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*Prosecutor as public interest advocate in administrative proceedings and
administrative court proceedings*

SUMMARY

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I. The thesis subject and the research objectives

The main subject of this thesis is the issue of prosecutor's participation in the administrative proceedings and administrative court proceedings. The Public Prosecutor's Office in Poland and its place in the system, particularly the question of the role of the prosecutor in the administrative proceedings and administrative court proceedings, is not appropriately addressed in either academic research nor discussions. The marginalization of prosecutor's participation in the administrative proceedings and administrative court proceedings resulted in a decreased number of research papers on the subject matter. The issue of the public prosecutor's involvement in administrative court proceedings was the subject matter of the 2009 paper by W. Czerwiński, entitled: "The public Prosecutor's Involvement in Administrative Proceedings". The paper however, focuses exclusively on the administrative proceedings, while this paper's focus is on the involvement of the public prosecutor in both administrative proceedings and administrative court proceedings. In addition, this paper discusses the issue of the public prosecutor's role in these proceedings. The need of a different approach to the role of the public prosecutor's office as the public interest advocate in these proceedings has emerged, as the issue of the involvement and the role of the public prosecutor's office in administrative and administrative court proceedings is discussed as a separate legal issue in the doctrine research papers sporadically.

II. The outline of the research paper

The public prosecutor's office has been evolving over the years. Currently, the main objectives of the public prosecutor is to supervise the rule of law and persecute those who breach it. One of the ways in which the rule of law and the public interest are protected is the public prosecutor's supervision over the administrative and administrative court proceedings. The involvement of the public prosecutor's office in the administrative and administrative court proceedings is a specific type of law regulation, due to the fact that it requires a change of the scope of the public prosecutor's actions – instead of acting as a public prosecutor, the prosecutor becomes a guardian of the rule of law and the public interest. The main objective of the public prosecutor in these proceedings is not to prosecute criminals, but to supervise the compliance with the law by public administration bodies and to ensure that the issued decision is lawful. This does not imply that the prosecutor must participate in all proceedings

of this type. The involvement of the public prosecutor is limited to the issues in which he or she deems necessary to intervene. Participating in administrative or administrative court proceedings depends on the prosecutor's discretion, although it seems that in the case of a justified suspicion that the law has been broken, the prosecutor is obliged to intervene in each such case.

The dissertation has been planned in accordance with the following research objectives.

Firstly, it aims at presenting the position of the public prosecutor's office as an authority and emphasizing that without adequate independence, the prosecutors will not be able to perform the entrusted tasks reliably. The absence of the prosecutor's office position in the Polish Constitution is still an open question. It seems that constitutionalizing the public prosecutor's office would ensure its stronger position, and if not, making its position as an authority more specific. Taking into the consideration the necessity of independent decision making for the public prosecutors the separation of the Public Prosecutor General's and The Minister's of Defense posts should be considered.

One of the key aims of the dissertation was to show the specific role of the public prosecutor's office in administrative and administrative court proceedings and to show that the authority functions as the advocate of the public interest in these proceedings. Naturally, the the above thesis resulted in an attempt to explain how the notion of public interested should be understood in the context of administrative and administrative court proceedings. In order to do so, it was necessary to describe what the concept of public interest is and how to interpret this notion. An attempt has been made to clarify the definition of this concept and to show in which administrative and administrative court cases the prosecutor was guided by the protection of the public interest, therefor acting as its advocate. In fact, the public prosecutor guided by the public interest acts in the interest of the general public and in the interest of the Republic of Poland.

Secondly, the dissertation focuses on the involvement of the public prosecutor' office in administrative and administrative court proceedings, presents the position in these proceedings, the role, the tasks, and the prosecutor's procedural means used to bring the supervised activity to compliance with the law, both in the course of the proceedings and after the final decision has been delivered. The dissertation additionally points out the problems occurring within the doctrine and the judicature on the example on the public prosecutor's role in the proceedings. The aim of the dissertation was not only to present and describe the regulations for the participation of the public prosecutor's office in administrative and

administrative court proceedings as comprehensively as possible, but also to indicate the discrepancies in the doctrine and judicature that arise on the basis of the solutions adopted by the legislator on the involvement of the prosecutor in these proceedings. It is often that the issues arising from the usage of certain procedural means or the time limitations are a source of a number of divergences in interpretations and, what is more, are a source of problems in legal practice. I made an attempt to support the discrepancies in legal academic writing and doctrine presented in the dissertation with statistical figures from the public prosecutor office's activities in administrative and administrative court proceedings, supplemented with examples from previous judicial decisions. The primary focus of the dissertation was put on the previous judicial decisions of the administrative courts' decisions delivered in cases where the public prosecutor was involved, as well as the reference documentation made available at selected public prosecutor's offices. I was given access to case files on administrative and administrative court proceedings from the last five years at the District Public Prosecutor's Office in Zduńska Wola and Regional District Public Prosecutor's Office in Sieradz. I have also contacted the public Prosecutors in Kielce, Pabianice, Łódź, Łask and Bełchatów, however these offices refused the access to respective files. I attempted to select the materials that were the most relevant to the objectives of the dissertation from the materials that I had access to.

All in all the dissertation analyses the cases where the Public Prosecutor acted directly as the public interest advocate. The factors determining the participation of the public prosecutor in administrative proceedings are foremostly the necessity to protect the rule of law and procedural justice. The protection of public interest is also a factor determining the involvement of the public prosecutor in administrative and administrative court proceedings, however, in my opinion, the protection of public interest is an inherent element of the protection of the rule of law. Thus, the public prosecutor protects the public interest by safeguarding the lawfulness of the public administration, as the lawfulness of administrative bodies lies within public interest. The public prosecutor acting as the public interest advocate and protecting public interest is driven mainly by the well-being of the whole society and the best interest of the Republic of Poland. Alike Ombudsman, representing the interest of an individual and the citizens, the public Prosecutor represents and protects the public interest.

III. Methodology

The main research method applied in the dissertation was doctrinal, consisting in the analysis of the valid legal, acts, judicial decisions, documentation on political

decisions as well as official statistics and academic publications. In addition, the theoretical-legal method was used to examine various theories regarding the concept of public interest and its functioning and understanding on the basis of the participation of the Public Prosecutor's Office in administrative and administrative court proceedings, as well as interpreting this concept by the Public Prosecutor's Office in the above-mentioned proceedings. The historical method was used to present the evolution of the Public Prosecutor's Office in Poland. This allowed to assess the legitimacy of increasing the independence of the Public Prosecutor's Office from political influence and its constitutionalization, which would additionally reinforce its position in the system of state authorities.

In addition to the doctrinal and historical methods, the dissertation also utilizes an empirical method to examine cases in which public prosecutor participate and the arguments they use when joining the proceedings or initiating administrative or administrative court proceedings. The purpose of these considerations, which are primarily illustrative in nature, was to broaden the perspective on cases in which public prosecutors participate most frequently and to draw conclusions whether, by initiating administrative and administrative court proceedings and engaging in these cases, the public prosecutor becomes a public interest advocate, and if so, in which cases it may be referred to as such. Moreover, the analysis of the described sources contributed to a better understanding of the opportunities and threats related to the participation of the Public Prosecutor's Office in administrative and administrative court proceedings and allowed to answer the question whether the role played by the public prosecutor in these proceedings is in fact based on the protection of public interest. There may be situations when, confronted with the interests of the citizen, the public interest does not find adequate protection, hence - in my opinion, the participation of the public prosecutor in the proceedings is required, as the advocate of such interest.

The trial reflects the legal state as of 1 June 2021.

14.09.2021r. *Gracjan Kozłowski*