

## **I. Information requested from States parties in relation to integrity in the judiciary, judicial administration and prosecution services (art.11)**

### **1. Has your country adopted and implemented 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. Please cite, summarize and, if possible, provide 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. Please provide 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. Have you ever assessed the effectiveness of the measures adopted to implement article 11? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.**

No information available.

**5. Which challenges and issues are you facing in (fully) implementing article 11 of the Convention?**

No such challenges have been faced so far.

**6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?**

No technical assistance is required.