

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY POLAND

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

POLAND (FOURTH MEETING)

(1) Application and implementation of article 11 of the UN Convention against Corruption.

Article 11 of the UN Convention against Corruption has been implemented. With regard to prosecution service, the following measures were taken to strengthen integrity and prevent opportunities for corruption of prosecutors.

High integrity is one of the initial requirements applicable to candidate prosecutors, in the process of recruitment. As it is set out in section 14 of the Law on Prosecution Service (LPS), the requirements are the following: Polish citizenship, impeccable character, university law degree, adequate health, minimum age of 26, having passed a prosecutor's or judge's examination, having worked as a trainee prosecutor or judge for at least a year. The requirement of an "impeccable character" is not further defined and the criteria for its assessment are discretionary and subject to individual evaluation. However, it is assumed that, apart from the requirement of having no criminal record, a person with an impeccable character should be distinguished for special ethical qualifications (honesty, impartiality, conscientiousness, responsibility and high personal culture). The evaluation of personal values of a candidate takes place on the basis of information obtained from different authorities.

The training on issues connected with ethics, proper conduct, prevention of corruption and conflict of interests and related matters is also included in the process of professional practice. The National School of Judiciary and Prosecution (NSJP) is responsible for providing training and professional development to judges, prosecutors, court assessors and assistant prosecutors (assessors). The curriculum of the NSJP foresees obligatory training for candidates in the area of "Ethics of prosecutor's work" in two training sessions, on "the meaning of ethics in prosecutor's work" and the prerequisites of official responsibility and disciplinary liability of a prosecutor.

(2) Summary or copies of the applicable policy(ies) or measure(s).

- The tasks, functions and operating principles of the Prosecutor's Office as well as the duties, rights and guarantees applicable to prosecutors are defined in the "Law on the Prosecution Service" of 20 June 1985. According to this law, the prosecution service is a legally-protected authority whose objective is to safeguard the law and order, as well as to oversee the prosecution of crimes. In accordance with section 8(1) LPS,

prosecutors are independent in the fulfillment of their duties, as specified in respective laws, subject to the provisions of sections 8(2), 8a and 8b LPS. These provisions state in particular, that a prosecutor is obliged to follow orders, guidelines and instructions (not related to the contents of a procedural act) of his/her superior prosecutor. Moreover, a direct superior prosecutor is entitled to amend or reverse a decision of the subordinate prosecutor. Such an amendment or reversal requires a written form and is to be included in the related file. Recent reforms were undertaken to strengthen the independence of the prosecution service, in particular by separating the positions of the General Prosecutor and Minister of Justice in March 2010. Moreover, in September 2010, the National Prosecution Council (NPC) was established as a designated self-government body, possessing a wide range of prerogatives, primarily entrusted with responsibility of securing and protecting prosecutorial independence. The Council is composed of the General Prosecutor, the Minister of Justice, a representative of the President of the Republic, four MPs, two senators, one elected prosecutor representing the military prosecution, one elected prosecutor representing the Institute of National Remembrance, three prosecutors elected by the prosecutors of the General Prosecutor's Office and 11 prosecutors elected by local gatherings at appellate level. The chair of the NPC is elected by its members.

- Ethical principles and core values of the prosecution service are contained in section 44(2) LPS, which states that a prosecutor is obliged to act in accordance with the prosecutor's oath and that s/he should, while on and off duty, safeguard the dignity of the office s/he holds and avoid anything which could be detrimental to the reputation of a prosecutor or to the trust in his/her impartiality.

Following the 2009 amendments to the LPS, the National Prosecution Council is responsible for the adoption of ethical principles governing the prosecutors' profession and for ensuring that those principles are observed. The NPC by resolution of 15 December 2011 appointed a commission, chaired by a prosecutor of the General Prosecutor's Office, tasked with the development of a draft collection of ethical principles.

On 19 September 2012, the NPC adopted the "Collection of Ethical Principles governing the Prosecutors' Profession", in the form of a resolution. The structure of the Collection of Ethical Principles is organised in 4 chapters and 29 sections, and takes into account specific duties and personal limitations both in and off service. It includes, *inter alia*, the principles of honesty, dignity and honour, sense of duty, objectivism, independence, impartiality and justice. The Collection is to be followed also by retired prosecutors and assessors entrusted with the fulfillment of prosecutor's duties.

- Prosecutors are appointed without any time limits by the General Prosecutor at the request of the National Prosecution Council. The NPC takes a decision on applying or not applying to the General Prosecutor for appointment of a candidate for the first prosecutor's position in the form of a resolution. The resolution may not be challenged and its contents are notified to the PG. Upon application, a prosecutor may be promoted by the General Prosecutor at the request of the National Prosecution Council to a higher position. Promotion takes place via competition. Candidates for higher-

rank prosecutor's positions (prosecutor at a Circuit Prosecutor's Office, Appellate Prosecutor's Office or General Prosecutor's Office) must meet additional requirements specified in section 14a of Law on Prosecution Service, in particular experience in the position of prosecutor or judge (four, six or ten years respectively). A prosecutor is to be dismissed from his/her position by law in the following cases: final and enforceable judgment of a Disciplinary Court adjudicating dismissal from the prosecution service; final and enforceable judgment of a court adjudicating a penal measure against the prosecutor of deprivation of public rights, prohibition to serve as a prosecutor, demotion or dismissal from the professional military service; loss of Polish citizenship. Moreover, a prosecutor may be dismissed by means of a decision by the General Prosecutor, which is obligatory in nature in the event that the prosecutor resigns from his/her position, or facultative in the situation in which the prosecutor – despite being punished twice by the Disciplinary Court with a reprimand, dismissal from the function or transfer to another position – is guilty of misconduct, including obvious violation of the provisions of law or the dignity of the prosecutor's office.

- The Law on Prosecution Service does not contain any provisions regulating the manner of allocation of cases to individual prosecutors. High-profile cases are transferred to specific departments in the Appellate Prosecutor's Office or Circuit Prosecutor's Office.

(3) Examples of successful implementation of domestic measures adopted to comply with article 11 of the Convention

According to statistical information covering the period 2008 to 2011, eight official disciplinary proceedings were conducted in the appeal prosecutor's offices. As a result, in two cases the prosecutors concerned received penalties of admonition and reprimand. Furthermore, four preliminary proceedings were conducted which ended either with a refusal to commence an inquiry or the discontinuation of proceedings as the prerequisites for committing a forbidden act were absent.

(4) Assessment of the effectiveness of measures adopted to implement article 11 of the Convention.

No information available.

(5) Challenges in fully implementing article 11 of the Convention.

No challenges

(6) Technical assistance

No

POLAND (THIRD MEETING)

(1) Measures applied to the judiciary:

* The National Council of the Judiciary- a constitutional organ safeguarding the independence of courts and judges pursuant to Resolution dated 7 October, 2009, no. 741/2009, has adopted a set of rules governing the professional ethics of judges. Paragraph 2 of the resolution says that a judge should always be guided by principles of integrity, dignity, honour, a sense of duty and should observe generally accepted customs. He may not abuse his status and the prestige of his office to further his own interest or the interests of other people. (§3 sentence 1). A judge should not yield to influence that could undermine his independence, irrespective of its source or cause (§9.1). He should avoid behaviour that could undermine trust in his independence and impartiality (§10). In addition, a judge should avoid personal contact and all business contacts with people or entities if such contacts give rise to doubts whether he performs his obligations in an impartial manner, or if such contacts undermine the prestige or trust in a judge's office and should refrain from engaging in financial activities that could be seen as an abuse of the judge's own position (§18.1 and §18.2). A judge may not accept any gains that could create the impression that by so doing someone is trying to exert an influence on him (§19); and when a judge benefits from offers addressed solely to judges, he should consider whether they are an attempt to influence on him or his professional workplace (§20). The National Council of the Judiciary is competent to interpret the rules of professional ethics. In its opinion dated 16 September, 2004, the Council provided an interpretation of the rules laid down in §18.2, saying that it is improper for judges to purchase movable or immovable property at auctions run by court executive officers (bailiffs) and furthermore stated that their closest persons should not engage in such activities as well.

* Furthermore, measures counteracting corruption in the judiciary are provided for in the Act of 27 July, 2001 — the Law on the Organisation of Common Courts (Dz. U. No. 98, item 1070 as amended). Under this Act, a judge may not take up an additional job, an additional activity, additional earnings, or membership in governing bodies of companies established under the commercial law, or a membership in co-operative bodies, or in foundations engaged in business activities or run a business (Art. 86§1-3). Pursuant to

Articles 87-88 of the aforementioned Act, a judge is obligated to file annual financial disclosure statements. A breach of this obligation is subject to disciplinary liability.

Moreover Article 26§1 of the Act limits the term in office of presidents of courts in order to reduce the possibility of having the same persons serve as president or vice-president of the court for many years. Presidents are appointed for a four-year term and may not be reappointed as president or vice-president in the same court before the lapse of six years after the end of their term of office. The same rule also applies to presidents of court divisions, vice-presidents of court divisions (Art. 11 §3a) and judges who act as inspectors (Art.37d §1). *An important instrument counteracting corruption is the right provided for in Articles 40-44 of the Act of 6 June 1997 — the Code of Criminal Procedure (Dz.U. z 1997, No. 89, item 555 as amended) that permits to exclude judges from adjudicating cases. Under this Act, judges are prevented from examining cases in which they are personally involved and from examining cases in which their family or personal relations could bear upon the outcome of a case. Both civil and criminal law procedure in the same scope provide for the exclusion of a judge from participating in the examination of a case by operation of the Act and at the request of a party, if there exists a circumstance giving rise to warranted doubts about the impartiality of a judge examining a particular case. In addition, court websites publish lists of judges who adjudicate in a specific court or court division. Such practice contributes greatly to the implementation of the rules of transparency of the judiciary.

* The rule is that proceedings before a court are open to the public. This rule follows from the Constitution of the Republic of Poland (Article 45.1 and Article 45.2), the Law on the Organisation of Common Courts (Article 42§2 and Article 42§3), and from both criminal and civil procedural regulations.

*Other instruments include information policy conducted by courts aimed at ensuring effective access to information relating to pending court proceedings. This practice, by reasons of the provisions of § 30 of the Rules of Procedure of common courts, falls

under the responsibility of the presidents and vice-presidents of courts and court press spokesmen who may be asked by members of the media for information concerning court cases. A judge should avoid communicating with third persons who ask him questions concerning a case falling within his competence because such question may raise doubts about his impartiality. A judge should not make appointments with clients, while information concerning proceedings should be given by authorised court employees to persons concerned (§ 51 of the Rules of Procedure).

*The creation of the National School of Judicature and Public Prosecution — a centralised unit which organises systematic training courses for judges and prosecutors from across the country in different fields, including in counteracting and fighting corruption — is an example of good practice.

(3) Measures applied to the prison service

* On 1 February, 2011, the Director General of the Prison Service, appointed a Plenipotentiary for Counteracting Corruption in Prison Service who works in the Prison Service. The Plenipotentiary is responsible for organising anti-corruption training courses and initiates amendments to internal regulations and changes in the organisation, the aim of which is to create transparent rules of organisation and implementation of tasks in the Prison Service. The Plenipotentiary also coordinates the implementation of anti-corruption mechanisms in the prison system and cooperates with other institutions and services whose task is to counteract corruption.

* Pursuant to Article 161 of the Act of 9 April 2010 on Prison Service (Dz.U. of 2010 No. 79, item 523) prison officers have a legal obligation (as do judges) to file financial disclosure statements about themselves and their spouses.