanatory proceedings for formal flaws in the course of one of the meetings of the Collegium of the Bielsko Biała Regional Public Prosecution Service years back. The procedures ended on 30 January 2018 with refusal to initiate proceedings in the case, and the decision is valid and final; moreover, in the disciplinary proceedings held by the Deputy Disciplinary Ombudsperson of the Prosecutor General for the Kraków divisional district, case ref. RP III RD 76.2020, she was accused of the disciplinary offence of damaging the dignity of the office because in her statement for the 'Gazeta Wyborcza' daily she used the expression: 'pathology' when referring to the legal and lawful official action of delegating an assistant prosecutor to perform his service at the Katowice Divisional Public Prosecution Service, hence acting in contravention of par. 2(4) of the Set of Rules of Prosecutors' Professional Conduct; moreover, on 26 February 2021 the Deputy Disciplinary Ombudsperson of the Public Prosecutor General issued the decision to supplement the decision to press charges, where the prosecutor is accused of damaging the dignity of the office and committing the disciplinary offence contemplated in Art. 137(1) of the Act on the Public Prosecution Service, consisting in her failure to comply with the recommendation of the Public Prosecutor General of 11 March 2014 by not setting the dates for Krzysztof Kołaczek, prosecutor of the former Katowice Appellate Public Prosecution Service to take his outstanding annual leave and thus causing the payment to him of the equivalent of 103 days of unused annual leave for the years 2013 - 2016 in the amount of PLN 92,320.96, as well as her failure to set herself the dates of taking an outstanding annual leave and paying the equivalent of PLN 22,500. The proceedings are in progress.

- **Krzysztof Parchimowicz** – prosecutor of the former Public General Prosecutor's Office, transferred to the position of a prosecutor at the Warsaw - Mokotów District Public Prosecution Service in Warsaw, member of the Lex Super Omnia Association of Prosecutors, former president of the Association. Subject of the largest number of disciplinary proceedings, including:

    1. PO VI K 116.133.2016 – concerning failure to notify the superiors of having filed, together with other demoted prosecutors, a complaint with the European Court of Human Rights,
    2. RP IV RD 163.2017 – concerning his opinion expressed in the 'Czarno na białym' programme on the making, by the director of the National Public Prosecutor's

Office, the opinion of the 'Ordo Iuris' Association an official opinion and distributing it among the prosecution units to be followed,

3. RP IV RD. 149.2018 – concerning liability for the decision made by another prosecutor which caused long term occupation of a storage hall for storing physical evidence and financial claims from the building administrator against the Warsaw Divisional Public Prosecution Service,
4. RP IV RD 7.2019 – concerning his participation (at the time of his annual leave) in the conference organised on 6 December 2018 by the National Ombudsman's Office on the institution of the protected witness and the so-called 'minor protected witness',
5. RP IV RD 25.2019 – concerning his participation on 12 February 2019, in his office hours, in presentation of the report of the Justice Defence Committee; Krzysztof Parchimowicz was interviewed in the matter on order from the Divisional Public Prosecutor in Warsaw, served on the prosecutor by the Head of Division II,
6. RP IV RD 102.2019 – concerning his questioning of the recommendation issued by the Deputy District Public Prosecutor for Warsaw Żoliborz and his alleged exchange of correspondence with the Deputy Divisional Public Prosecutor in Warsaw outside the official channels,
7. RP IV RD 130.2019 – concerning his participation in and his statement made on 11 October 2019 during a conference of the Justice Defence Committee on violating the rules of law and order,
8. RP IV RD 46.2019 – concerning irregularities in the investigation taken over by the Warsaw Divisional Public Prosecution Service applying to the period preceding the take-over of the case,
9. PO V WO 1160.24.2020 – concerning failure to resume the suspended proceedings, where information on the suspect's whereabouts was received after the case had been taken over by another lead prosecutor,
10. concerning his participation on 14 and 22 June 2018, during the office hours, in two disciplinary trials of prosecutor Beata Mik; the disciplinary ombudsperson for Łódź held evidence taking proceedings in the matter and to that aim interviewed all superiors and seniors of prosecutor Parchimowicz from the Warsaw Mokotów District Public Prosecution Service about his observing discipline at work, following which he discontinued the disciplinary proceedings; the appeal lodged by the National Public Prosecutor with the Disciplinary Court (case ref. PK I SD 62.2019) proved unsuccessful; the cassation appeal from the National Public Prosecutor was received but not considered by the Disciplinary Chamber as non-permissible under the law (case ref. II DSI 37/20).

In addition, a number of disciplinary proceedings have been in progress against prosecutor Krzysztof Parchimowicz:

1. RP III RD 14.2017 – conducted by the Łódź disciplinary liability ombudsperson where he faced 3 charges of critical statements made in the media on poor working conditions at the Warsaw Mokotów District Public Prosecution Service, criticism of the personal decisions of his superiors, and criticism of the operations of the Warsaw Regional Public Prosecution Service consisting in potential reporting

for participation in the Association registration procedure and his criticism of the dragging Association registration procedure. By virtue of the decision of 30 March 2017, the proceedings were discontinued in view of marginal social harmfulness and the decision is valid and final.

2. The Deputy Disciplinary Omudsperson for the Białystok divisional district has presented prosecutor Krzysztof Parchimowicz with a charge under Art. 137(1) of the Act on the Public Prosecution Service in the case ref. RP III RD 8.2018, where the charge concerned further public statements and media comments in the form of postings on the Twitter service and in the 'Czarno na białym' programme on the TVN24 station broadcast on 25/10/2017. The proceedings are now continuing under the ref. No. PK I SD 46.2019 before the Disciplinary Court for Prosecutors.
3. The proceedings held by the Białystok disciplinary ombudsperson under the ref. No. III RD 20.2018, where the charges raised concern behaviour unworthy of a prosecutor in connection with the critical statement made in the 'Czarno na białym' programme, assessing the conduct of the Public Prosecutor General and other prosecutors in the trial of the cardio-surgeons accused of causing the death of Zbigniew Ziobro's father, and the statement given to the 'Polityka' Weekly which criticised the approach of the prosecutors financially dependent on the authorities. The proceedings (case ref. PK I SD 99.2019) are currently in progress before the Disciplinary Court.
4. The disciplinary proceedings concerning insult on the dignity of the prosecutor's office in connection with the decision to publish a note entitled: 'Position in the matter of instrumental initiation of investigations' on the Association's website; the note criticised the action taken by Tomasz Janeczek, prosecutor of the National Public Prosecution Service holding the office of the Divisional Public Prosecutor in Katowice; this is because in the message he identified the given name and surname of the judge the investigation initiated at the prosecution was to concern; the disciplinary court issued a yet not final decision to discontinue the proceedings in case PK I SD 11.2019 in view of obvious non-existence of any grounds of the accusation; the appeal of the disciplinary ombudsperson is awaiting consideration by the Disciplinary Chamber,
5. Proceedings ref. PK I SD concerned an obvious and gross infringement on the law by failing to commence the procedure in a case and exceeding in this way the 30-day deadline for initiation of proceedings or issuing refusal to initiate them. The Regional Public Prosecutor, Paweł Blachowski, penalised the prosecutor for the fault with the sanction of admonition. In consequence of the objection lodged, on 3 October 2019 the Disciplinary Court discontinued the proceedings. The disciplinary ombudsperson filed an appeal from the decision with the Disciplinary Chamber.
6. In the case of the reference No. RP III RD 48.2019, deputy disciplinary ombudsperson in Łódź accused him of violating the obligation of impartiality because of his statements published in August 2019 in the 'Trybuna' Daily and the Newsweek Polska Weekly, which criticised politicisation of the prosecution services and conformist stances of some prosecutors. The matter is being considered by the Disciplinary Court (case ref. PK I SD 52.2020).

7. In the case ref. III RP RD 39.2019 of 11 December 2020, the deputy disciplinary ombudsperson for the Rzeszów divisional district raised 7 charges of insulting the dignity of the office against prosecutor Krzysztof Parchimowicz by his:
   - placing posts on the Twitter portal criticising the press spokesperson of the Regional Public Prosecution Services in Warsaw and publishing statistical data which evidenced that the explanation for delegating prosecutor Piotr Skiba to the District Public Prosecution Services in Grodzisk Mazowiecki could not have been based on the staffing needs,
   - statement posted on 26 September 2018 on the Onet.pl portal in the article: 'New functions for prosecutors and the disciplinary ombudsperson for judges. Parchimowicz: this comes down to buying loyalty' which critically assessed the system of motivating prosecutors financially through awards, extra jobs, and discretionary promotions,
   - statement placed on 10 December 2018 on the Onet.pl portal in the article: 'Controversial words of Ziobro in the TVP. Prosecutor Parchimowicz: the ground is shrinking beneath his feet' which expressed a negative view of the actions taken by the prosecution services in the case against Wojciech Kwaśniak and the way in which they were made public,
   - statement made in the interview of 12/12/2018 on the 'Rozmowy Piaseckiego' programme which criticised politicising of the prosecution services, the stance taken by some prosecutors versus the case against Wojciech Kwaśniak suspected of failing to comply with his obligations in his performance of the FSA's *[KNF]* supervision over the operations of SKOK Wołomin,
   - statement of 10/01/2019 voiced during the conference held under the title: 'Free Prosecution Services' which included criticism of politicising of the prosecution services,
   - questioning, in November 2018, the correctness of delegations to the Warsaw Divisional Public Prosecution Service and refusal to perform the jobs of the office,
   - statement made in the article entitled: 'The prosecutors of the Ziobro Times' published in 'Polityka' No. 11 of 15 March 2017 on non-uniform standards applied to prosecutors engaging in off-the-job activities.

The following criminal proceedings are in progress against prosecutor Krzysztof Parchimowicz:

1. under the file reference No. RP I Ds 70.2016, conducted by the Białystok Divisional Public Prosecution Service and in one of the threads concerning the fact that back in 2009 in his capacity of the director of the Organised Crime Bureau of the National Public Prosecution Service he distributed a letter among appellate public prosecutors i divisional heads of organised crime field bureaus where he indicated the recommended classification of 'behaviours related to abuses of the procedure of calculating the payment the VAT tax and other public law liabilities.' The initiated proceedings suggest that Krzysztof Parchimowicz might have assisted those who defrauded VAT in avoiding criminal liability.

2. Other criminal proceeding against Krzysztof Parchimowicz were given the reference No. PK XIV Ds. 3.2017 and were conducted by the National Public Prosecution Service. The action was initiated without any factual grounds and the verification proceedings were closed with the decision to refuse initiation of an investigation in the matter of filing a false declaration of the assets owned in the year 2015. The verification operations continued for 3 months (between March and June 2017) and over their duration the prosecutor of the Department of Internal Affairs of the National Public Prosecution Service exchanged written communication and demanded the files of the inheritance proceedings following the death of the prosecutor's parents despite having a copy of the decision dividing the inheritance at his disposal.
3. Criminal proceedings conducted by the Ostrołęka Regional Public Prosecution Service under the ref. PO 1 Ds. 1.2020 concerning the filing, by members of the management board of the Lex Super Omnia Association of Prosecutors in Warsaw on 12 September 2019 a report on an actually not committed offence and accusing falsely the Minister of Justice of an offence said to have been committed on 6 December 2016, namely overstepping his authority with the view of enabling prosecutors of the National Public Prosecution Service to reap a financial gain, where the transgression consisted in the issuance of a disposition to delegate prosecutors to the National Public Prosecution Service or Ministry of Justice and the National School of Judiciary and Public Prosecution and to grant benefits to prosecutors delegated to do their service away from the place of usual residence in transgression of the statutory delegation as laid down in Art. 112 of the Act on the Public Prosecution Service, in effect of which in the period from March 2018 to 9 August 2018 prosecutors of the National Public Prosecution Service were paid undue monthly benefits of the accommodation lump sum allowance adding up to the aggregate sum of PLN 2,329,315.85, which represented actions to the detriment of the State Treasury, i.e. an offence perpetrated by the Minister of Justice, classified as falling under Art. 231(2) of the Criminal Code, i.e. an offence under Art. 238 of the Criminal Code in concurrence with Art. 234 of the Criminal Code in conjunction with Art. 11(2) of the Criminal Code. On 4 December 2020 Krzysztof Parchimowicz was interviewed in the case in the capacity of a witness upon cautioning him first of the reading of Art. 183(1) of the Code of Criminal Procedure.

- **Paweł Pik** – prosecutor of the Gdańsk Divisional Public Prosecution Service, member of the management board of the Lex Super Omnia Association of Prosecutors; disciplinary proceedings held by the deputy disciplinary ombudsperson for the Łódź divisional district under the case ref. RP III RD 10.2020; prosecutor Paweł Pik was summoned to submit his written position pursuant to Art. 154(1) of the Act on the Public Prosecution Service; the proceedings concern failure to file a motion pursuant to Art. 257(3) of the Code of Criminal Procedure and non-resumption of a suspended case despite reasons to do so.

- **Wojciech Sadrakuła** – retired prosecutor of the Public General Prosecutor's Office, member of the Lex Super Omnia Association of Prosecutors; explanatory proceedings in the matter of his running classes with students in the 5th edition of the Constitution Week. For his participation, together with representatives of the Committee for the

Defence of Democracy, in a sitting of the Legislative Committee of the Sejm of the Republic of Poland in 2016, devoted to the bill on the Constitutional Tribunal, prosecutor Wojciech Sadrakuła was penalised with the disciplinary sanction of admonition by the National Public Prosecutor; in effect of an objection lodged by the attorney *ad litem* of the prosecutor, the Public Prosecutor General ordered that the matter be referred for consideration to the disciplinary court. On 21 June 2021, the Disciplinary Court found the prosecutor guilty of a disciplinary offence and imposed the sanction of admonition on him. The judgment is not yet valid and final. In January 2019, the retired prosecutor Wojciech Sadrakuła filed a request with the National Public Prosecutor, Bogdan Święczowski, for consent to his taking up literary activities, but the latter denied his consent. In connection therewith, on 14 May 2019 prosecutor Wojciech Sadrakuła filed a constitutional complaint with the Constitutional Tribunal on selected organisational regulations governing the operations of the prosecution services arguing that Art. 103(6) of the Act on the Public Prosecution Service, which burdens prosecutors with the obligation of obtaining prior consent to take up any extra activities or jobs (in this case consisting in engaging in literary activities) hits freedom of speech and expression, and also artistic freedom.

- **Alfred Staszak** – prosecutor of the Zielona Góra Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; on motion from the Zielona Góra Regional Public Prosecution Service, the acting deputy of the Disciplinary Ombudsperson of the Prosecutor General for the Wrocław divisional district initiated disciplinary proceedings (RP IV RD 8.2020) in the matter of insulting the dignity of the office, which consisted in assessing the decision of his superior to have the case entered in the 'Ko' register instead of the 'Ds' register as a premeditated action aimed at not disclosing the case as being of long-term category; that insult on dignity was connected with the disciplinary proceedings of the Regional Public Prosecutor in Zielona Góra, file case ref. PO IV WOS 1160.9.2019, where prosecutor Alfred Staszak was summoned to file a written explanation on 'neglecting prompt pronouncement' of the charge to the person who gave a false statement' – the case was closed with a judicial reproach which was obviously ungrounded (an objection to the reproach resulted in quashing the reproach by the Disciplinary Court on 9 June 2020 and discontinuance of the proceedings ref. PK I SD 16.2020); on 11 September 2020, in the same matter, prosecutor Staszak was announced a charge of having committed an offence falling under Art. 137(1) of the Act on the Public Prosecution Service. The proceedings are in progress.

- **Zbigniew Szpiczko** – prosecutor of the Białystok Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; explanatory proceedings connected with the investigation in the matter of forging signatures on the letters of support for the candidates of the National Movement in the elections to the local governments in 2014.

- **Dariusz Ślepokura** – prosecutor of the Warsaw Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; summoned by the disciplinary ombudsperson to file a written statement on his participation in the March of One Thousand Robes in Warsaw in the prosecutor's robe in January 2020.

- **Andrzej Śliwski** – prosecutor of the Białystok Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; explanatory proceedings connected with the investigation in the matter of forging signatures on the letters of support for the candidates of the National Movement in the elections to the local governments in 2014.

- **Katarzyna Szeska** – prosecutor of the former Warsaw Appellate Public Prosecution Service transferred to the position of a prosecutor at the Warsaw - Wola District Public Prosecution Service; delegated in January 2021 for 6 months away from the place of her usual residence to the Jarosław District Public Prosecution Service.

- **Piotr Wójtowicz** – prosecutor of the former Wrocław Appellate Public Prosecution Service, transferred to the position of a prosecutor at the Legnica Regional Public Prosecution Service, former Regional Public Prosecutor in Legnica and member of the Lex Super Omnia Association of Prosecutors; accused of the disciplinary offence of an insult on the dignity of the prosecutor's office, consisting in his giving, on 16 July 2016, an unauthorised interview to a journalist of a local Internet portal during the rally organised by the Committee for the Defence of Democracy in defence of free courts. The proceedings were conducted as of the onset under the file ref. No. PK I SD 84.2017 and were closed on 11 June 2019 with acquittal of the accused. On 9 June 2020, the National Public Prosecutor, Bogdan Święczkowski, filed a cassation appeal from the above decision of the disciplinary court with the Supreme Court (ID *[Disciplinary Chamber]*); the appeal has not been cognized to date.

- **Ewa Wrzosek** – prosecutor of the Warsaw - Mokotów District Public Prosecution Service in Warsaw; member of the Lex Super Omnia Association of Prosecutors; she has been presented with disciplinary charges because of her taking the floor during the public hearing of the 'judicial acts of law' in the building of the Sejm of the Republic of Poland, because of her participating in a rally organised in front of the Supreme Court in July 2018 in defence of 'free courts', and in connection with her appearance in the footage produced by the Free Courts Initiative where she said two sentences in the English language; the charges are awaiting consideration by the disciplinary court. The proceedings are in progress before the Disciplinary Court at the Public Prosecutor General filed under the ref. No. PK I SD 75.2020; in the verdict of 25 August 2020 (PK I SD 80.2019), the Disciplinary Court for Prosecutors at the Public Prosecutor General found prosecutor Ewa Wrzosek guilty of a disciplinary offence falling under Art. 137(1) of the Act on the Public Prosecution Service (in connection with the established idleness in proceedings, lasting 6 months and 22 days) but waived imposing any penalty; the Deputy Disciplinary Ombudsperson of the Public Prosecutor General for the Warsaw divisional district filed an appeal from the decision to the Supreme Court (ID); the disciplinary proceedings ref. PO V WO 1160.32.2018 'concerning failure to file a written statement to satisfy the obligation ensuing from the reading of Art.103a(1) of the Act on the Public Prosecution Service'.

- **Robert Wypych** – prosecutor of the Częstochowa Regional Public Prosecution Service, member of the Lex Super Omnia Association of Prosecutors; summoned by the Deputy Disciplinary Ombudsperson for the Katowice divisional district (RP III RD 37.2020) to file

an explanatory statement in connection with the words spoken in the media which indicated that the prosecution services were inadequately prepared for the outburst of the COVID-19 epidemic in terms of personal protection equipment and procedures; he is currently facing the charge of insulting the dignity of the prosecutor in connection with his utterance; the proceedings are in progress.