

## Poland / Pologne

### MAIN QUESTION

Do you know about any judgments or decisions of the European Court of Human Rights or of the Court of Justice of the European Union, or of any other international court which refer to or in any way touch upon the independence (and preferably went on to highlight its elements):

- a) of prosecutors;
- b) of the judiciary or the justice system as a whole;
- c) of judges.

If you know about any such judgments or decisions, the CCPE Bureau and the Working Group will be very grateful to you if you indicate their titles and also, if possible, the numbers of paragraphs or sections in these judgments and decisions where such references or indications are made. These judgments and decisions may concern any country, not only your country.

### Questions

#### IN YOUR COUNTRY:

1. What are the general official measures taken for reacting to and implementing the decisions of international courts and treaty monitoring bodies?

If it is necessary to change the law in connection with an international court ruling, it is possible to take legislative action.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?

The independence of prosecutors is guaranteed by law.

3. Are these measures reflected in the law or in the prosecution policy or debate?

The principle of the prosecutor's independence is set out in Articles 7- 8 of the Act on the Public Prosecutor's Office.

4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Yes, the approach to this issue has changed over the years in terms of detailed solutions.

5. Are there also national decisions of the Supreme or Constitutional Courts, or any other highest judicial body at national level, dealing with the question of independence of prosecutors?

There is case-law of both courts and the Constitutional Tribunal regarding the status of a prosecutor, which also raises, although usually marginally, the issue of independence,

(e.g. the judgment of the Constitutional Tribunal of 18 July 2011, reference number SK 10/10, decision of the Constitutional Tribunal of 26 June 2019, reference number K 26/16, judgment of the Supreme Court of 17 September 2001, reference number III SZ 8/01, judgment of the Supreme Court of 18 February 2013, reference number II PK 147/12).

6. Does the prosecution system in your country belong to the judiciary?

No, it does not.

6bis Are there any parallels between the independence of judges and independence of prosecutors, or the latter is considered separately, if considered at all?

7. Are prosecutors and prosecution services independent or autonomous from the executive and legislative branches of state power?

Prosecutors in the performance of their tasks are independent of the legislative and executive authorities. The Prosecutor General, as the superior of prosecutors, operates within a different type and scope of competences than competences vested in the executive body, which is the Minister of Justice, both areas do not overlap, as they are clearly delimited by applicable law.

7bis Is the interaction of prosecutor offices with courts, police, investigation authorities and other actors in criminal procedure based on the principle of prosecutorial independence and how?

8. Is there a Council of Prosecutors or a similar equivalent body which can be considered as a mechanism to monitor and ensure prosecutorial independence, including in the way in which the prosecution services operate?

In accordance with the Act on the Public Prosecutor's Office, the National Council of Prosecutors safeguards the independence of prosecutors.

9. How many of its members are elected by their peers, and does the prosecution policy or the debate within the judiciary produce any impact on the election of the members of the Council of Prosecutors?

The National Council of Prosecutors consists of 22 prosecutors, including 16 elected by equal prosecutors (4 elected by the meeting of prosecutors of the National Prosecutor's Office, 1 elected by the meeting of prosecutors of the Institute of National Remembrance and 11 elected by the assembly of prosecutors in regional prosecution offices).

10. Who has the initiative of disciplinary proceedings?

The disciplinary commissioner initiates and conducts explanatory and disciplinary proceedings and is a prosecutor in a disciplinary court. The disciplinary commissioner initiates explanatory proceedings at the request of the Prosecutor General, the competent regional or circuit prosecutor, as well as on his own initiative.

11. Are prosecutors appointed for life or do they have to fulfil successive terms? Of how many years?

For a lifetime.

12. Are the rules regarding appointment, transfer, promotion and discipline of prosecutors similar to those of judges?

Nomination.

The rules are different. Prosecutors of common organizational units of the public prosecution office are appointed by the Prosecutor General at the request of the National Prosecutor. The judges are appointed by the President of the Republic of Poland at the request of the National Council of the Judiciary.

Transfer.

The rules regarding prosecutors are similar to those regarding judges, but not identical. Transferring a prosecutor or a judge to another place of service (i.e. to another unit of the prosecution office or other court) in principle can only take place with his consent, but the law provides for exceptions. Exceptions are similar for both professions. The prosecutor is transferred by the National Prosecutor and the judge – the Minister of Justice, with the judge being entitled to appeal to the Supreme Court in certain cases.

Promotion.

Promotion rules are similar. Both in the case of prosecutors and judges, the condition for promotion to a higher position is a specific period of work in a previous position (Article 76 of the Act on the Public Prosecutor's Office, Articles 63-64 of the Law on the System of Common Courts). In the case of prosecutors, an exceptionally earlier promotion is possible if it constitutes a prize (Article 133, paragraph 2 of the Act on the Public Prosecutor's Office).

Disciplinary proceedings.

It is similar. The definition of misconduct is practically the same for both professions. This also applies to penalties. In the first phase, the body conducting the disciplinary proceedings is a disciplinary commissioner, appointed respectively from among judges or prosecutors, then in the first instance a disciplinary court composed of representatives of each profession or the Supreme court, and in the second instance only the Supreme Court.

13. May the government instruct the prosecution services, for instance, to prosecute or not to prosecute? Are instructions general or specific in nature? Are they given in writing? Can the prosecution challenge them?

The government cannot issue instructions the prosecution service to prosecute a particular category of crime, as the obligation to prosecute is based on the law and is based on the principle of legalism.

14. Are the instructions of superior prosecutors given in writing to those under their supervision? Can these instructions be challenged or refused?

An order regarding the content of an action issued in a specific case is always in writing. If the prosecutor does not agree with the order, he may demand that the order be changed or that he be excluded from performing in the case. Instructions on how to conduct a particular category of proceedings are also issued in writing.

14bis What is the system of allocation, re-allocation and management of cases and is it based on objective and transparent criteria respecting the independence of prosecutors?

15. Which are, if any, the main initiatives in terms of training to strengthen the awareness about the de facto dimension of the prosecutorial independence?

15bis Is the concept of prosecutorial independence reflected in the code of ethics and professional conduct of prosecutors? If such code exists in your country, could you please inform how it was prepared and adopted, and provide its copy in English or French if available.

16. To what extent the media cover the decisions of international courts and treaty bodies as regards the practical independence of prosecutors?

17. To what extent the prosecutor offices interact with the broad public as regards the decisions of international courts and treaty bodies related to the practical independence of prosecutors?

The prosecution office can communicate with the general public through spokespersons, website messages, etc.