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The Model of Disciplinary Proceedings Against Prosecutors – Selected Issues

Abstract: The article discusses possible models of disciplinary proceedings against prosecutors in Poland. In the first, the so-called “corporate” model, disciplinary commissions of both instances are composed only of prosecutors. In the second, the so-called “mixed” model, in the first instance the disciplinary commission, composed only of prosecutors, delivers a judgment and the appeal goes to the court. The last model introduces single disciplinary proceedings for judges, prosecutors, advocates, legal advisors and notaries. In this model cases are heard by courts with the right to appeal the judgment to the Supreme Court. The article seeks to answer the question which model is best adjusted to disciplinary proceedings against prosecutors in Poland.

Keywords: disciplinary proceedings, prosecutor, investigating authority

Introduction

Disciplinary liability of prosecutors is a type of a quasi-criminal legal liability rooted in the sphere of repressive law¹. A possibility to hold a prosecutor liable in disciplinary proceedings for acts related to his or her functional role is one of the guarantees of the Prosecution Service independence². Although the new Act of

1 See P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, pp. 61-158 – comprehensively on the definition of the disciplinary responsibility and considerations regarding the relationship between disciplinary responsibility and other forms of liability of legal practitioners. See also in general about the responsibility of prosecutors: W. Kozielowicz, *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, Warszawa 2012.

2 T. Demendecki, (in:) J. Bodio, G. Borkowski, T. Demendecki, *Ustrój organów ochrony prawnej. Część szczegółowa*, Warszawa 2013, p. 231.

2016³ came into force, apart from certain positive exceptions⁴, changes within the scope of disciplinary proceedings ensuing from it have not responded to fundamental reservations about the shape of prosecutors' disciplinary liability already formulated on the basis of previously binding provisions⁵.

The new Act has not changed regulations on the model of disciplinary jurisdiction in the context of investigating authorities merely copying the previous model of disciplinary jurisdiction operating under the Act of 1985⁶. As different solutions within this scope have been proposed in the past, it is worth examining them more closely. A possibility of introducing a different shape of disciplinary jurisdiction continues to incite a lot of controversy mostly due to the fact that prosecutors may be deprived of exclusive competence of disciplinary sentencing in the first and second instance in cases pertaining to them while these powers could be fully or partially handed over to common courts' jurisdiction. For this reason, a purpose of this study will be to present possible models of disciplinary proceedings against prosecutors with regard to the criterion of investigating authority carrying out disciplinary proceedings and answer the question which model is most suitable to address the existing problems of disciplinary proceedings against prosecutors. Other elements that are equally important for the model of disciplinary proceedings such as, among others, competence of Disciplinary Ombudsman, limitation period, or a possibility of challenging disciplinary rulings through cassation or re-opening of the proceedings as well as the issue of transparency of proceedings will not be discussed herein for editorial limitations.

1. Models of disciplinary jurisdiction – general comments

According to the criterion of authorities (panels) adjudicating in these proceedings, three models of disciplinary proceedings may be distinguished for the needs of this study. The first one, which is currently valid, hands over the second

3 Act of 28 January 2016 on the Public Prosecutor's Office (Journal of Laws of 2016, item 178) [(Ustawa z dnia 28 stycznia 2016 r. Prawo o prokuraturze, Dz.U. poz. 178), hereinafter referred to as Act on Prosecutors.

4 The main point is to ensure, postulated for a long time, publicity for the prosecutor's disciplinary proceedings – see K. Kremens, *Jawność prokuratorskich postępowań dyscyplinarnych*, „Prokuratura i Prawo” 2015, No. 5, p. 128-142.

5 See for instance: P. Kardas, *Rola i miejsce prokuratury w systemie organów demokratycznego państwa prawnego. Kilka uwag o przesłankach determinujących założenia projektu ustawy o prokuraturze*, „Prokuratura i Prawo” 2012, No. 9, p. 44; P. Czarnecki, *Postępowanie dyscyplinarne...*, *op. cit.*, p. 435 oraz K. Kremens, *Odpowiedzialność zawodowa prokuratorów*, Warszawa 2010, pp. 18-19.

6 The identical model of disciplinary proceedings was in force pursuant to the Act of 20 June 1985 on the Public Prosecutor's Office (consolidated text Journal of Laws of 2011, No. 270, item 1599, as amended). The new Act on the Public Prosecutor's Office has not changed in this respect.

instance disciplinary jurisdiction to “corporate” authorities⁷, which are solely composed of prosecutors, with a possibility of bringing cassation against the second instance ruling to the Supreme Court.

The second model, conventionally called as “mixed” and described in one of the previously proposed drafts of the Act on Prosecutors of 20 February 2014⁸, assumed examination of disciplinary cases in the first instance by the “corporate” court, and in the second instance – by the common court (or the Supreme Court). Subsequently, cassation against the ruling could be submitted to the Supreme Court.

The third model contained in the drafted Act on Disciplinary Proceedings against Individuals Practicing Some Legal Professions of 2013⁹ assumed the introduction of uniform disciplinary jurisdiction for judges, prosecutors, attorneys, legal advisors and notaries. According to this model, specially established disciplinary divisions in appellate courts were to sentence in the first instance while in the second instance – the Supreme Court. Cassation against second instance rulings was not admitted¹⁰.

Examples of other solutions, which can be called as sub-models, may also be found in other Acts. For instance, disciplinary proceedings against court executive officers (see the Act of 29 August 1997 on Court Executive Officers and Execution, uniform text: Journal of Laws of 2011, No. 231, item 1376) envisage examination of the case in the first instance by a disciplinary committee whereas in the second instance – by the regional court competent according to the official seat of the accused court executive officer (Art. 75 par. 1-2). At the same time, cassation against the ruling of the second instance is not admitted at all. On the other hand, disciplinary proceedings against tax advisors (the Act of 5 July 1996 on Tax Advisory Services, uniform text: Journal of Laws of 2011, No. 41, item 213) envisages handing over second instance disciplinary proceedings to “corporate” courts and a concurrent possibility of appealing to the common court, i.e. the Court of Appeals – the Court of Employment and Social Security competent according to the place of residence of the accused (Art. 75 par. 1 of the Act on Tax Advisory Services). Cassation to the Supreme Court has not been admitted here too.

7 The author is aware of the conventionality and certain inadequacy of the use of the term “corporate” in the disciplinary courts of both prosecutors and judges. However, due to the common understanding of this phrase, it will be used as a shorthand for the purposes of this study.

8 The draft of the Act on the Public Prosecutor’s Office of 20 February 2014 (hereinafter referred as to the draft of 2014), available at <http://legislacja.rcl.gov.pl/docs//2/52748/52767/dokument102521.pdf> (accessed: 6 December 2016).

9 Druk sejmowy nr 1202 (dalej jako: proj. jsd.) dostępny na stronie internetowej: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/3B6C514FACAC465AC1257B35005DBAED/%24File/1202.pdf> (accessed: 6 December 2016).

10 See. Art. 26 par. 1 of the draft of a uniform disciplinary court. Paragraph 2 of this provision allows only the cessation of the Ombudsman from any final decision of a disciplinary court terminating disciplinary proceedings.

2. The “corporate” model of disciplinary jurisdiction against prosecutors

Pursuant to the currently valid regulation, in the first instance, disciplinary proceedings are carried out before Disciplinary Tribunals while in the second instance – before Appellate Disciplinary Tribunals (Art. § 1 of the Act on Prosecutors). A number of disciplinary tribunals and a general number of members of disciplinary tribunals are established by the National Council of Prosecutors (Art. 43 § 3 of the Act on Prosecutors). Disciplinary judges themselves are elected among all prosecutors by the Assembly of Prosecutors, i.e. collegiate authorities located in Appellate Prosecutors’ Offices, and the Meeting of Prosecutors in the National Prosecution General Service (Art. 45 and 47 of the Act on Prosecutors). The composition of a disciplinary tribunal is designated by the Chairman according to the list of all judges of a given tribunal in the order the cases are submitted, but the composition of the tribunal is always made of at least one prosecutor from the organizational prosecution unit equal to the one where the accused was employed or performed official activity at the moment of the commission of an act (Art. 147 § 1 of the Act on Prosecutors)¹¹.

A full “corporate nature” of prosecutors’ disciplinary jurisdiction has been broken by a possibility of bringing cassation against a final and valid disciplinary ruling passed in the second instance to the Supreme Court (Art. 163 § 1 of the Act on Prosecutors). The scope of cassation is wider than the one envisaged in the provisions on criminal proceedings¹². According to the Constitutional Tribunal, such a state of affairs does not arise doubts and is considered to be a sufficient judicial control of disciplinary rulings passed against prosecutors by Prosecutors’ Disciplinary Tribunals¹³.

11 Derogation from the order in which cases are brought to court is possible only in case of illness of a member of the court or for another important reason, which should be indicated in the order on the appointment of the hearing or the meeting.

12 In criminal proceedings, cassation may be brought only because of the deficiencies listed in art. 439 CCP. (the so-called absolute reasons for appeal) or other gross violation of law, if it could have a significant impact on the content of the decision, but it can not be brought solely because of the disproportionate penalty (Article 523 par. of the CCP). Art. 163 para. 1 of the Act on Prosecutors, on the other hand, states that cassation may be brought both because of a gross violation of the law and a gross incommensurability of the disciplinary penalty.

13 In the judgment of the Constitutional Tribunal of 25 June 2012, sygn. K 9/10, OTK-A 2012, No. 6, item 66, the Constitutional Tribunal held that “the scope of the judicial control proceedings in disciplinary matters designated by the challenged provisions is in line with art. 45 para. 1 of the Constitution. The Court considered that the adoption of a control model in which cassation can be brought only because of “gross violation of law” and “gross incommensurability of a disciplinary sanction” falls within the limits of freedom of law by the ordinary legislature and does not violate the principle of fair hearing and resulting from it an obligation of a proper shape of the court procedure.”

3. The “mixed” model of disciplinary jurisdiction

The reasoning to the draft of 2014 underlined that a purpose of the “mixed” model endeavours to achieve “objectivization of first instance disciplinary tribunals’ rulings by the introduction of appellate courts’ cognition” because the “corporate” model of disciplinary jurisdiction has been exhausted¹⁴. This draft assumed serious changes in disciplinary jurisdiction against prosecutors whilst its most vital element was entrusting the second instance disciplinary jurisdiction with appellate courts or the Supreme Court. Disciplinary Tribunal in the Prosecution General and disciplinary tribunals in appellate prosecutors’ offices were to become first instance courts in disciplinary cases (Art. 169 § 1 of the draft of 2014) depending on the accused¹⁵. Furthermore, the changes were to embrace decentralization of the first instance disciplinary jurisdiction and modification of a manner of election of disciplinary tribunals’ members. The second instance disciplinary jurisdiction against prosecutors was to be transferred to the Supreme Court with regard to cases heard in the first instance by the Disciplinary Tribunal in the Prosecution General and appellate courts with regard to cases heard in the first instance by disciplinary tribunals in appellate prosecutors’ offices (Art. 169 § 2 of the draft of 2014). A competent appellate court according to the venue of the second instance disciplinary tribunal was to be the court within the jurisdiction of the first instance disciplinary tribunal (Art. 172 § 1 of the draft of 2014).

Disciplinary Tribunal in the Prosecution General was to be composed of prosecutors of the Prosecution General¹⁶ (Art. 171 § 1 of the draft of 2014). The composition of disciplinary tribunals in appellate prosecutors’ offices was to include prosecutors of the appellate prosecutors’ office as well as prosecutors from competent regional prosecutors’ offices according to the relevant appellate prosecutors’ office in a number reflecting the number of prosecutors of the appellate prosecutors’ office as well as prosecutors from competent regional prosecutors’ offices according to the relevant appellate prosecutors’ office in the same number elected by the Assembly of

14 The reasons of the draft of 2014, p. 71.

15 The Supreme Court was to be appointed to hear cases against the Prosecutor General, prosecutors of the General Prosecutor’s Office, Chief Executive Officer, Director of the Main Commission, Director of the Lustration Office, appellate prosecutors and their deputies, district prosecutors and their deputies, as well as prosecutors delegated to the General Prosecutor’s Office, Ministry of Justice, National School of Judiciary and Public Prosecution, if the disciplinary offenses were committed during the period of delegation. In turn, disciplinary courts established in the appellate prosecutor’s offices were to conduct proceedings against other prosecutors (Article 170 para. 1 of the draft of 2014) in accordance with the local jurisdiction corresponding to the place of committing the act which was the subject of proceedings before the disciplinary court (Art. 170 para. 2 of the draft of 2014).

16 The Prosecutor General and his deputies as well as the disciplinary spokesman were excluded from this group.

Prosecutors in the appellate prosecutors' office (Art. 171 § 2 of the draft of 2014)¹⁷. Moreover, the draft introduced a mixed adjudicating panel in every case, which meant that a disciplinary tribunal had to be randomly appointed each time so that it included a prosecutor of the appellate prosecutors' office, a prosecutor of the regional prosecutors' office and a prosecutor of the district prosecutors' office (Art. 171 § 10 of the draft of 2014). The composition of the second instance disciplinary tribunal was to be randomly selected from the list of all judges of a given court; it had to include at least one judge who sentenced in criminal cases on permanent basis (Art. 171 § 4 of the draft of 2014).

This model appeared to meet the requirements formulated in supranational legal regulations in the best way. Although the UN's Guidelines of 1990 on the Role of Prosecutors¹⁸ did not stipulate which authority should carry out disciplinary proceedings against prosecutors¹⁹, already the Council of Europe Recommendation of 2000²⁰ and the so called Explanatory Memorandum enclosed to Recommendation²¹ assumed that rulings in the first instance disciplinary proceedings should be examined by the tribunal composed of prosecutors while the second instance was to be independent and sovereign, which apparently may only be assured by a court.

17 Moreover, the prosecutors of the Institute of National Remembrance, in number corresponding to the number of appellate prosecutors, jointly elected by the General Assembly of the Chief Prosecutors and the Assembly of Prosecutors of the Lustration Office. The head of the Main Commission appoints one of the selected prosecutors to disciplinary courts in individual appellate prosecutor's offices.

18 Art. 21 and 22 Wytucznych dotyczących roli prokuratorów (Guidelines on the Role of Prosecutors) przyjęte na VIII Kongresie Organizacji Narodów Zjednoczonych o zapobieganiu przestępczości i traktowaniu przestępców, Hawana 27 sierpnia – 7 września 1990 r., available in English at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx> (accessed: 6 December 2016).

19 One of the guides states that disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision, which is in favor of conducting prosecutor disciplinary proceedings by judges who guarantee the most far-reaching objectivism because of the value of independence assigned to this office. Another statement of the Guidelines indicates that the decision shall be subject to independent review which also should be interpreted that also in this case it should be a judicial body.

20 Zasada 5e Rekomendacji Rec (2000) 19 przyjętej przez Komitet Ministrów Rady Europy 6 października 2000 r. Rola prokuratury w systemie wymiaru sprawiedliwości w sprawach karnych (The Role of the Public Prosecution in the Criminal Justice System), <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM#> (accessed: 6 December 2016).

21 Memorandum wyjaśniające (Explanatory Memorandum) do Rekomendacji RE Rec (2000)19, p. 7, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1465390&SecMode=1&DocId=838058&Usage=2> (accessed: 6 December 2016) (wskazano, iż obowiązek rozpoznania sprawy dyscyplinarnej w drugiej instancji przez niezależny i niezawisły organ nie dyskwalifikuje w żaden sposób możliwości rozpoznania sprawy w pierwszej instancji przez organ o charakterze administracyjnym albo hierarchicznym).

4. The model of uniform disciplinary jurisdiction for individuals practicing some legal professions

The draft of uniform disciplinary jurisdiction (hereinafter – udj.) should be explained in more details here. It was initially submitted in the Fifth Term Sejm as a governmental draft in 2006²². It spurred discussion in the legal world evoking a lot of controversy and crushing critique²³. The main objection against the draft was its unconstitutionality, i.e. inconsistency with Art. 17 of the Constitution and the ensuing principle of entrusting local governments with the charge of public confidence professions. Works on this draft were interrupted because the Fifth Term Sejm came to an end. The draft returned, however, on 29 August 2012 as a private members' bill of the Parliamentary Club Solidarity Poland during the Seventh Term Sejm²⁴ to be withdrawn by the applicant on 4 February 2013²⁵ only to be resubmitted four years later as the draft registered under Parliamentary Paper No. 1202. It was then referred to first reading. The draft contained the identical model of proceedings, system of authorities and principles of procedure as the original one; yet it failed to include comments and observations raised to the draft and did not stand a larger chance to become an Act²⁶. Support for the draft was withdrawn on 14 December 2014 before second reading²⁷.

22 Zob. druk sejmowy nr 970 V Kadencji Sejmu, [http://orka.sejm.gov.pl/Druki5ka.nsf/0/CCCC0111D05A3488C12571EF004C5803/\\$file/970.pdf](http://orka.sejm.gov.pl/Druki5ka.nsf/0/CCCC0111D05A3488C12571EF004C5803/$file/970.pdf) (accessed: 6 December 2016).

23 P. Czarnecki, *Postępowanie dyscyplinarne...*, *op. cit.*, pp. 404-417 – zbiorczo prezentuje stanowisko przedstawicieli wszystkich zawodów prawniczych wobec projektu. Zob. także niektóre głosy w dyskusji nad projektem: A. Bojańczyk, *W sprawie dwóch rozwiązań procesowych projektu ustawy o nowym ustroju dyscyplinarnym niektórych zawodów prawniczych*, „Palestra” 2007, No. 9/10; K.K. Świeczkowski, *Postępowanie dyscyplinarne wobec osób wykonujących zawody prawnicze*, „Prokurator” 2006, No 3. See also the opinions on the draft of 2006 inter alia P. Winczorek, T. Stawewski, *Opinia prawna w sprawie zgodności z Konstytucją RP projektu ustawy o postępowaniu dyscyplinarnym wobec osób wykonujących niektóre zawody prawnicze z dnia 7 marca 2006 r.* and A. Bojańczyk, *Opinia do projektu ustawy o postępowaniu dyscyplinarnym wobec osób wykonujących niektóre zawody prawnicze (druk sejmowy nr 970) z dnia 14 sierpnia 2007 r.* <http://orka.sejm.gov.pl/IEKSBAS.nsf/0/C125728000417C20C125734600430931?OpenDocument> (accessed: 6 December 2016).

24 See druk sejmowy nr 1048, <http://orka.sejm.gov.pl/Druki7ka.nsf/0/3B6C514FACA-C465AC1257B35005DBAED/%24File/1202.pdf> (accessed: 6 December 2016).

25 See Informacja Marszałka Sejmu RP do druku nr 1048 z dnia 6 lutego 2013 r., <http://orka.sejm.gov.pl/Druki7ka.nsf/0/075720DD229758FBC1257B0F00390B9A/%24File/1048-001.pdf> (accessed: 6 December 2016).

26 See on the project P. Czarnecki, *Postępowanie dyscyplinarne...*, *op. cit.*, pp. 423-424. See also Stanowisko Rządu z 14 czerwca 2013 r. wobec poselskiego projektu ustawy o postępowaniu dyscyplinarnym wobec osób wykonujących niektóre zawody prawnicze (druk nr 1202), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/6F48CFBB29F497E7C1257B8F00362019/%24File/1202-s.pdf> (accessed: 6 December 2016).

27 See Informacja Marszałka Sejmu RP do druku nr 1202 of 16 December 2014. <http://orka.sejm.gov.pl/Druki7ka.nsf/0/1A453B8F8ED93860C1257DB20031A269/%24File/1202-005.pdf> (ac-

Despite an apparent lack of a possibility to introduce such a solution now due to serious constitutional doubts²⁸, this draft is still worth analyzing. It proposed to introduce a uniform mechanism of sentencing in disciplinary cases involving legal professions such as common court judges and prosecutors of common organizational units of prosecution service including the retired ones, as well as prosecutor's assessors, attorneys and attorney trainees, legal advisors and legal advisor trainees, court executive officers, court executive officer's assessors and trainees, notaries, notaries' assessors and trainees (Art. 1 of the draft of udj.). At the same time, the draft envisaged to maintain existing prerequisites of disciplinary liability separate for each legal profession in individual Acts (Art. 2 of the draft of udj.)²⁹.

Pursuant to the draft, appellate courts were to become first instance disciplinary tribunals while disciplinary divisions were to be established for this purpose within appellate courts; the Supreme Court was to become the second instance disciplinary tribunal (Art. 4 of the draft of udj.). The competence of the first instance tribunal was to be designated by the official venue of service in case of prosecutors and judges, or a seat – in case of attorneys, legal advisors, notaries and court executive officers (Art. 5 of the draft of udj.). Legitimate disciplinary judges were to become judges of a given appellate court except its President and Deputy Presidents (Art. 6 par. 2 of the draft of udj.).

A lot of criticizing arguments were raised against the draft both in 2006 and after it was resubmitted; yet they were not absolute³⁰. It was even argued that the effect of

cessed: 6.12.2016 r.).

- 28 Although this issue does not seem to be as obvious as it recognizes the environment (see the statement of Deputy Minister of Justice M. Królikowski during the debate on the project, reported by "Gazeta Prawna" of 18 April 2013, which, however, clearly contradicts the government's position expressed in response to the bill of 14 June 2013), this is clearly pointed out by A. Bojańczyk. See. A. Bojańczyk, *Opinia do projektu...*, *op. cit.* See also the judgment of the Constitutional Tribunal of 25 June 2012, K 9/10, OTK-A 2012, No. 6, item 66 (The proceedings before the Tribunal took place because of the request submitted by the Ombudsman to examine the constitutionality of provisions regulating the scope of judicial review of disciplinary proceedings of lawyers, legal advisors, notaries and prosecutors. In the opinion of the Tribunal, the current form of cassation proceedings enables a real and effective control of judgments of disciplinary courts, which is why judicial review of judgments issued in disciplinary proceedings by advocates, legal advisors, notaries and prosecutors held by the Supreme Court should be considered as a control that meets both constitutional and convention standards).
- 29 In the opinion of the draftsman, "[in] this way, the specificity of performing a given legal profession will be respected and the standards of professional ethics specified by particular groups will be respected. Also, constitutionally entrusted to professional self-governments, custody over the performance of the profession will be preserved (see *Uzasadnienie projektu jednolitego sądownictwa dyscyplinarnego*).
- 30 A. Bojańczyk pointed out in 2006 that "both from the technical and legal point of view, unifying the model of the disciplinary proceedings and creating a uniform act of disciplinary proceedings undoubtedly makes sense and deserves approval" – A. Bojańczyk, *W sprawie...*, *op. cit.*, pp. 97-98. See also *Stanowisko Rządu z dnia 14 czerwca 2013 r...*, *op. cit.*, p. 2 (It was indicated, firstly,

uniformity in the form of the liquidation of differences between separate disciplinary proceedings was likely to permit development of uniform disciplinary practice in the future³¹. Undeniably, it would certainly benefit all legal professions. However, the shape of solutions itself proposed by the drafters was seriously criticized. According to A. Bojańczyk, “disciplinary jurisdiction is an element of «custody over a due performance of a profession» of public trust”³². Moreover, the Constitution Tribunal’s case law was invoked, according to which a task of the professional self-government is “the observance of the right quality – substantially and legally – of the activities composing «the performance of professions»”³³. Yet the submitted draft fully abolished the participation of self-government from disciplinary proceedings. The government’s opinion on the draft, on the other hand, emphasized that even if all constitutional and purposeful aspects were ignored, the introduction of uniform jurisdiction for individuals practicing some legal professions would have to trigger serious social consequences resulting from the transfer of entire disciplinary jurisdiction to common courts and Supreme Court’s cognition³⁴. It would inevitably entail an increased case load of these authorities whilst a number of cases carried out annually is not insignificant at all³⁵.

Conclusion

The current model of disciplinary proceedings against prosecutors based on the “corporate” model apparently requires further changes. Apart from some defects thereof as, e.g., prolonged proceedings often resulting in the limitation of disciplinary offences, one of the problems is the structure of disciplinary tribunals criticized for their “corporate nature”, which may evoke certain doubts in the context of objectivism of the rulings they pass. This model, which was upheld by the new Act on Prosecutors

that “this proposal is not consistent with the interpretation of art. 17 of the Constitution of the Republic of Poland and the principle of entrusting local governments with custody over the performance of public trust professions”, and secondly that corporate disciplinary courts have ethical behavior patterns related to the jurisdiction of a given legal profession and “are much more able to understand and distinguish ethical behavior, which should characterize her member”).

31 *Ibidem*, p. 98.

32 *Ibidem*, p. 102.

33 See the judgment of the Constitutional Tribunal of 18 February 2004, P 21/02, ZU/OT K-A 2004, No. 2, item 9.

34 Stanowisko Rządu z dnia 14 czerwca 2013 r..., *op. cit.*, p. 2.

35 There were only 51 disciplinary proceedings against notaries in 2011, but against attorneys in the same period 1337 (Stanowisko Rządu z dnia 14 czerwca 2013 r..., *op. cit.*, p. 5-6). The possible increase in the burden of ordinary courts was pointed out also by W. Marchwicki, Adwokackie postępowania dyscyplinarne – postrzeżenie w opinii publicznej oraz propozycje zmian, (in:) A. Bodnar, P. Kubaszewski (eds.), *Postępowania dyscyplinarne w wolnych zawodach prawniczych*, Warszawa 2013, p. 52.

of 2016, may be contrasted with the model of uniform disciplinary jurisdiction for individuals practicing some legal professions. However, this proposal, which has been widely criticized for its unconstitutionality, arises serious doubts too. They are connected with a possible excessive case load of appellate courts which could be burdened with trivial disciplinary cases that are now heard by corporate disciplinary committees. Despite these arguments, although this proposal is interesting and may even be prospective, it cannot be preserved due to diversity of legal trainings for individual legal professions and, most of all, distinctiveness of their duties and ethical models they should follow³⁶. It obviously does not mean that uniform disciplinary jurisdiction (for example in the USA) guarantees that disciplinary proceedings against prosecutors are actually carried out frequently and effectively. Just the opposite, they are absolutely rare, which is often criticized³⁷. Hence it appears that the establishment of uniform disciplinary jurisdiction is not in itself a remedy for the problems of disciplinary proceedings carried out against prosecutors in Poland. Therefore the answer to the necessary reform of disciplinary jurisdiction of prosecutors and at least partial objectivization of the case law appears to be the “mixed” model of disciplinary jurisdiction submitted in 2014, according to which “corporate” disciplinary tribunals would sentence in the first instance whereas appellate courts (or the Supreme Court) would sentence in the second instance. Perhaps we should return to this idea. Such a structure of disciplinary jurisdiction of prosecutors would also better fulfil postulates expressed in acts of international law referring to prosecutors.

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36 Although the author of this study in the past expressed hope about the possibility of considering the adoption of such a model (K. Kremens, *Odpowiedzialność...*, *op. cit.*, p. 18-19 and continues to believe that this idea should arouse interest and lead to discussion on the model of disciplinary liability of legal practitioners in Poland, and consequently also on the shape of legal education and the legitimacy of maintaining separate training for representatives of various legal professions, currently on the ground content of art. 17 of the Constitution, it seems that there is no possibility of introducing such a model.

37 See inter alia D. Keenan, D.J. Cooper, D. Leibowitz, T. Lerer, *The Myth of Prosecutorial Accountability After Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct*, *The Yale Law Journal Online* 2011, No. 121, pp. 203-265, a także o problemach z odpowiedzialnością dyscyplinarną prokuratorów w odniesieniu nie tylko do Stanów Zjednoczonych Ameryki Północnej: R.F. Wright, M.L. Miller, *The Worldwide Accountability Deficit for Prosecutors*, „*Washington & Lee Law Review*” 2010, vol. 9, No. 4, pp. 1587-1620.

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