PROSECUTOR'S IMAGE AFTER THE AMENDMENT OF CRIMINAL PROCEDURE CODE IN 2016

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1. INTRODUCTION

The negation of the adversarial model of a trial by the present authorities and the return to the inquisitorial model of the judicial procedure give rise to many questions about the reasons for the change of the criminal procedure introduced by the amendment to the Criminal Procedure Code of 11 March 2016.[1] Undoubtedly, the primary are the reasons that are systemic and political in nature, connected with the conception and form (method) of exercising power. It is right to say that the criminal procedure mirrors the condition of democracy in a state. Quite often, the criminal procedure is used as an element of strengthening a certain social and political system or order, or positions of political parties that are in power in the state.

However, let the above-mentioned issues be the subject matter of another paper. This article is aimed at discussing the issues concerning the perception of a prosecutor's procedural activity. The issue of the present authorities' perception of a prosecutor's work was probably the reason for departure from the adversarial model of the hearing procedure at a trial. Thus, the change of the criminal procedure made by the present authorities is a good opportunity to present a prosecutor's image.

The article presents the analysis of the regulations of exclusively criminal procedure. The volume framework and the outline nature of the article do not allow the analysis of the Act on Public Prosecution and a discussion of other issues concerning social psychology, sociology and political studies. Due to that, the presented prosecutor's image is not complete but makes it possible to realise how the present authorities perceive a prosecutor and his role in a trial.

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[1] Journal of Laws [Dz.U.] of 2016, item 437, 1 April 2016; hereinafter: CPC.

2. THE PROSECUTOR'S ROLE BEFORE THE AMENDMENT OF CPC OF 2016

Understanding the way of perceiving a prosecutor's activities in a trial requires the presentation of a prosecutor's role in criminal proceedings before the amendment of 11 March 2016. Indeed, the negation of a prosecutor's position and role in the adversarial procedure was one of the reasons for the change of the criminal procedure. Thus, it is necessary to take into account that, according to the authors of the Great Amendment to CPC of 27 September 2013, the change from the former model of a trial to a more adversarial one resulted, inter alia, from the fact that attempts to overcome the many years the old Soviet model of a trial in Eastern Europe failed, which is indicated by the following elements:

1) criminal proceedings were dominated by preparatory proceedings because a prosecutor and law enforcement bodies were obliged to explain all the circumstances of a case and conduct the full evidence-taking proceedings, and a court's role was only to verify whether the factual findings were appropriately established and make a judgement, which in most cases consisted in the confirmation of the committed crime indicated in the indictment;
2) a criminal court did not have real conditions to be impartial because it played an active role in the hearing and, instead of a prosecutor, refuted the presumption of innocence protecting the accused;
3) the principle of equality was not applicable in the hearing before a court, because a public prosecutor supported by the state apparatus had more opportunities to obtain information and present it as evidence in a trial than the accused who could not present evidence obtained for the purposes of the proceedings.[2]

The existence of such a trial model resulted in lengthiness of proceedings, including cases where the accused was remanded in custody, which was called a structural problem in the European Court of Human Rights (ECtHR) case law. Another problem of a trial was connected with the inefficient repetition of activities already performed in the preparatory proceedings.[3] The main aim of the model changes indicated was to make the proceedings more functional and, at the same time, maintain or even strengthen the rights of the parties involved. The goal was to be obtained with the use of the adversarial model of judicial proceedings and the simultaneous limitation of the preparatory proceedings.[4] It was assumed that

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[2] See, P. Hofmański, *Model kontradyktoryjny w świetle projektu zmian k.p.k. z 2012 r.*, [in:] P. Wiliński (ed.), *Kontradyktoryjność w polskim procesie karnym*, Warsaw 2013, pp. 33–34. Also see, P. Hofmański, *Funkcja sądzenia – u progu przebudowy modelu*, [in:] T. Grzegorczyk, J. Izydorczyk, R. Olszewski, *Z problematyki funkcji procesu karnego*, Warsaw 2013, p. 523 ff; P. Hofmański, *Gwarancje prawa do obrony w świetle zmian Kodeksu postępowania karnego zawartych w ustawie z dnia 27 września 2013 r.*, [in:] *Prawo do obrony w postępowaniu penalnym*, Warsaw 2014, p. 7; J. Giezek, *Kontradyktoryjność procesu karnego – uwagi wprowadzające*, [in:] J. Giezek, A. Malicki (ed.), *Adwokatura jako uczestnik procesu legislacyjnego*, Warsaw 2012, p. 27; P. Wiliński (ed.), *Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach*, Warsaw 2015.

[3] See, P. Hofmański, *Model kontradyktoryjny…*, p. 35.

[4] *Ibid.*

the change of the new model of criminal proceedings would also be connected with the need to overcome many difficulties, inter alia:

1) activating the parties, especially a prosecutor, who used to be passive in the courtroom because he believed that his role in a trial ended with filing an indictment;
2) "compelling" the accused and his counsel to be active, too, because a court was not supposed to provide paternalistic protection for the accused by taking evidence favourable to them *ex officio*;
3) concerns connected with the seeming threat to the principle of factual truth, which was associated with the limitation of a court's competence to take evidence *ex officio*.[5]

The model of preparatory proceedings was based on the assumption that evidence taking conducted at this stage is, as a rule, to create the grounds of an indictment (it is conducted for the need of a prosecutor and not a court), and only exceptionally in such a scope in which the hearing before a court was not possible, it was to be used by a court as a basis for establishing facts.[6]

Successive changes resulting from the introduction of the adversarial trial were connected with a prosecutor's obligation to specify the evidential thesis for every piece of evidence listed in the indictment, i.e. circumstances that must be proved with the use of that evidence, with the indication of the way and sequence of hearing them if necessary (Article 333 §1 CPC). In the event of filing an indictment, a prosecutor provided a court only with the materials from the preparatory proceedings connected with the liability of persons indicated in the indictment for acts subject to accusations (Article 334 §1 CPC). On a party's demand, a prosecutor also added to the indictment other required materials from the preparatory proceedings (Article 334 §2 CPC). Thus, the scope of documentation from an investigation or an inquiry passed to a court with an indictment was limited to that connected with the issue of liability of persons indicated in an indictment for acts they were charged with.[7]

In the event a prosecutor filed an indictment, a court could not return it in order to complete an investigation or inquiry, even in case there was a need to search for evidence. Should a prosecutor file a motion to a court to arrest a suspect, he was obliged to give the accused and his counsel access to the part of an indictment

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[5] *Ibid.*, pp. 36–37.

[6] In accordance with the Act of 27 September 2013, the aim of preparatory proceedings was: (1) to establish whether a prohibited act was committed and whether it constitutes a crime; (2) to detect and apprehend a perpetrator if necessary; (3) to collect data in accordance with Articles 213 and 214 CPC; (4) to determine the circumstances of a case, including the aggrieved and the size of harm; (5) to collect, protect and record evidence necessary to substantiate an indictment or another way of concluding the proceedings as well as the admission of evidence and taking of evidence before a court (Article 297 §1 CPC).

[7] The material included all decisions and judgements issued in preparatory proceedings (by prosecution bodies as well as a court), reports of evidence-taking activities and annexes to them, e.g. audio-visual recordings, shorthand records, etc. and opinions obtained in the course of an investigation or inquiry, and documents obtained by the proceeding bodies or submitted by the parties. See, J. Skorupka, *Wpływ kontradyktoryjności rozprawy głównej na przebieg postępowania przygotowawczego*, [in:] P. Wiliński (ed.), *Kontradyktoryjność w polskim procesie karnym*, Warsaw 2013, p. 81.

containing the information about the evidence indicated in the motion. It was due to the fact that only findings based on evidence not kept secret from the accused and his counsel could be the basis for a decision to apply or prolong provisional detention (Article 249a CPC).

In the motion to apply provisional detention, a prosecutor had to specify evidence indicating high probability that the accused had committed a crime and circumstances indicating certain threats to the appropriate course of proceedings or the possibility of committing another serious crime by the accused, and circumstances indicating the existence of grounds for the application of this preventive measure and the necessity for applying it (Article 250 §2a CPC).[8]

Until the beginning of judicial proceedings at the first part of a trial, a prosecutor could withdraw an indictment without the accused party's consent. However, after the judicial proceedings started before a court of first instance, the withdrawal of an indictment was admissible only with the accused party's consent (Article 14 §2 CPC). The withdrawal of an indictment resulted in discontinuation of the proceedings by court due to the lack of a complaint filed by a competent prosecutor (Article 17 §1(9) CPC). Filing an indictment against the same person for the commission of the same act was inadmissible (Article 14 §2 CPC).

A public prosecutor's duty in judicial proceedings was to prove the accused party's guilt (Article 2 §1(1) CPC). The role of a court in the evidence-taking proceedings was subsidiary. In a trial, the burden of proof was a prosecutor's not a court's duty. It was a prosecutor not a court that was obliged to prove the fact of the crime committed by the accused. Therefore, in case a prosecutor failed to prove the crime the accused was charged with, a court could not, as a rule, do this instead. A court could undertake the evidence-taking initiative exceptionally, e.g. in order to take the evidence favourable to the accused who had no counsel for the defence.[9]

As a result of the burden of proof and the obligation to produce evidence, which is formally on a public prosecutor, doubts unresolved in the judicial proceedings were adjudicated in favour of the accused (Article 5 §2 CPC). A public prosecutor could prove the accused party's guilt with the use of any evidence admissible in accordance with the provisions of law. It was inadmissible to prove guilt with the use of evidence obtained against the bans laid down in codes and other legal acts and with the use of evidence obtained via a prohibited act referred to in Article 1 §1 CC (Article 168a CPC). In a trial, a public prosecutor could use information obtained in the course of operational-surveillance activities (Article 393 §1 CPC), including those obtained beyond the subjective and objective limits of operational control ordered by a court, provided they were authorised within the court's successive consent mode.

Because the burden of proof was on a public prosecutor, he could rely on a court's "support" only in an extraordinary situation, justified by extraordinary

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[8] *Ibid.*, p. 91.

[9] See, J. Skorupka, *W kierunku kontradyktoryjności rozprawy głównej*, [in:] J. Giezek, A. Malicki (ed.), *Adwokatura jako uczestnik procesu legislacyjnego*, Warsaw 2012, p. 45.

circumstances of a case. As a rule, in the evidence-taking proceedings, the taking of evidence was the duty of the parties, i.e. prosecutors (public, subsidiary and private ones) and the accused and their procedural representatives. A court's entitlement to take evidence *ex officio* was limited to extraordinary cases justified by extraordinary circumstances of a case and to a situation when a court acted in lieu of a party that filed an evidence motion admitted but did not attend the trial. In such a situation, a court conducted the taking of evidence within the limits of the evidence thesis specified in the motion. As a rule, a court was supposed to be passive and take active part in the evidence-taking proceedings only when, in the face of the lack of the parties' activity, the issue of an appropriate judgement came into question.[10]

A court's procedural duty was to verify evidence and not to conduct the taking of it. Collecting and providing evidence in a trial was the procedural domain of other bodies and parties to the proceedings. A court's departure from such a separation of procedural roles was possible when, e.g. a subsidiary or a private prosecutor acted without their representatives. This is how the position and the role of a court were perceived in case law. There was an opinion that "a court is obliged to conduct the taking of evidence only in such a scope that is necessary to explain all the circumstances of a case. In other words, in the scope necessary to adjudicate properly."[11] It was also assumed that "a prosecutor was to challenge the presumption of innocence in a trial and prove the accused party's guilt. Therefore, a court does not have a duty to find evidence *ex officio* in order to support the prosecution when evidence provided by a prosecutor is not sufficient to convict the accused and a prosecutor does not strive to supplement it."[12]

The new model of criminal proceedings forced a public prosecutor and the accused and his counsel to prepare to the evidence-taking proceedings in a trial. In case a public prosecutor failed to conduct the taking of evidence in a trial, he could not claim in an appeal that a court did not take some specific evidence, provided that he did not file an evidence motion and claim the taking of evidence, despite the lack of that motion or a claim of the infringement of the provisions concerning a court's activity in the taking of evidence, including the taking of evidence beyond the scope of the evidence thesis (Article 427 §5 CPC). A prosecutor could indicate new facts or evidence but only in the event they could not be provided before the court of first instance (Article 427 §3 CPC).

The criminal procedure reform introduced by the Act of 27 September 2013 amending the Act: Criminal Procedure Code and some other acts assumed the primacy of a trial over preparatory proceedings. The pre-judicial proceedings were limited, inter alia, to the collection, protection and recording of evidence in the scope necessary for taking a decision on the way of concluding this stage of the proceedings, i.e. discontinuation of the proceedings, filing an indictment

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[10] See, P. Hofmański, *Model kontradyktoryjny…*, p. 36.

[11] See, the Supreme Court judgement of 28 May 2003, WA 25/03, OSNwSK 2003, No. 1, item 1136; the Supreme Court ruling of 11 April 2006, V KK 360/05, OSNwSK 2006, No. 1, item 819.

[12] See, judgement of the Appellate Court in Katowice of 8 March 2007, II AKa 33/07, Prok. i Pr. No. 11, 2007, item 23.

or another complaint to court. The change of the model of a trial resulted in the rise in its significance. Evidence that constituted a basis for factual findings was to be established in adversarial evidence-taking proceedings, the essential feature of which is a procedural struggle of the parties, i.e. a public prosecutor and the accused, and not in inquisitorial preparatory proceedings or inquisitorial judicial proceedings.

Thus, the Great Criminal Procedure Amendment introduced a model of an active prosecutor creating the course of the evidence-taking proceedings and the scope of evidence assessment in a trial, giving a prosecutor a real possibility of influencing the course of judicial proceedings because it was him and not a court who was to conduct the taking of evidence specified in an indictment. A prosecutor stopped being a passive observer of a court's acting but was authorised to active and creative conduct in a trial. The change of a prosecutor's position and role also resulted from the belief of the former authorities that a prosecutor who as a legal body of the state not only has legal competence to conduct the taking of evidence in a trial but also real possibilities and skills to fulfil the duties. There was also a belief that the completion of master's legal studies, the required pupillage and internship should let a prosecutor play the role of a creative party to judicial proceedings and perform probably the most important duty, i.e. prove the accused party's guilt.

3. THE PROSECUTOR'S TASKS UNDER THE ACT OF 11 MARCH 2016

The present authorities, passing the Act of 11 March 2016, under the pretence of recovering the appropriate significance of the principle of material truth, changed the model of evidence-taking proceedings in a trial and reshaped a prosecutor's rights. It was assumed that only the evidence-taking proceedings and taking of evidence *ex officio* by a court guarantees the establishment of true factual findings. It should be stated straight away that the thesis results from an absurd assumption that factual findings will be in conformity with reality only if a court conducts the taking of evidence. The thesis results in a conclusion that factual findings constituting the basis for a decision to discontinue proceedings taken by a prosecutor do not have the features of conformity with the reality because they were not made by a court. This reasoning is so illogical that it can be safely called absurd. Nevertheless, it was the basis for the change of the criminal proceeding model. It demonstrates how the present authorities perceive a prosecutor's role in criminal proceedings. The image is very unfavourable to a prosecutor. The changes introduced in the provisions show that a prosecutor is not able to conduct the taking of evidence specified in an indictment, which he himself developed and potentially other evidence provided in a trial and, in this way, establish facts that are the basis for a decision on the accused party's guilt. While before the amendment to the regulations introduced by the Act of 11 March 2016 a prosecutor conducted the taking of evidence on his own and a court, as a rule, could not do this in lieu of him, after the change in the criminal procedure, a court is to conduct the taking of evidence in a trial. According to the present authorities, it is due to the lack of a prosecutor's possibilities of establishing

facts in conformity with the reality, based on which a court might adjudicate on the accused party's guilt and punishment.

It is unknown for what reasons the present authorities decided that a prosecutor is not capable of establishing facts matching the reality because they were not publicised. However, they may be as follows: (1) the lack of skills in the taking of evidence in a trial, (2) the lack of knowledge of the case in which a public prosecutor acts, (3) the lack of knowledge of evidence that should be provided, (4) the lack of knowledge of the rules of proceedings before a court of first instance. If one realises that in a trial a prosecutor presents motions to conduct the taking of evidence, which he earlier obtained in the inquisitorial preparatory proceedings, the image of a prosecutor is quite negative.

This negative image of a prosecutor is even worsened by the circumstance that in preparatory proceedings, a prosecutor, the police and other preparatory proceeding bodies may use all possible state resources, and secret or non-secret methods of obtaining information about facts that should be proved with the use of strict and flexible evidence means. While in an adversarial model of criminal proceedings a prosecutor could not provide evidence obtained in a way that was not in compliance with law, after the amendment to the model, the provision of Article 168a CPC gives a prosecutor the possibility of proving the accused party's guilt also with the use of evidence obtained with the infringement of procedural provisions or with the use of a prohibited act referred to in Article 1 §1 CC, unless evidence was obtained by a public official performing duties as a result of manslaughter, intentional damage to health or deprivation of liberty. Moreover, in the event, as a result of surveillance ordered by a competent body based on special regulations (e.g. the chief commander of the voivodeship police force), evidence against a person who was subject to surveillance is obtained concerning an offence prosecuted *ex officio* or a fiscal offence other than the offence that was subject to the surveillance ordered, or an offence prosecuted *ex officio* or a fiscal offence committed by person other than the one that was subject to surveillance, a prosecutor must decide on the use of the evidence in criminal proceedings (Article 168b CPC). A similar regulation was introduced concerning evidence obtained in the course of the tapping referred to in Chapter 26 CPC (Article 237a).

In order to introduce to a trial the evidence obtained beyond the framework of the procedural and non-procedural tapping, it is not necessary to obtain a court's successive consent. The present authorities assumed that a court's consent for the provision of this evidence is useless. Instead of a court, it is a prosecutor who is to decide whether to use that evidence in the proceedings.

The change in the criminal procedure introduced by the present authorities shows that a prosecutor has a considerable scope of legal, financial, logistic, human resources and other measures at his disposal, which enable him to base an indictment upon true factual findings. Despite this, a court may refer the case back to him to supplement evidence and thus give him the opportunity to file an indictment again.

According to the present authorities, the above-mentioned measures, although they make it possible to use a great potential of the state, information obtained in the course of secret operational-surveillance activities and evidence obtained with the

infringement of law as well as the opportunity to file an indictment in the same case many times, are insufficient to prove the accused party's guilt by a prosecutor. In order to fulfil this duty, he must be supported by a court or a court should act in lieu of him by conducting the taking of evidence unfavourable to the accused *ex officio* and, if this is not sufficient, order a prosecutor to conduct the taking of evidence in accordance with Article 396a CPC. Implementing a court's order, a prosecutor or the police may, e.g. interview witnesses, request an expert witness to prepare an opinion, perform a search or seize objects that may constitute evidence in the case, perform a procedural experiment, and conduct all these activities beyond a trial without a court's supervision. The reports of those activities are submitted to a court and are read in a trial in the way and scope determined in Article 391 §1 CPC, Article 393 §1 CPC, Article 393a CPC.

It should be taken into account that requesting a public prosecutor to conduct the taking of some evidence, a court takes responsibility for the implementation of prosecution; it undertakes activities that in criminal proceedings based on the separation of procedural roles rooted in the principle of complaint-based proceedings are a prosecutor's duties. Requesting a prosecutor to provide specific evidence, a court clearly sides with the prosecution and takes the role of "a supporter of the prosecution".[13] A court's activities in accordance with Article 396a §1 CPC result in the breach of the separation of procedural roles between a court and a public prosecutor and, consequently, procedural functions of a court and a prosecutor and lead to inappropriate distribution of responsibility for a criminal complaint, which, in accordance with the principle of complaint-based proceedings, only a public prosecutor should bear.[14] If a public prosecutor decides to indict someone, although everyone is subject to the constitutional principle of the presumption of innocence,[15] not anyone else but only he is responsible for providing evidence that can undermine that presumption. Thus, the solution introduced in Article 396a CPC results in considerable procedural imbalance between a public prosecutor and the accused.

If these activities are insufficient, on a motion filed by a prosecutor before the judgement is made, a court may refer the case back to a prosecutor to supplement an investigation or an inquiry, provided that during a trial important circumstances are revealed, and there is a need to conduct a search or other activities aimed at explaining the circumstances of a case. In other words, if there is a risk of an acquittal, a prosecutor may request referring a case back to him to be investigated in order to collect evidence for indeterminate time and to postpone the release of the

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[13] It is in conflict with the necessity of keeping distance to the case and the accused and, thus, objectivism and impartiality on the part of a court; see, J. Skorupka, *Ciężar dowodu i ciężar dowodzenia w procesie karnym*, [in:] T. Grzegorczyk (ed.), *Funkcje procesu karnego. Księga jubileuszowa Profesora Janusza Tylmana*, Warsaw 2011, pp. 133–134; J. Zagrodnik, *Model interakcji postępowania przygotowawczego oraz postępowania głównego w procesie karnym*, Warsaw 2013, pp. 418–419 and p. 439 ff.

[14] See, J. Zagrodnik, [in:] J. Skorupka (ed.), *Kodeks postępowania karnego. Komentarz*, Warsaw 2016, pp. 1005–1006.

[15] See, M. Safjan, L. Bosek (ed.), *Konstytucja RP*, Vol. I, Warsaw 2016, p. 1065.

accused from the charge of crime.[16] The above-mentioned regulation is not only an expression of the lack of trust in the efficiency of a prosecutor's activities in a trial but also a deep inhuman thought of the necessity of convicting a person accused by a prosecutor at all costs. The regulation in question is evidence of treating the accused in the way that is to lead to conviction, regardless of circumstances.

The Act of 11 March 2016 also changes the objectives of preparatory proceedings,[17] the objectives of the whole criminal proceedings (Article 2 §1 CPC) and the roles of a court and a prosecutor in the fulfilment thereof. While earlier it was a public prosecutor's duty to prove the accused party's guilt, after the amendment also a court has this duty and, if one takes into account the practice of law application, exclusively a court. Fulfilling this duty, a court may *ex officio* conduct the taking of evidence and, as far as this is concerned, it is not limited. Only doubts that cannot be solved can be used in favour of the accused, i.e. only when, despite all the possible evidence-taking proceedings, the doubts cannot be eliminated. If a public prosecutor does not demonstrate activity and does not file adequate evidence-related motions, a court is obliged to *ex officio* conduct the taking of evidence. According to the present authorities, a prosecutor may be inactive or even passive in a trial. It is enough that he files an indictment and a court shall do the rest. However, in case a court acquits the accused as a result of failure to conduct the talking of evidence *ex officio*, a prosecutor may raise this procedural irregularity in his appeal against a court's decision.

Filing an indictment, a prosecutor enlists persons (the accused and witnesses, possibly expert witnesses) who should be summoned to attend a trial and evidence that should be assessed in a trial. A prosecutor does not have to indicate his evidence thesis in the evidence specification at present. It turned out that requiring that a prosecutor indicate circumstances that must be proved with the use of a piece of evidence is unattainable. It is hard to understand this situation because determination of the source and evidence as well as evidence thesis are formal requirements of every evidence motion. If the accused and the aggrieved, who do not know the criminal procedure, are required to provide in their evidence motion circumstances that must be proved with the use of a piece of evidence, the fact that a prosecutor is made exempt from this obligation when he files evidence motions in an indictment must surprise.

It turns out that a prosecutor is unable to fulfil another duty. Namely, at present, a prosecutor must submit an indictment with all the preparatory proceeding files to a court (Article 344a CPC). There is an extra-standard requirement consisting in

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[16] See, Article 10 Act of 30 November 2016 amending the Act: Law on the common courts system and some other acts, Journal of Laws [Dz.U.] of 2016, item 2103, 22 December 2016.

[17] For the purpose of preparatory proceedings, it is necessary, inter alia, to collect, protect and record evidence for a court. A prosecutor does not conduct (or supervise) preparatory proceedings in the scope enabling him to take decisions concerning the way of concluding the proceedings and submit appropriate evidence motions, but in a much broader scope, because he is to collect, protect and record evidence for a court, which will make it possible to hold a perpetrator liable for a crime and free an innocent person from liability (Article 2 §1(1) CPC). He must collect evidence in an inquisitorial system and in secret preparatory proceedings. This means a return to the CPC solutions of 1950–1955, strengthened in CPC of 1969.

the request that a prosecutor selects the evidence material collected in preparatory proceedings and submits only the evidence that is significant for the adjudication on the accused party's liability for an act he is charged with in an indictment.

The procedural provisions admit basing a court's decision on the application or prolongation of preliminary remand on evidence that is of considerable importance for this decision taking, which has not been revealed to the accused and his counsel,[18] in spite of the fact that it is in conflict with Directive 2012/13/EU of the European Parliament and of the Council of 25 May 2012 on the right to information in criminal proceedings. As a result of such a regulation, the accused and his counsel are deprived of the possibility of questioning evidence provided by a prosecutor to a court in order to deprive the accused of liberty. As a result, the judicial proceedings concerning preliminary remand are deprived of arms and, thus, they are unfair. Moreover, the accused and his counsel are not informed about the secrecy of some evidence and cannot appeal against a prosecutor's decision to a court.

4. CONCLUSIONS

The present authorities introduced a criminal proceeding model in which the evidence-taking proceedings are subordinated to the aim of proving perpetration and guilt of the accused. If a prosecutor files an indictment, his action should result in success, even if this public prosecutor is incompetent. In such a situation, a court is to take the prosecution function over and show a prosecutor what evidence he should provide to make it possible to convict the accused. The present authorities assume that a prosecutor, who can use all the state resources, including secret ways of obtaining information by means of tapping and other surveillance activities, is not able to collect evidence in preparatory proceedings in order to efficiently conduct prosecution before a court and during a trial he is not able to prove the grounds for the indictment and, thus, prove the accused party's guilt. Due to that,

[18] If, in preparatory proceedings, a prosecutor files a motion to apply or prolong preliminary remand, he is obliged to provide the accused and his counsel with access to the part of case files containing evidence indicated in the motion with the exception of evidence based on testimonies of witnesses whose or whose closest relations' life, health or liberty may be in danger (Article 250 §2b CPC). The decision concerning the application or prolongation of preliminary remand must be based on findings resulting from evidence that is not secret to the accused and his counsel and secret evidence resulting from testimonies of witnesses referred to in the above-mentioned provision. In case a motion to apply or prolong preliminary remand filed in the course of preparatory proceedings, the accused and his counsel are not given access to all evidence constituting grounds for preliminary remand. The accused and his counsel are not given access to evidence resulting from testimonies of witnesses if there is a substantiated threat to witnesses' or their closest relations' life, health or liberty. In such a situation, a prosecutor must not provide the evidence in the motion to apply preliminary remand but attaches it to the motion in separate documents. A prosecutor does not inform the accused and his counsel that the motion to a court is supported with additional evidence, not just that in the motion. The accused and his counsel may learn about such additional evidence attached to the motion only when the evidence confirms circumstances that are in favour of the accused (which is not possible in practice), because then a court is obliged to admit the circumstances *ex officio* and inform a prosecutor about that.

a court must be involved in prosecution so that, in case of a prosecutor's passiveness, inability or incompetence, it will tell him what evidence should be provided to lead to conviction.

It must be added that the directive to conduct the taking of evidence *ex officio* by a court in order to establish facts that are in conformity with the reality and to fulfil the requirement of the principle of material truth cannot lead to a breach of the separation of procedural roles that are fundamental in contemporary criminal proceedings. The principle of material truth does not constitute the aim of proceedings but only a means for issuing a judgement that is materially and procedurally just. The principle ensures the achievement of the aim of criminal proceedings together with other principles, especially the principle of presumption of innocence and the adversarial model. Therefore, the principle of material truth should not be treated as more important or significant for criminal proceedings than the principle of presumption of innocence or the adversarial model. All these principles together with others constitute constitutive elements of the contemporary criminal proceedings and shape their model.[19]

In accordance with the binding regulations, the role of a prosecutor in criminal proceedings is limited to preparatory proceedings. In case of filing an indictment, a court is to take the prosecution duties over and indict in lieu of a prosecutor. This means that a prosecutor can only fulfil his procedural duties in the course of preparatory proceedings. Then he loses this "skill" during a trial.

In accordance with the regulations introduced by the present authorities, an image of a prosecutor is very unfavourable to him. It is in the interest of prosecutors to change this state of things so that they will be perceived as fully authorised, active and creative members of judicial proceedings.

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PROSECUTOR'S IMAGE AFTER THE AMENDMENT OF CRIMINAL PROCEDURE CODE IN 2016

Summary

The author shows, on the basis of an analysis of the existing rules of criminal procedure, how the present authorities perceive a prosecutor. The adversarial model of criminal proceedings, which has been rejected by the present authorities, is a counterpoint to the existing rules. The analyses show a negative image of a prosecutor as a body unable to prove the accused party's

guilt and to undermine the presumption of innocence that protects the accused. The image of a prosecutor as perceived by the present authorities is very unfavourable to him. Therefore, it is in the interest of prosecutors to change this situation.

Keywords: criminal proceedings, role of a prosecutor in a criminal trial, image of a prosecutor perceived by the authorities

WIZERUNEK PROKURATORA PO ZMIANIE KODEKSU POSTĘPOWANIA KARNEGO W 2016 R.

Streszczenie

Na podstawie analizy obowiązujących przepisów procedury karnej autor pokazuje, w jaki sposób prokurator jest postrzegany przez obecną władzę. Kontrapunktem dla obowiązujących przepisów prawa jest model kontradyktoryjnego postępowania karnego, który został odrzucony przez obecną władzę. Z przeprowadzonych analiz wynika negatywny obraz prokuratora jako niezdolnego do udowodnienia winy oskarżonemu i przełamania chroniącego go domniemania niewinności. Wizerunek prokuratora w oczach obecnej władzy jest dla niego bardzo niekorzystny. Dlatego w interesie prokuratorów jest zmiana tego stanu rzeczy.

Słowa kluczowe: postępowanie karne, rola prokuratora w procesie karnym, wizerunek prokuratora w oczach władzy

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