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Constitutional Liability of the Prosecutor General in the Legal System of the Republic of Poland

Odpowiedzialność konstytucyjna Prokuratora Generalnego w systemie prawnym Rzeczypospolitej Polskiej

Abstract

The subject of the analysis is the potential constitutional liability of the Prosecutor General within the Polish legal system. To this end, particular attention is paid to the provisions of the Constitution of the Republic of Poland, the Act on the State Tribunal, and the Act on the Public Prosecutor's Office. In the introductory section, the author outlines the historical background, the legal bases of constitutional liability, and the significance of the issue under consideration. The analysis then turns to a discussion of the position of the Prosecutor General within the system of law-enforcement and legal-protection authorities of the Republic of Poland, viewed from the perspective of potential constitutional liability. The culminating part of the study identifies the possibilities of attributing constitutional liability to the Prosecutor General under selected variants of the model governing the functioning of the public prosecution service in Poland. On this basis, the concluding section formulates findings indicating deficiencies in the Constitution of the Republic of Poland of 1997 and the need for amendments both at the constitutional level and at the statutory level with respect to the functioning of the Prosecutor General and the public prosecution service as a whole.

Keywords: Prosecutor General, public prosecution service, Constitution of the Republic of Poland, State Tribunal, constitutional liability.

Streszczenie

Przedmiotem analizy jest potencjalna odpowiedzialność konstytucyjna Prokuratora Generalnego w polskim systemie prawnym. W tym celu analizie podlegają w szczególności przepisy Konstytucji RP, ustawy o Trybunale Stanu oraz ustawy Prawo o Prokuraturze. We wprowadzeniu autor wskazuje na aspekty historyczne, podstawy prawne odpowiedzialności konstytucyjnej oraz istotę zagadnienia. Następnie przechodzi do omówienia pozycji Prokuratora Generalnego w systemie organów ochrony prawnej RP pod kątem potencjalnej odpowiedzialności konstytucyjnej. Kulminacyjny punkt opracowania wskazuje na możliwości przypisania Prokuratorowi Generalnemu odpowiedzialności konstytucyjnej w wybranych wariantach modelu funkcjonowania prokuratury w Polsce. Na tej podstawie w podsumowaniu wyprowadzone są wnioski wskazujące na deficyty Konstytucji RP z 1997 r. oraz na konieczność zmian zarówno w Konstytucji RP oraz na poziomie ustawowym w zakresie funkcjonowania Prokuratora Generalnego oraz prokuratury w ogólności.

Słowa kluczowe: Prokurator Generalny, prokuratura, Konstytucja RP, Trybunał Stanu, odpowiedzialność konstytucyjna

Introduction

The issue of constitutional liability lies at the intersection of law and politics. It should be emphasised that in Poland's recent history this sphere has been predominantly deliberative and has been used rather as a political instrument. This is evidenced by the statistics concerning proceedings before the State Tribunal, which is the competent court in matters of constitutional liability: since 1989, a total of six individuals have been brought before the Tribunal, of whom only two have been convicted¹. Accordingly, it is necessary to consider whether the current institutions and regulations governing this matter are not, in fact, "dead letters" and whether they do not require far-reaching reforms.

Constitutional liability may be analysed from both a subjective and an objective perspective. In the former sense, it concerns public authorities

¹ In 1997, five individuals were brought before the State Tribunal in connection with the so-called "alcohol scandal," involving the illegal importation of alcoholic beverages. Two persons—Dominik Jastrzębski and Jerzy Cwiek—were convicted. Additionally, in 2007, the former Minister of State Treasury, Emil Wąsacz, appeared before the Tribunal; however, his case was discontinued.

and officeholders who, pursuant to Article 198(1) of the Constitution of the Republic of Poland² and Article 1(1) of the Act on the State Tribunal³ bear constitutional liability for violations of the Constitution or statutes committed in connection with the office held or within the scope of their official duties. Such liability is borne by: 1) the President of the Republic of Poland; 2) the Prime Minister and members of the Council of Ministers; 3) the President of the National Bank of Poland; 4) the President of the Supreme Audit Office; 5) members of the National Broadcasting Council; 6) persons entrusted by the Prime Minister with the management of a ministry; and 7) the Commander-in-Chief of the Armed Forces. Moreover, pursuant to Article 191(2) of the Constitution of the Republic of Poland and Article 1(2) of the Act on the State Tribunal, Members of Parliament and Senators are also subject to constitutional liability before the State Tribunal within the scope specified in Article 107 of the Constitution of the Republic of Poland. At first glance, this catalogue may appear to be exhaustive; however, this issue will be examined in greater depth in the subsequent part of this study.

Turning to the objective analysis, the concept of a constitutional delict requires clarification. There is no statutory definition of this term. For the purposes of the present article, it should be understood as an act constituting the basis for constitutional liability in accordance with the provisions of the Act on the State Tribunal⁴. The Constitution of the Republic of Poland specifies constitutional liability as follows: 1) in Article 145, for the “violation of the Constitution or a statute, or the commission of a crime”; 2) in Article 156, for the “violation of the Constitution or statutes, as well as for crimes committed in connection with the office held”; and 3) in Article 198, for the “violation of the Constitution or a statute, in connection with the office held or within the scope of the performance of official duties.” In turn, the Act on the State Tribunal provides for constitutional liability: 1) in Article 1(1), for the “violation of the Constitution or a statute, in connection with the office held or within the scope of the performance of official duties”; 2) in Article 2(1), for the “violation of the Constitution or a statute, or for the commission of

² The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483, as amended: 2001, No. 28, item 319; 2006, No. 200, item 1471; 2009, No. 114, item 946.

³ Act of 26 March 1982 on the State Tribunal, Journal of Laws of 2022, item 762, as amended.

⁴ R. Zawłocki, *Pojęcie i istota deliktu konstytucyjnego jako podstawy odpowiedzialności konstytucyjnej przed Trybunałem Stanu*, „Monitor Prawniczy” 2021, No. 18, pp. 953–954.

a crime or a fiscal offence”; 3) in Article 2(4), for the “violation of the Constitution or statutes, as well as for crimes or fiscal offences committed in connection with the office held”; 4) in Article 2(5), for “crimes or fiscal offences committed in connection with the office held”; and 5) in Article 3, for the violation of the Constitution or a statute in connection with the office held or within the scope of the performance of official duties.

In view of the foregoing, and referring to the observations of R. Zawłocki, as many as ten types of delicts may be distinguished in the objective sense, namely: 1) a violation of the Constitution of the Republic of Poland; 2) a violation of the Constitution of the Republic of Poland in connection with the office held; 3) a violation of the Constitution of the Republic of Poland within the scope of the performance of official duties; 4) a violation of a statute; 5) a violation of a statute in connection with the office held; 6) a violation of a statute within the scope of the performance of official duties; 7) a crime; 8) a crime committed in connection with the office held; 9) a fiscal offence; and 10) a fiscal offence committed in connection with the office held. At the same time, it should be borne in mind that there is an interrelationship between the objective and subjective aspects, which is determined by the relevant provisions of the Constitution of the Republic of Poland.

Given the limited scope of the present study, it should be noted that the grounds for constitutional liability are not precisely defined as a basis for repressive liability. Reiterating the view expressed by R. Zawłocki, it may be assumed that a “constitutional delict is an unlawful act prohibited by the Act on the State Tribunal (or by criminal law or fiscal criminal law) under the threat of the sanction specified therein”⁵.

The subject of the subsequent considerations will be an analysis of the issue of the constitutional liability of the Public Prosecutor General. Accordingly, following the above introductory remarks concerning the most important aspects of constitutional liability, an analysis of the constitutional position of the Public Prosecutor General will be conducted on the basis of the provisions of the Constitution of the Republic of Poland and the Act on the Public Prosecutor’s Office⁶. Subsequently, the issue of the potential constitutional liability of the Public Prosecutor General

⁵ R. Zawłocki, *Pojęcie i istota...*, pp. 955.

⁶ Act of 28 January 2016 – Law on the Public Prosecutor’s Office, Journal of Laws of 2024, item 390.

will be addressed, followed by *de lege ferenda* remarks concerning the current legal framework in the analysed area.

The Constitutional Position of the Prosecutor General

When considering the possibility of attributing constitutional liability to the Public Prosecutor General, it is necessary to discuss his constitutional position. This task is rendered difficult because the constitutional status of this authority is rather vague due to regulatory deficiencies at the level of the Constitution of the Republic of Poland, which results in the matter being regulated almost entirely at the statutory level⁷.

It should be noted in passing that the Constitution of the Republic of Poland does not regulate the position of the public prosecution service or that of the public prosecutor (it merely provides that a public prosecutor may not be a Member of Parliament). The Constitution refers to the Public Prosecutor General only in a single provision, namely Article 191(1), indicating that, alongside the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, fifty Members of Parliament, thirty Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the President of the Supreme Audit Office, and the Commissioner for Human Rights, the Public Prosecutor General may submit an application to the Constitutional Tribunal in matters referred to in Article 188 of the Constitution, that is: 1) the conformity of statutes and international agreements with the Constitution; 2) the conformity of statutes with ratified international agreements whose ratification required prior consent expressed by statute; 3) the conformity of legal provisions issued by central state authorities with the Constitution, ratified international agreements, and statutes; 4) the conformity of the objectives or activities of political parties with the Constitution; and 5) the constitutional complaint referred to in Article 79(1) of the Constitution⁸. This concludes the constitutional framework concerning the Public Prosecutor General⁹.

⁷ A. Mączyński, J. Podkowik, [in:] M. Safjan, L. Bosek (eds.), *Konstytucja RP. Tom II. Komentarz do art. 87–243*, 1st ed., Warsaw 2016, art. 191.

⁸ M. Śladkowski, *Zasady postępowania w sprawie ze skargi konstytucyjnej*, „Roczniki Administracji i Prawa” 2023, No. 2, pp. 137–138.

⁹ M. Podsiadło, *Prokurator Generalny jako inicjator kontroli norm przed Trybunałem Konstytucyjnym*, „Prokuratura i Prawo” 2014, No. 7, pp. 6–7.

In the literature, this situation is identified as a noticeable deficit of the Polish legal system. Accordingly, any work on amending or enacting a new Constitution of the Republic of Poland should involve a comprehensive treatment of the position of the Public Prosecutor General and the prosecution service subordinate to him¹⁰.

Turning to the statutory framework, it is necessary to refer to Article 1 of the Act on the Public Prosecutor's Office, which provides that the Public Prosecutor General constitutes the prosecution service together with other public prosecutors¹¹. Under the currently applicable provision of Article 1 § 2 of this Act, the Public Prosecutor General is the supreme authority of the prosecution service, and this office is held by the Minister of Justice¹². It should be emphasised that, in recent history, the offices of the Public Prosecutor General and the Minister of Justice have not always been combined. The mere combination of these offices is not, *ex lege*, unconstitutional; however, it may affect the scope of the prosecution service's external independence¹³.

As a matter of historical record, it should be noted how this issue developed chronologically. From 1919 to 1939, the Minister of Justice served as the Chief Prosecutor.¹⁴ After the outbreak of the Second World War, institutional continuity was maintained, as the April Constitution remained in force. Consequently, the Minister of Justice continued to be legally combined with the Chief Prosecutor, who supervised the small group of prosecutors operating in London under the Government of the Republic of Poland in exile¹⁵.

¹⁰ W. Kawalec, A. Cader-Krupa, *Wybrane problemy regulacji statusu prokuratora w Polsce – głos w dyskusji dotyczącej reformy prokuratury*, „Prokuratura i Prawo” 2025, No. 4, pp. 41–42.

¹¹ The Act enumerates here: the National Prosecutor, the deputies of the Public Prosecutor General, as well as the prosecutors of the common organizational units of the prosecution service and the prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation.

¹² G. Stanek, [in:] P. Drembkowski (ed.), *Prawo o prokuraturze. Komentarz*, 1st ed., Warsaw 2021, art. 1.

¹³ A. Gerecka-Żołyńska, *Niezależność prokuratury i prokuratorów – nowe rozwiązania na tle dotychczasowych kontrowersji*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2016, No. 1, pp. 57–58.

¹⁴ Decree on the Organisation of the Supreme Court, Journal of Laws of the Polish State 1919, No. 15, item 199; Regulation of the President of the Republic of Poland of 6 February 1928 – Law on the Organisation of Common Courts, Journal of Laws 1928, No. 12, item 93.

¹⁵ P.A. Kardela, *Losy i postawy prokuratorów w Polsce w latach 1918–1989*, [in:] E.M. Guzik-Makaruk, E.W. Pływaczewski, L. Wieczorek, P.A. Kardela, J.D. Pogorzelski, *Prokuratura w Polsce od odzyskania niepodległości do czasów współczesnych*, Warszawa – Sandomierz 2022, pp. 113–115.

Until 1950, the prosecution service operated under the pre-war model¹⁶. In 1950, the Act on the Prosecution Service of the Republic of Poland was enacted¹⁷, which separated the prosecution from the Ministry of Justice through the establishment of the Public Prosecutor General of the Republic of Poland, who from that point was subordinated to the Council of State¹⁸. This systemic change entailed the abolition of the pre-war office of the Chief Prosecutor as well as the separate prosecution office in the Supreme National Tribunal¹⁹. The functioning model of the prosecution service was not altered by the enactment of a new Act in 1985²⁰.

The democratic changes of 1989, which restored the name of the state as the Republic of Poland, coincided with reforms within the prosecution service, which became responsible for safeguarding the rule of law²¹. The functions of the Public Prosecutor General were merged with those of the Minister of Justice, and consequently, the office also became subordinated. In 1990, the Public Prosecutor General's Office was abolished, and its responsibilities were transferred to the Prosecution Department within the Ministry of Justice²². In 1996, the National Prosecution Office (*Prokuratura Krajowa*) was established as the central organizational unit of the prosecution service, and the National Prosecutor (*Prokurator Krajowy*) was appointed as the first deputy of the Public Prosecutor General²³.

It should be emphasised that, despite the adoption of the new Constitution of the Republic of Poland, the functioning of the prosecution service and the office of the Public Prosecutor General continued to be based on a statute with Soviet origins. No changes were introduced, and the prosecution service retained a model combining the offices of

¹⁶ P. Sarnecki, *Prokuratura w Rzeczypospolitej Polskiej*, „WSPiA Rzeszowska Szkoła Wyższa. Publikacje elektroniczne”, p. 1.

¹⁷ Act of 20 July 1950 on the Prosecution Service of the Republic of Poland, *Journal of Laws* 1985, No. 38, item 346.

¹⁸ M. Wielec, G. Ocieczek, *O monografii „Prokuratura w Polsce od odzyskania niepodległości do czasów współczesnych”*, „Prokuratura i Prawo” 2022, No. 12, pp. 168–169.

¹⁹ Decree of 22 January 1946 on the Supreme National Tribunal, *Journal of Laws* 1946, No. 5, item 45.

²⁰ Act of 20 June 1985 on the Prosecution Service, *Journal of Laws* 1985, No. 31, item 138.

²¹ Act of 29 December 1989 on the Amendment of the Constitution of the Polish People's Republic, *Journal of Laws* 1989, No. 75, item 444.

²² Act of 22 March 1990 on the Amendment of the Act on the Prosecution Service of the Polish People's Republic, the Code of Procedure in Petty Offence Cases, and the Act on the Supreme Court, *Journal of Laws* 1990, No. 20, item 121.

²³ Act of 10 May 1996 on the Amendment of the Acts on the Prosecution Service, the Supreme Court, the Constitutional Tribunal, and the Acts – Law on the Organisation of Common Courts and Law on the Bar, *Journal of Laws* 1996, No. 77, item 367.

the Minister of Justice and the Public Prosecutor General. In 2009, an amendment to the Act on the Prosecution Service was enacted, which separated these offices and significantly expanded both the internal and external independence of prosecutors²⁴.

These changes should be assessed positively, as they not only noticeably expanded prosecutorial independence but also created mechanisms to ensure relative apoliticism (the Public Prosecutor General was no longer a politician, although he was still appointed by politicians—i.e., the Sejm). They were not perfect, however, as certain doubts regarding the nature of the prosecution service's functioning persisted, due to the imprecision and deficiencies of the constitutional provisions. Consequently, in 2016, a new Act on the Prosecution Service was enacted, which, symbolically, broke with the Soviet model of the prosecution service but also reversed the gains in prosecutorial independence and once again combined the offices of the Minister of Justice and the Public Prosecutor General²⁵.

Returning to the analysis of the current position of the Public Prosecutor General, it should be noted that, pursuant to Article 2 of the Act on the Public Prosecutor's Office, he performs tasks in the area of criminal prosecution and safeguards the rule of law. These duties are carried out in accordance with the functions specified in Article 3 § 1 of that Act. Given the limited scope of the present study, it should be noted that this list is not exhaustive—special statutes may extend it.

In this concise manner, the constitutional position of the Public Prosecutor General has been presented. This is significant from the perspective of the subsequent discussion concerning the potential constitutional liability of the Public Prosecutor General.

Does the Prosecutor General Incur Constitutional Liability?

The Public Prosecutor General is not explicitly mentioned in Article 198(1) of the Constitution of the Republic of Poland or in Article 1 of the Act on the State Tribunal; however, this does not preclude consideration

²⁴ T. Grzegorzczuk, *Niezależność prokuratury i prokuratorów w świetle znowelizowanej ustawy z dnia 9 października 2009 r. ustawy o prokuraturze*, „Prokuratura i Prawo” 2010, No. 1–2, pp. 27–28.

²⁵ Act of 28 January 2016 – Law on the Public Prosecutor's Office, *Journal of Laws* 2024, item 390, as amended.

of the matter, given the further construction of these provisions. Accordingly, in proceeding with the analysis, it is necessary to examine the definition of a constitutional organ. According to the case law of the Constitutional Tribunal, this is “primarily an organ individually designated in the Constitution, but also an organ defined by type, whose mode of establishment and basic competences are regulated at the constitutional level”²⁶.

Undoubtedly, the constitutional organs of the Republic of Poland include all bodies enumerated in the Constitution: the Sejm and the Senate, the President of the Republic, the Council of Ministers, the courts and tribunals, the Commissioner for Human Rights, the Supreme Audit Office, and the National Broadcasting Council. However, this does not conclude the discussion concerning the constitutional liability of the Public Prosecutor General. In analyzing the above definition of a constitutional organ, it should be noted that the Public Prosecutor General is mentioned in the Constitution and is briefly defined in terms of type²⁷. Moreover, only one of his competences is regulated at the level of the Basic Law. In summary, recognizing the Public Prosecutor General as a constitutional organ would be, at the very least, debatable. Nevertheless, considering his institutional significance and his role in criminal proceedings, there is a justified *de lege ferenda* argument that, in any future work on constitutional amendments, his competences should be explicitly incorporated into the Constitution.

The consequence of such legislative action should be the clear determination of the status of the prosecution service within the Polish system of legal protection bodies, as well as the role of the Public Prosecutor General. With regard to prosecutors, the scope of their independence should be defined, which in turn would determine the extent of their competences vis-à-vis the courts and the Police. In the context of the Public Prosecutor General, the issue of the combination of this office with that of the Minister of Justice should be resolved, as it carries significant implications for the interpretation of constitutional liability..

A far clearer institutional model is one that assumes the separation of the office of the Public Prosecutor General from that of the Minister of Justice. Considering that constitutional liability is repressive in nature

²⁶ Judgment of the Constitutional Tribunal of 4 December 2012, Case No. U 3/11.

²⁷ M. Bartnik, *Prokuratura jako organ ochrony prawa*, [in:] M. Grzybowski, B. Przywora (eds.), *Konstytucyjny system organów Rzeczypospolitej Polskiej*, Warsaw 2024, pp. 362–363.

and must respect fundamental principles of criminal law—namely the prohibition of expansive interpretation (and analogy) to the detriment of a suspect or accused²⁸, derived from the principle *nullum crimen sine lege* and guaranteed in Article 42(1) of the Constitution of the Republic of Poland and Article 1 § 1 of the Penal Code—it cannot be assumed that the Public Prosecutor General automatically embodies the office to which ministerial responsibilities are entrusted. Even if the Act on the Public Prosecutor's Office were to provide that the Public Prosecutor General is appointed by the Prime Minister, the National Prosecution Office (*Prokuratura Krajowa*), which supports the activities of the Public Prosecutor General, could not be treated as a ministry. Under such a model, it would be necessary to supplement the catalogue of organs subject to constitutional liability to explicitly include the Public Prosecutor General²⁹.

The situation is entirely different when the two aforementioned offices are combined. The Minister of Justice is appointed by the President of the Republic of Poland at the request of the Prime Minister and is thus a member of the Council of Ministers. Pursuant to Article 1 § 2, second sentence of the Act on the Public Prosecutor's Office, the office of the Public Prosecutor General is held by the Minister of Justice³⁰. Consequently, any possibility of attributing constitutional liability to the Public Prosecutor General would derive from the fact that he is also the Minister of Justice. However, it remains necessary to analyse whether he can be held liable for actions undertaken specifically in his capacity as Public Prosecutor General.

In this context, it should be reiterated that the Constitution of the Republic of Poland does not preclude such a possibility. Pursuant to Article 156(1) of the Constitution, members of the Council of Ministers, including the Minister of Justice, are liable before the State Tribunal for violations of the Constitution or statutes, as well as for crimes committed in connection with the office held. It follows that, *de iure*, a violation of the Constitution or a statute does not necessarily have to be linked to the office held. However, when moving to the arcsecond sentencing

²⁸ S. Tkacz, *Zakaz wykładni rozszerzającej (i analogii) na niekorzyść podejrzanego lub oskarżonego, wynikający z zasady nullum crimen sine lege*, „Archiwum Filozofii Prawa i Filozofii Społecznej” 2020, No. 2, pp. 81–82.

²⁹ M. Barański, *Odpowiedzialność konstytucyjna w Rzeczypospolitej Polskiej*, [in:] M. Barański, A. Czyż, R. Rajczyk (eds.), *Sądownictwo konstytucyjne w państwach Grupy Wyszehradzkiej. Perspektywa politologiczno-prawna*, Katowice 2015, pp. 31–32.

³⁰ G. Stanek, [in:] P. Dremkowski (ed.), *Prawo o prokuraturze. Komentarz*, 1st ed., Warsaw 2021, art. 1.

the actions of the Minister of Justice and the office held, a question arises as to how to distinguish acts connected to each role, since Article 1 § 2, second sentence, of the Act on the Public Prosecutor's Office merges the office of Minister of Justice with that of the Public Prosecutor General. Delimiting the competences of the Minister of Justice and the Public Prosecutor General is not impossible, but it may, in some cases, give rise to significant interpretative difficulties.

Turning to the framework of the Act on the State Tribunal, and assuming that a rational legislator deliberately incorporated the cross-reference in provisions of constitutional rank, it can be asserted that the Act provides even more arguments supporting the view that, under the current legal conditions, the Public Prosecutor General may bear constitutional liability. As noted above, pursuant to Article 2(4) of the Act on the State Tribunal, members of the Council of Ministers are subject to constitutional liability for violations of the Constitution or statutes³¹. Only crimes or fiscal offences must be committed in connection with the office held.

From the foregoing analysis, it should be concluded that, due to the significant role it plays within the system of legal protection, the Public Prosecutor General ought to bear constitutional liability—regardless of the model adopted for the appointment and functioning of this office. At the same time, the analysis has shown that the combination of the offices of Public Prosecutor General and Minister of Justice allows for the former to be held constitutionally liable. On the other hand, the inability to hold the Public Prosecutor General accountable under a model in which these offices are separated at the statutory level constitutes a constitutional defect.

Summary

The reconstruction and clarification of the issue proposed in the title required a twofold analysis: first, with respect to constitutional liability, including both its objective and subjective dimensions; and second, regarding the institutional position and role of the Public Prosecutor General. Beyond the scope of this study remain the tasks of the Public

³¹ R. Zawłocki, *Pojęcie i istota deliktu konstytucyjnego...*, p. 956.

Prosecutor General in criminal proceedings and his powers over the prosecutors hierarchically subordinate to him.

From the issue outlined above, it is evident that the matter is complex and heterogeneous, and that the provisions of constitutional rank, as well as those of the Act on the State Tribunal, are ambiguous. In the context of a creeping crisis of legitimacy affecting constitutional organs—manifested in the recognition or lack thereof of their functioning—this may give rise to negative consequences for the authority of institutions within a democratic state governed by the rule of law. Such a situation should be remedied as a matter of urgency through legislative action, in accordance with the framework established by the Constitution of the Republic of Poland.

With respect to the subject matter under consideration, the foregoing analysis allows the following conclusions to be drawn.

First, the Constitution of the Republic of Poland requires revision. One example of this is the constitutional framework concerning the Public Prosecutor General and the prosecution service—or, more precisely, its deficit. The fundamental tasks of the Public Prosecutor General should be defined at the level of the Basic Law. The same applies to the prosecution service: the body responsible for safeguarding the rule of law is not regulated at the constitutional level, which opens the door to far-reaching interpretations and reinterpretations, and renders its institutional position excessively flexible. Incidentally, any work on amending the Constitution should take into account the need to address its revision mechanisms—such a mechanism existed in the March Constitution³². Under Article 125 of that Constitution, it was to be subjected to revision every 25 years by an ordinary majority of the Sejm and the Senate, convened for that purpose as the National Assembly³³.

Second, the foregoing observation implies that the Public Prosecutor General should be included in the catalogue of organs listed in Article 198(1) of the Constitution of the Republic of Poland and Article 1 of the Act on the State Tribunal. In other words, he should bear constitutional liability and be subject to the jurisdiction of the State Tribunal.

Third, the definition of the role of the Public Prosecutor General and the prosecution service in the Constitution of the Republic of Poland

³² Act of 17 March 1921 – Constitution of the Republic of Poland, *Journal of Laws* 1921, No. 44, item 267.

³³ A. Szmyt, *Tryb zmiany Konstytucji polskich z 1921 i 1935 r. – Geneza, interpretacja, praktyka*, „Toruńskie Studia Polsko-Włoskie XVII – Studi Polacco-Italiani di Toruń XVII”, Toruń 2021, pp. 13–14.

should serve as a counterpoint for choosing the institutional model of these bodies. This, in turn, should guide the formulation of precise statutory provisions. The assumptions underlying these changes should include the separation of the office of the Public Prosecutor General from that of the Minister of Justice, the expansion of both the external and internal independence of prosecutors, and the strengthening of their impartiality and apoliticism.

In summary, it appears that under the current constitutional and statutory framework, in the context of the combination of the offices of Public Prosecutor General and Minister of Justice, the Public Prosecutor General may be held constitutionally liable. However, such an ambiguous regulation of this issue must be assessed negatively. Accordingly, the above *de lege ferenda* conclusions deserve, at the very least, to be taken into account in any discussion concerning reforms of the legal framework.

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