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NOTIFICATION OF A GROSS BREACH OF PROCEDURAL OBLIGATIONS BY A PUBLIC PROSECUTOR OR A PERSON CONDUCTING A PREPARATORY PROCEEDING

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Abstract

The research problem of the article is the notification of a gross breach of procedural obligations by a public prosecutor or a person conducting a preparatory proceeding (Article 20 § 2 of the Code of Criminal Procedure). Its aim is to assess the usefulness of this measure in eliminating significant procedural irregularities committed by a public prosecutor and bodies conducting preparatory proceedings. The research thesis is the statement that this notification plays an important role in eliminating and preventing procedural irregularities in the activities of public prosecutors and in preparatory proceedings. The research hypothesis is the assumption that its regulation in the Code of Criminal Procedure – in order to increase its effectiveness – requires minor amendments. The basic research methods used are the formal-dogmatic and logical ones.

The subject-matter of the considerations includes: the development of the notification, its legal nature, the bodies authorised to notify (court, prosecutor), its subject-matter (gross violation of procedural obligations, public prosecutors, persons conducting preparatory proceedings), its addressees, and the notification proceeding. These considerations lead to the conclusion that this measure is, in principle, properly regulated. The court's or prosecutor's notification decision is not subject to appeal; however, due to the consequences for the person

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concerned, an appeal against the court's decision should be lodged with a three-judge bench of the same court, and a complaint about a prosecutor's decision should be submitted to the superior prosecutor. In order to increase the effectiveness of notification, it is necessary to authorise the court and the prosecutor to request that the superior of the person who has not sent information on the measures taken within the specified time limit initiate an official proceeding and provide information on its outcome.

Keywords: public prosecutor, prosecutor, superior, gross breach of procedural obligations, court, notification

INTRODUCTION

The implementation of the objectives of criminal procedure laid down in Article 2 § 1 of the Code of Criminal Procedure ('CCP') requires that all participants in the proceedings, including procedural bodies and parties, fulfil their duties efficiently. This particularly applies to a prosecutor, who plays the role of both a body conducting and supervising a preparatory proceeding and a public prosecutor, as well as to other bodies involved in a preparatory proceeding and acting as public prosecutors. The Code of Criminal Procedure provides for special instruments that are to ensure the efficient course of a criminal proceeding at all stages. Such an objective is achieved, in relation to a suspect or the accused, by the application of coercive measures, which are ruled in order to secure the proper course of a proceeding (Article 249 § 1 CCP), and, in relation to a public prosecutor and a body conducting a preparatory proceeding, by a notification of a gross breach of procedural obligations by them (Article 20 § 2 CCP), which is the subject-matter of the article. Its aim is to assess the usefulness of this measure in eliminating significant procedural violations committed by a public prosecutor or a body conducting a preparatory proceeding. The research thesis is that this notification plays an important role in eliminating and preventing procedural irregularities in the activities of public prosecutors and in preparatory proceedings. The research hypothesis is the assumption that its regulation in the Code of Criminal Procedure, in order to increase its efficiency, requires minor amendments. The basic research methods used are formal-dogmatic ones.

DEVELOPMENT OF THE NOTIFICATION

The Codes of Criminal Procedure of 1928 and 1969 did not provide for the notification of a gross breach of obligations by a public prosecutor or a body conducting a preparatory proceeding. It was regulated for the first time in the Code of Criminal Procedure of 1997. In accordance with the original wording of Article 20 § 2 CCP, in the event of a gross breach of procedural obligations by a public prosecutor or a person conducting a preparatory proceeding, the court was obliged to notify the immediate superior of the person who committed the violation. Prosecutors also had such rights in relation to the Police and other investigative bodies.

The Act of 9 May 2007 amending the Act: Code of Criminal Procedure and some other acts[1] obliges the author of the notification to request that information be sent within 14 days on the actions taken as a result of the notification (Article 20 § 2 CCP), and the court is obliged to send a copy of the notification to the Prosecutor General if the violation is committed by a prosecutor, and, in the event the violation is committed by a public prosecutor who is not a prosecutor (of the Prosecution Service), to the competent authority that is superior to the immediate superior of this public prosecuting body (Article 20 § 2 CCP).

LEGAL NATURE OF THE NOTIFICATION

There is no conceptual terminology used in the literature to specify the measure laid down in Article 20 CCP. The determination of a correct term is important because it should reflect its legal nature.

In the literature, the notification referred to in Article 20 § 2 CCP is specified as signalling,[2] in the same way as the notification of a gross breach of procedural obligations by counsel for the defence or proxy (Article 20 § 1 CCP).[3] The same term is also used to refer to the notification of flagrant misconduct in the activities of state, self-government or social bodies, in particular when it contributes to the commission of a crime (Article 19 § 1 CCP), the initiation and completion of an *ex officio* proceeding (Article 21 CCP), collaboration in the commission of a crime to the detriment of a minor, with a minor or in circumstances that may indicate demoralisation of a minor or a demoralising influence on a minor (Article 23 CCP), and determination of groundlessness, illegality or irregularity of detention (Article 246 § 4 CCP).[4] Occasionally, it is called a notice.[5]

Article 20 § 2 CCP refers to the notification of a gross breach of procedural obligations, which indicates that in the normative sense the activity has the nature of a notification,[6] and this is how the activity regulated therein should be called.

As far as the legal nature of the notification is concerned, the doctrine rightly classifies it as a disciplinary measure, which is the procedural bodies' response

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1 Journal of Laws of 2007, No. 99, item 664.

2 J. Karaźniewicz, in: Zagrodnik J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2024, p. 159.

3 S. Kowalski, 'Sygnalizacja rażącego naruszenia obowiązku procesowego przez radcę prawnego w postępowaniu karnym', *Radca Prawny. Zeszyty Naukowe*, 2023, No. 4, p. 63; M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania karnego. Komentarz. Art. 1–424*, Vol. I, Warszawa, 2024, p. 144; ruling of the Supreme Court of 18 August 2021, III KZ 35/21, LEX No. 3398328; ruling of the Supreme Court of 24 February 2021, I KZ 5/21, LEX No. 3171306.

4 J. Karaźniewicz, *Instytucja sygnalizacji w polskim procesie karnym*, Toruń, 2015, pp. 223–228.

5 A. Sakowicz, in: Sakowicz A. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2023, p. 135.

6 Thus it is defined in: F. Prusak, *Kodeks postępowania karnego. Komentarz*, Vol. 1, Warszawa, 1999, p. 128; T. Grzegorczyk, *Kodeks postępowania karnego. Artykuły 1–467. Komentarz*, Vol. I, Warszawa, 2014, p. 160; J. Kosonoga, in: Stefański R.A., Zabłocki S. (eds), *Kodeks postępowania karnego. Komentarz do art. 1–166*, Vol. I, Warszawa, 2017, p. 364; the ruling of the Appellate Court in Lublin of 9 November 2008, II AKz 286/08, LEX No. 491020.

to procedural irregularities that result in the initiation of disciplinary proceedings placed outside the criminal proceeding, consisting in a request for this made to competent authorities.[7]

BODIES AUTHORISED TO ISSUE THE NOTIFICATION

The type of body authorised to issue the notification depends on the stage of the preparatory proceeding. In the course of the court proceeding, it is the court that is entitled to make it, and in the preparatory proceeding, it is a prosecutor.

1. COURT

In jurisdictional proceedings, this is an exclusive competence of the court, and this right is not held by the president of the court, the head of the division, or the judge presiding over the adjudicating bench. The conclusion results from the linguistic interpretation of Article 20 § 2 CCP, which expressly refers to the court. The Supreme Court expressed a different stance, stating that:

> 'The provision of Article 20 § 1 CCP authorises the "court" to act accordingly (and thus, in the appropriate form: a decision, not a ruling), and secondly, it concerns a breach of procedural obligations in specific cases being examined by this court. This opinion does not lead to the conclusion that a judge, in particular the head of the division, does not have legal grounds for signalling to competent corporate authorities that they noticed circumstances that, even based on their subjective assessment, are of great importance for the appropriate performance of defence-related obligations and, more broadly, for the proper functioning of the justice system. A legal situation in which a judge, and even more so the head of the division, would be deprived of the possibility of signalling their observations concerning the improper functioning of a specific sphere of the justice system to the competent authorities would not be acceptable.'[8]

Although this view was expressed on the basis of Article 20 § 1 CCP, due to the identical regulation in § 2 of the provision, it can also be applied to the measure in question. This opinion is incorrect because: firstly, it is in conflict with the literal wording of the provision, which clearly grants this right to the court; secondly, this notification may even result in the initiation of a disciplinary proceeding against the person concerned.

The mention of the court in Article 20 § 2 CCP makes it possible to assume that this provision is applicable at every stage of a jurisdictional criminal proceeding, i.e., in a proceeding before the court of first instance, as well as in cases concerning appeal, cassation, resumption of a proceeding, a complaint about the judgment of the court of appeal, and an extraordinary complaint. There is no doubt that it is

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[7] J. Kosonoga, *System środków dyscyplinujących uczestników postępowania karnego*, Warszawa, 2014, p. 345.

[8] The Supreme Court resolution of 12 January 2006, SNO 61/05, LEX No. 569039.

permissible to submit a notification of a gross breach of procedural obligations by a prosecutor in the course of investigation or inquiry that the court found while performing activities in the preparatory proceeding, because Article 20 § 2 CCP does not require that the court find it in the course of the court proceeding. It is not clear whether the court also has the right when it finds a gross breach of procedural obligations by a prosecutor participating in a session in which the court performs procedural activities in a preparatory proceeding. A prosecutor participating in such a session neither acts as a public prosecutor nor as a person conducting a preparatory proceeding. In the course of these activities, a prosecutor, in accordance with Article 299 § 3 CCP, has the rights of a party.

In the literature, however, such possibility is rightly allowed based on reference made to teleological interpretation. It is argued that notification is not intended to improve the future work of given bodies in other proceedings, but mainly in the ongoing proceeding, so that the gross breach of procedural obligations does not hinder or prevent the achievement of the objectives of the proceeding.[9]

2. PROSECUTOR

In preparatory proceedings, a prosecutor has the exclusive right to make a notification. Article 20 § 2 in fine CCP indicates that 'also' a prosecutor has the right. The word 'also' 'signals that the given state of things is to some extent similar to another one, especially the one mentioned earlier'.[10] Thus, the its use before the word 'prosecutor' means that they, alongside the court, have the right to make a notification of a gross breach of procedural obligations by a person conducting a preparatory proceeding. This does not mean that the court has an unlimited right to use this institution. It is limited only to situations when they are revealed in a proceeding before the court.

A prosecutor is a person who meets the statutory requirements and is appointed to the position by the Prosecutor General at the request of the National Prosecutor (Article 74 § 1 and Article 75 of the Act of 28 January 2016 – Law on the Prosecution Service).[11] The right is also granted to an assessor of the prosecution service holding the so-called *votum*, i.e., entrusted by the Prosecutor General with the task of performing prosecution activities for a period of up to three years, without the right to: (1) participate in proceedings before the appellate court and a proceeding before the regional court, with the exception of first instance proceedings in cases in which they conducted preparatory proceedings; (2) appear before the Supreme Court, and prepare appeals and applications to the Supreme Court (Article 173 § 1). The notification they draft is not subject to their immediate superior prosecutor's approval, because it is not listed in Article 173 § 2 LPS as one that is subject to this activity.

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[9] M. Kurowski, in: *Kodeks…*, op. cit., p. 144.

[10] B. Dunaj (ed.), *Nowy słownik języka polskiego*, Warszawa, 2005, p. 610.

[11] Journal of Laws of 2024, item 390, hereinafter referred to as 'LPS'.

NOTIFICATION SUBJECT MATTER

1. PROCEDURAL OBLIGATIONS AND A GROSS BREACH OF THEM

The source of the notification of both the court and prosecutor, in terms of the subject matter, is a gross breach of procedural obligations. A breach of procedural obligations means a discrepancy between the conduct required in a given procedural situation, corresponding to the standards of proper performance of duties, and the conduct of a particular participant in the proceeding.[12]

The clarification that it concerns procedural obligations indicates their limitation to obligations resulting from the provisions of the Code of Criminal Procedure and other legal acts. This is to be a breach of obligations in the course of a specific proceeding and in connection with it.

Not every breach of procedural obligations constitutes grounds for the notification, but only one that is gross. The word *gross (flagrant)* in various forms is also used in Article 20 § 1, Article 438(4), and Article 523 § 1 CCP. Taking into account the interpretation directive prohibiting homonymous interpretation, according to which the same phrases should not be given different meanings,[13] one can use the achievements of the doctrine and case law developed also on the basis of these provisions to interpret this term. The Supreme Court, based on Article 523 § 1 CCP, argued that a gross breach of law occurs when: it is very serious,[14] it is unquestionable and obvious,[15] it is easy to ascertain and of such gravity that it is of key importance for the correctness of the proceeding,[16] it is serious and plays an important role in resolving the case,[17] it is of such gravity and significance that it may be comparable to the rank of absolute grounds for appeal,[18] it is of clear, unquestionable nature that can be easily recognised, as well as when its gravity is of serious nature.[19]

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[12] J. Karaźniewicz, 'Dyscyplinowanie obrońców i pełnomocników za pomocą sygnalizacji w świetle ograniczonego prawa do ingerencji organu procesowego w relacje między stroną a jej profesjonalnym przedstawicielem procesowym', in: Grzegorczyk T., Olszewski R. (eds), *Verba volant, scripta manent. Proces karny, prawo karne skarbowe i prawo wykroczeń po zmianach z lat 2015–2016. Księga pamiątkowa poświęcona Profesor Monice Zbrojewskiej*, Warszawa, 2017, p. 135.

[13] L. Morawski, *Wstęp do prawoznawstwa*, Warszawa, 2014, p. 148; ruling of the Supreme Court of 6 September 2000, III KKN 337/00, ONSKW 2000, No. 9–10, item 81.

[14] Ruling of the Supreme Court of 9 July 2024, IV KK 184/24, LEX No. 3732534.

[15] Ruling of the Supreme Court of 8 May 2024, II KK 114/24, LEX No. 3722225.

[16] Ruling of the Supreme Court of 28 June 2024, II ZK 32/24, LEX No. 3748598.

[17] Ruling of the Supreme Court of 27 March 2024, IV KK 77/24, LEX No. 3704211; ruling of the Supreme Court of 13 December 2023, III KK 525/23, LEX No. 3717616; ruling of the Supreme Court of 29 November 2023, II KK 436/23, LEX No. 3637303; ruling of the Supreme Court of 27 September 2023, III KK 384/23, LEX No. 3609488; ruling of the Supreme Court of 26 April 2023, II KK 99/23, LEX No. 3572500; ruling of the Supreme Court of 1 February 2023, IV KK 9/23, LEX No. 3521810.

[18] Ruling of the Supreme Court of 21 February 2024, II ZK 92/22, LEX No. 3694891.

[19] Ruling of the Supreme Court of 24 January 2024, V KK 485/23, LEX No. 3672343; ruling of the Supreme Court of 6 December 2023, IV KK 435/23, LEX No. 3717552; ruling of the Supreme Court of 6 December 2023, IV KK 430/23, LEX No. 3717551; ruling of the Supreme Court of 18 October 2023, V KK 379/23, LEX No. 3617433.

The Polish word *rażące* [gross/flagrant] means 'too clear, obvious, unquestionable, beyond doubt; one that is conspicuous, impossible not to notice',[20] 'clear, striking'[21] and 'obvious, indisputable, beyond doubt, great, striking, significant, distinct'.[22] Having the above in mind, one can assume *mutatis mutandis* that a gross breach of procedural obligations occurs when it is beyond doubt and obvious, and has key importance for the correctness of the proceeding, in particular affecting the procedural guarantees of the accused or the aggrieved party. This concerns a clear and significant breach of an obligation. It is rightly noted in the literature that a gross breach of a procedural obligation is one that has additional features in comparison with an 'ordinary' breach.[23] It limits the notification to indisputable violations constituting a clear and significant breach of procedural obligations. This is an evaluative circumstance, which gives a body freedom to decide whether it should actually make a notification in the given circumstances.[24] It is also rightly indicated that the question whether the violation of specific procedural obligations is flagrant is not asked *in abstracto*, but only *ad casum*, taking into account whether it has had or could have had an exceptionally drastic effect on the procedural situation of the accused.[25]

What may be helpful for the assessment are the regulations contained in the Collection of Principles of Professional Ethics, which is an annex to the resolution of the National Council of Prosecutors at the Prosecutor General's Office of 12 December 2017.[26] They stipulate, *inter alia*, that a prosecutor is obliged to observe the law and public decency (§ 2 (1)), not to behave in a manner that could bring discredit on the dignity of the prosecutor or undermine trust in the office they hold (§ 3 (2)), as well to avoid behaviour and situations that could undermine trust in their independence, impartiality and professional integrity or give the impression of a lack of respect for the law (§ 4 (1)).[27] The impact of a breach of procedural obligations on the procedural guarantees of the participants in the proceeding, in particular the accused and the aggrieved party, should be an important circumstance decisive for such an assessment. It is rightly emphasised in the literature that irregularities have a negative impact on the rights of the aggrieved party, and it is primarily argued that, in accordance with Article 2 § 1 (3) CCP, the legally protected interests of the

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[20] H. Zgółkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 35, Poznań, 2002, p. 265.

[21] M. Szymczak (ed.), *Słownik języka polskiego PWN*, Vol. 2, Warszawa, 1998, p. 22; S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Vol. 4, Warszawa, 2003, p. 33.

[22] W. Doroszewski (ed.), *Słownik języka polskiego*, Vol. 7, Warszawa, 1965, p. 841.

[23] S. Kowalski, *Sygnalizacja*…, op. cit., p. 70.

[24] A. Małolepszy, 'Przesłanki odpowiedzialności porządkowej obrońcy za niedopełnienie obowiązków procesowych w toku postępowania karnego', in: Grzegorczyk T. (ed.), *Funkcje procesu karnego. Księga jubileuszowa Profesora Janusza Tylmana*, Warszawa, 2011, p. 453.

[25] Z. Gostyński, S. Zabłocki, in: Stefański R.A., Zabłocki S. (eds), *Kodeks postępowania karnego. Komentarz*, Vol. I. Warszawa, 2003, p. 333.

[26] https://www.gov.pl/web/prokuratura-krajowa/zbior-zasad-etyki-zawodowej-prokuratorow [accessed on 23 December 2024].

[27] Judgment of the Supreme Court of 19 March 2015, SDI 5/15, LEX No. 1663832; thus also J. Kosonoga in: *Kodeks*…, op. cit., p. 352; C. Kulesza, in: Dudka K. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2023, p. 83.

aggrieved party should be taken into account.[28] In this context, the view presented in the case law that

> 'The person conducting an investigation should allow the parties to the proceeding to participate in an activity that cannot be repeated at the main trial (Article 272 § 1d CCP and Article 316 § 1 CCP) deserves approval. Such actions should include the inspection of an item if it is to be handed over to an authorised person (Article 199d CCP), the removal of elements from it in order to use them for evidence related purposes, etc. Therefore, if these persons request participation in the activities, they should be notified of their place and date, and in the absence of proof of delivery of the notification to the non-appearing persons, the activities should be postponed (Article 102 §§ 1–3d CCP and Article 117 §§ 1–2 CCP). Failure to do so may affect the outcome of the case, because it deprives the parties of the opportunity to raise objections to the state of the exhibit.'[29]

It is indicated in the doctrine that such activities include: failure to apply to the court for the appointment of public counsel for the defence despite the existence of circumstances justifying mandatory defence and the accused not having an attorney of their choice; failure to inform the suspect of their rights contrary to the requirements under Article 300 CCP; failure to inform a witness about the right to refuse to testify although they have such a right and having their testimony taken; use or approval of the use of prohibited methods of questioning under Article 171 § 5 CCP; failure to make the required change of charges (Article 314 CCP); a public prosecutor's failure to supplement formal deficiencies of the indictment within the deadline required under Article 337 § 3 CCP; a public prosecutor's unjustified failure to appear at a trial; failure to submit translations of procedural documents drafted by them and submitted to the court into the language used by the accused;[30] violation of the freedom of speech;[31] failure to present one's stance on the planning and organisation of the main hearing on time or presenting it in a cursory or incomplete form, which may significantly prolong the proceeding;[32] failure to start dealing with the suspect's request to appoint counsel for the defence or proxy;[33] inconsistency of the indictment with the materials collected during the preparatory proceeding; lack of evidencing initiative; failure to prepare to participate in the taking of evidence; issuing a decision to discontinue a proceeding without substantive justification;[34] and exceeding the five-day deadline for questioning the suspect in the proceeding within the necessary scope.[35]

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[28] J. Kosonoga, *System środków*…, op. cit., p. 369.

[29] Judgment of the Appellate Court in Kraków of 3 September 1998, II AKa 155/98, KZS 1998, No. 10, item 29.

[30] T. Grzegorczyk, *Kodeks*…, pp. 157–158.

[31] R. Koper, *Swoboda wypowiedzi osoby przesłuchiwanej w procesie karnym*, Warszawa, 2022, pp. 434–435.

[32] B.J. Stefańska, 'Rola prokuratora w posiedzeniu przygotowawczym sądu', in: Kala D., Zgoliński I. (eds), *Postępowanie przed sądem I instancji w znowelizowanym procesie karnym*, Warszawa, 2018, p. 204.

[33] M. Kurowski, in: *Kodeks*…, op. cit., p. 146.

[34] J. Karaźniewicz, in: *Kodeks*…, op. cit., p. 159.

[35] P. Hofmański, E. Sadzik, K. Zgryzek, in: Hofmański P. (ed.), *Kodeks postępowania karnego. Komentarz do art. 1–296*, Warszawa, 2007, p. 174.

2. BODIES SUBJECT TO A BREACH OF PROCEDURAL OBLIGATIONS

The court's right to send the notification of a gross breach of procedural obligations applies to such violations committed by: (1) in jurisdictional proceedings – a public prosecutor, and (2) in a preparatory proceeding – a person conducting it.

A prosecutor has this right only in the event the body conducting a preparatory proceeding is other than a prosecutor (of the Prosecution Service).

2.1. PUBLIC PROSECUTORS

In accordance with Article 45 § 1 CCP, a prosecutor is a public prosecutor before the court.[36] A prosecutor, and not the prosecution service, has this status because a prosecutor is a procedural body and the term is used in the Code of Criminal Procedure, e.g., in Article 18 § 1, Article 45 § 1, Article 231 § 1, Article 298 § 1 therein. A prosecutor is an individual procedural entity equipped with authoritative powers, and an organisational unit of the prosecution service is an office that provides organisational and technical support for tasks performed by prosecutors.[37]

This may be an assessor to the prosecution service, either one that has the so-called *votum* or one that does not have it. The former, as was indicated earlier, is authorised to perform prosecution activities, including those falling within the scope of public prosecutor's ones (Article 173 § 1 LPS). The latter, who is not authorised to perform prosecution activities, may act as a public prosecutor in cases in which an investigation was conducted (Article 173 § 3 LPS).

This may also be a prosecutor trainee who, having completed a 12-month prosecution service training, may appear before the district court as a public prosecutor in cases concerning crimes carrying a penalty not exceeding five years of deprivation of liberty or a more lenient penalty, as well as in an execution proceeding before this court (Article 183 § 3 LPS).

A public prosecutor may also be another state body that derives this right from special statutory provisions that define the scope of their activities (Article 45 § 1 CCP) or a regulation issued pursuant to Article 325d CCP. The following may act in such capacity pursuant to special statutes:

– a forest ranger, forest manager, deputy forest manager, supervisory engineer, forester and deputy forester, provided that the object of the offence is timber from forests owned by the State Treasury (Article 47 (2)(7) and Article 48 of the Act of 29 September 1991 on Forests[38]). Although these entities do not have the status of a state body required under Article 45 § 2 CCP, as rightly indicated

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[36] For more see R.A. Stefański, 'Oskarżyciel publiczny', in: Kulesza C. (ed.), *System prawa karnego procesowego. Strony i inni uczestnicy postępowania karnego*, Vol. VI, Warszawa, 2016, pp. 151–211.

[37] J. Smoleński, 'Prawno-ustrojowe problemy prokuratury', *Państwo i Prawo*, 1963, No. 1, pp. 78–79; H. Zięba-Załucka, *Instytucja prokuratury w Polsce*, Warszawa, 2003, p. 88; W. Grzeszczyk, 'Prokurator jako organ procesowy', *Prokuratura i Prawo*, 2003, No. 11, p. 163; R.A. Stefański, 'Prokurator jako organ postępowania karnego', in: Kwitkowski Z. (ed.), *System prawa karnego procesowego. Sądy i inne organy postępowania karnego*, Vol. V, Warszawa, 2015, pp. 831–840.

[38] Journal of Laws of 2024, item 530 as amemded.

in the doctrine, Article 45 § 2 CCP does not have superior rank over this Act; it is permissible to authorise these entities to act as public prosecutors. Article 47(2)(7) of this Act is *lex specialis* in relation to Article 45 § 2 CCP;[39]

– a warden of the State Hunting Guard in cases concerning offences against game (Article 39(2)(7) of the Act of 13 October 1995: Game Law[40]).

In accordance with § 1 of the Regulation of the Minister of Justice of 22 September 2015 on bodies authorised, in addition to the Police, to conduct investigations and bodies authorised to bring and support charges before the court of first instance in cases in which an investigation was conducted, as well as the scope of matters assigned to these bodies,[41] the following entities may conduct investigations and bring and support charges before the court of first instance within this scope, i.e., act as public prosecutors:

(1) bodies of the Trade Inspection in cases concerning offences they recognise in the course of inspection that are specified in Article 43(1) and (2) and Article 453(1) of the Act of 26 October 1982 on upbringing in sobriety and preventing alcoholism[42] and Article 38 of the Act of 15 December 2000 on the Trade Inspection;[43]
(2) bodies of the State Sanitary Inspection in cases concerning offences specified in Article 37b of the Act of 14 March 1985 on the State Sanitary Inspection,[44] Articles 96–99 of the Act of 25 August 2006 on the Security of Food and Feeding[45] and in Articles 31–34, Article 36–40, Article 50 and Article 51 of the Act of 25 February 2011 on Chemical Substances and Their Mixtures;[46]
   – in cases concerning offences specified in Articles 77–79 of the Act of 29 September 1994 on Accounting;[47]
(3) the head of a customs-tax office within the scope of customs-tax inspection;
(4) the head of a revenue office in other cases.[48]

Also, bodies of the Border Guard are authorised to bring and support charges before the court in cases concerning offences specified in Article 264 § 2, Article 264a § 1, Article 270, Article 271 §§ 1 and 2, and in Articles 272–277 CC, in Article 464 of the Act of 12 December 2013 on Foreigners,[49] in Article 125 of the Act of 13 June 2003 on the Provision of Protection to Foreigners in the Territory of the Republic

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[39] S. Steinborn, 'Nieprokuratorskie organy oskarżycielskie', in: Kulesza C. (ed.), *System prawa karnego procesowego. Strony i inni uczestnicy postępowania karnego*, Vol. VI, Warszawa, 2016, pp. 213–214.

[40] Journal of Laws of 2023, item 1082.

[41] Journal of Laws of 2018, item 522.

[42] Journal of Laws of 2023, item 2151, as amended.

[43] Journal of Laws of 2024, item 312, as amended.

[44] Journal of Laws of 2024, item 416, as amended.

[45] Journal of Laws of 2023, item 1448.

[46] Journal of Laws of 2022, item 1816, as amended.

[47] Journal of Laws of 2023, item 120, as amended.

[48] § 1 (5) of this Regulation grants the President of the Office of Electronic Communications the right to carry out an investigation related to the offences laid down in Article 208(2) of the Act of 16 July 2004 – Telecommunications Law (Journal of Laws of 2024, item 34, as amended), but the provision was repealed by Act of 12 July 2024 – Provisions Introducing Act: Electronic Communications Law (Journal of Laws of 2024, item 1222), and thus the right has lapsed.

[49] Journal of Laws of 2024, item 769, as amended.

of Poland,[50] and in Article 9 and Article 10(1) and (2) of the Act of 15 June 2012 on the Employment of Foreigners Illegally Staying in the Territory of the Republic of Poland.[51]

2.2. BODIES CONDUCTING PREPARATORY PROCEEDINGS

Bodies that may carry out preparatory proceedings include: a prosecutor, an assessor to the prosecution service holding the so-called *votum*, the Police (Article 298 § 1 CCP) and bodies listed in Article 312 § 1 CCP within the scope of their competence, i.e., the bodies of the Border Guard (Article 9(1) in conjunction with Article 1(2)(4) of the Act of 12 October 1990 on the Border Guard[52]), the Internal Security Agency (Article 5(1)(2) of the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency[53]), the National Revenue Administration (Article 2(1)(15) and (16), Article 28(1)(11), Article 33(1)(9) and (10) of the Act of 16 November 2016 on the National Revenue Administration[54]), the Central Anti-Corruption Bureau (Article 2(1)(1) of the Act of 9 June 2006 on the Central Anti-Corruption Bureau[55]) and the Military Police (Article 3(2)(1)–(7) of the Act of 24 August 2001 on the Military Police and Military Order Bodies[56]). The above-mentioned bodies playing the roles of public prosecutors in the cases they carry out also have those rights (Article 312 § 2 CCP).

In the context of the body conducting a preparatory proceeding, the question arises whether the notification analysed may also concern a prosecutor supervising a preparatory proceeding. In jurisprudence, it is claimed that Article 20 § 2 CCP should be broadly interpreted and also cover supervisory activities, which by their nature fundamentally affect the manner of conducting a preparatory proceeding, although it is noted that since this provision only refers to the body conducting a preparatory proceeding, it does not cover supervisory activities, especially since Article 326 § 1 CCP clearly distinguishes between both types of procedural activity. It is argued that a prosecutor who is *dominus eminens* is obliged to ensure the proper and efficient course of the entire proceeding they supervise (Article 326 § 2 CCP), and thus they have actual influence on the course of procedural activities, and their procedural duty is to take care of the course of the proceeding. A different interpretation would be at odds with the role a supervising prosecutor plays in a preparatory proceeding and would lead to depriving the court of the possibility of reacting to a gross breach of procedural obligations resulting from supervision, which would be in conflict with the *ratio legis* of Article 20 § 2 CCP. In order to eliminate these doubts, it is rightly proposed *de lege ferenda* to add the words

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50 Journal of Laws of 2023, item 1404.
51 Journal of Laws of 2021, item 1745.
52 Journal of Laws of 2024, item 915, as amended.
53 Ibidem.
54 Journal of Laws of 2023, item 615, as amended.
55 Journal of Laws of 2024, item 184, as amended.
56 Journal of Laws of 2023, item 1266, as amended.

'or supervising' after the word 'conducting' a preparatory proceeding in Article 20 § 2 CCP.[57]

A prosecutor's powers to notify about a gross breach of procedural obligations in a preparatory proceeding are limited to the Police and other bodies conducting such proceedings. The form of a preparatory proceeding is irrelevant; it may be an investigation entrusted to the Police or another body to be conducted as a whole or to a specific extent. It may also be individual investigative activities entrusted to such bodies for execution (Article 311 § 2 CCP).

The subject matter of a prosecutor's notification cannot be a gross breach of procedural obligations by a prosecutor. The omission of a prosecutor under Article 20 § 2 *in fine* CCP is justified by the fact that there is no such need, since the superior prosecutor has at their disposal different means of response to a breach of official duties committed by a subordinate prosecutor, including procedural ones, which are provided for in the Act on the Prosecution Service.

A superior prosecutor:

(1) may give a written admonition to a prosecutor who committed a significant irregularity affecting the efficiency of a preparatory proceeding and request that the consequences of such irregularities be removed (Article 7 § 7 (1) and Article 139 § 1 LPS). A prosecutor concerned may, within seven days, submit a written objection to the superior prosecutor who gave them the admonition; however, this does not release them from the obligation to immediately remove the consequences of the irregularities. The admonished prosecutor shall inform the superior prosecutor about the activities taken for this purpose. In the event an objection is filed, the superior prosecutor who gave it shall either cancel it or refer it for hearing to a disciplinary court. Having heard a disciplinary spokesman and the admonished prosecutor, provided the hearing is possible, the disciplinary court shall issue a decision upholding the admonition or waiving it and discontinuing the proceeding. The disciplinary court's decision is not subject to appeal (Article 139 §§ 2–4 LPS). In the literature, a conclusion is rightly drawn from the requirement that the irregularity be significant that it concerns such irregularities that may cause procedural consequences of key significance[58] and cannot be classified as actions or omissions that may prevent or significantly hinder the functioning of the justice system or the prosecution service because in the latter case the perpetrator would incur disciplinary liability (Article 137 § 1 (2) LPS);[59]

(2) in the event of an obvious contempt of the legal provisions in the course of a proceeding, regardless of other rights, having requested explanations, points out this irregularity to the prosecutor who committed it. The finding and pointing out of the irregularity does not affect the resolution of the case; it only indicates the irregularity in accordance with the principles laid down in Article 140 (Article 7 § 7 LPS). The Supreme Court rightly indicated that:

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[57] J. Kosonoga, *System środków*…, op. cit., pp. 367–368; C. Kulesza, in: *Kodeks*…, op. cit., p. 83.

[58] P. Czarnecki, 'Odpowiedzialność służbowa prokuratorów', in: Mistygacz M., Staszak A., Wszołek R. (eds), *Prokuratura wobec współczesnych wyzwań ustrojowych*, Warszawa, 2024, p. 174.

[59] P. Turek, *Prawo o prokuraturze. Komentarz*, Warszawa, 2023, p. 416.

> 'The contempt is obvious when the error committed is easy to determine, when the provision can be applied without a deeper analysis, when the understanding of the provision of law should not raise any doubts in the mind of an ordinary person with legal qualifications.'[60]

A prosecutor reproached for the irregularity may, within seven days, submit a written objection to a superior prosecutor who reproached them, however, this does not release them from the obligation to remove the effects of the irregularity. In the event of an objection, the superior prosecutor who reproached their subordinate for the irregularity shall either cancel the reproach or refer it for hearing to a disciplinary court. Having heard a disciplinary spokesman and the reproached prosecutor, provided that the hearing is possible, the disciplinary court shall issue a decision upholding the reproach for the irregularity or shall waive it and discontinue the proceeding. The decision on dismissing the objection lodged by the prosecutor reproached for the irregularity committed, may be appealed against. A different equivalent bench of the same disciplinary court shall hear the appeal (Article 140 §§ 2–4 LPS). The measure shall be applied in the event of an obvious, but not necessarily gross, contempt of law.[61]

These are the means of professional liability of prosecutors, which is supported by the placement of the provisions regulating them in the Act on the Prosecution Service, in Chapter 3 entitled 'Criminal, disciplinary and professional liability of prosecutors'.[62] The Supreme Court rightly indicated that:

> 'The institution of "prosecutor's reproach" as well as "a written admonition" are legal and administrative instruments used for disciplining prosecutors officially. They are of a signalling nature, aimed at correcting errors found in current work and avoiding similar flagrant irregularities in the application of law in the future. They differ from disciplinary measures that are only aimed at repression and punishment of the perpetrator of the given irregularity. The competence of the superior is limited to the possibility of initiating such proceedings, and the penalty is the matter to be resolved by a disciplinary court.'[63]

In the event of an obvious and gross contempt of the provisions of law, a superior prosecutor is obliged to request the initiation of a disciplinary proceeding against a prosecutor who committed it (Article 7 § 8 LPS). In accordance with Article 137 § 1 (1) LPS, a prosecutor is disciplinarily liable for professional (disciplinary) misconduct, including obvious and flagrant contempt of the provisions of law.

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[60] Judgment of the Supreme Court of 4 September 2003, SNO 51/03, OSNSD 2003, No. 2, item 54.

[61] P. Turek, *Prawo o prokuraturze*…, op. cit., p. 419.

[62] P. Czarnecki, 'Odpowiedzialność służbowa…', op. cit., p. 173; A. Kiełtyka, W. Kotowski, W. Ważny, *Prawo o prokuraturze. Komentarz*, Warszawa, 2017, p. 542.

[63] Judgment of the Supreme Court of 24 September 2019, II DSI 56/19, OSNID 2020, No. 3. Thus also E. Gromek-Kukuryk, 'Odpowiedzialność służbowa o odpowiedzialność dyscyplinarna prokuratorów w świetle ustawy Prawo o prokuraturze', *Studia Prawnicze i Administracyjne*, 2018, No. 4, pp. 15–20.

NOTIFICATION ADDRESSEES

The court *verba legis* shall notify the immediate superior of the person who committed the irregularity (Article 20 § 2 CCP). Taking into account that it concerns an act committed by a public prosecutor or a person conducting a preparatory proceeding, the addressee of the notification is an immediate superior of the public prosecutor or a person conducting a preparatory proceeding. A superior is a person who 'has some authority, commands, manages, is a person in charge',[64] and an immediate superior is a superior who has authority over some persons directly, without anyone's intermediation. Indication of such a person requires an analysis of the organisational structure of a given body. Some constitutional acts or implementing acts issued based on them define superiors and immediate superiors.

In accordance with Article 31 § 1 LPS, immediate superior prosecutors include:

(1) Prosecutor General – in relation to the National Prosecutor and deputies of the Prosecutor General and Deputy National Prosecutors;
(2) National Prosecutor – in relation to prosecutors performing tasks in the National Prosecutor's Office, directors of departments of the National Prosecutor's Office, and regional prosecutors;
(3) other deputies of the Prosecutor General, within the scope of assigned tasks – in relation to prosecutors performing tasks in the National Prosecutor's Office, directors of departments of the National Prosecutor's Office, and regional prosecutors;
(4) Director of the Department for Organised Crime and Corruption – in relation to heads of Branches of the Department for Organised Crime and Corruption of the National Prosecutor's Office and prosecutors performing tasks in these departments;
(5) regional and provincial prosecutors and their deputies, within the scope of the assigned tasks – in relation to prosecutors performing tasks in a given unit and in relation to heads of organisational units of the prosecution service at the directly lower level in the territory of operation of a given unit, with the exception of prosecutors performing tasks in a given centre or district prosecutors in the territory of operation of a given branch centre of the provincial prosecution office;
(6) heads of branch centres of the provincial prosecution offices and, within the scope of assigned tasks, their deputies – in relation to prosecutors performing activities in a given branch centre of the provincial prosecution office;
(7) district prosecutors and, within the scope of assigned tasks – in relation to prosecutors of the given district prosecution office;
(8) heads of branch centres of district prosecution offices – in relation to prosecutors performing tasks in these centres.

Under Article 174 § 1 LPS, the provision is also applicable to assessors to the prosecution service.

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[64] H. Zgółkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 33, Poznań, 2001, p. 347.

Directors of departments and bureaus of the National Prosecutor's Office, heads of sections, departments and bureaus of the National Prosecutor's Office, as well as departments in regional and provincial prosecution offices, and heads of sections in prosecution offices and branch centres of the regional and provincial prosecution offices are not immediate superior prosecutors. A prosecutor managing an organisational substructure in an organisational unit of the prosecution service, in accordance with Article 31 § 2 LPS, is an official superior in relation to prosecutors performing tasks in this unit.[65]

The Law on the Prosecution Service does not indicate an immediate superior prosecutor in relation to prosecution trainees acting as public prosecutors. As a result, a question arises as to whom the court should send a notification of a gross breach of procedural obligations by such a trainee. There is no obstacle to treating such a notification as a complaint, which – under Article 186 § 2 LPS – is subject to hearing by a prosecutor managing the organisational unit of the prosecution service.

As regards other bodies conducting preparatory proceedings or acting as public prosecutors, their immediate superiors determined in legal acts are:

(1) in the Police: a person holding a position directly superior to the position held by a given police officer, starting from the head of a county area (equivalent) or a platoon commander – (§ 1 (6) of the Regulation of the Minister of the Interior of 14 May 2013 concerning detailed rights and obligations and the course of police officers' service[66]);
(2) in the Border Guard: a person holding a managerial position directly superior to the position held by an officer subject to appraisal, staring from a platoon commander (equivalent) – § 5 (1) of the Regulation of the Minister of the Interior and Administration of 17 June 2002 concerning periodic appraisal of the officers of the Border Guard[67]);
(3) in the Internal Security Agency: a superior holding a position not lower than a head of section or an equivalent one to whom an officer reports directly (§ 1a (1) of the Regulation of the President of the Council of Ministers of 3 March 2011 on giving opinions on the officers of the Internal Security Agency and a specimen of the official opinion form;[68] § 2 (6) of the Regulation of the President of the Council of Ministers of 13 February 2003 concerning the attainment of the ranks of officers of the Internal Security Agency[69]).

Immediate superiors in other bodies are persons managing separate organisational units in relation to persons performing tasks in these units. And thus:

– organisational units of the Military Police include: (1) General Headquarters of the Military Police; (2) territorial organisational units of the Military

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[65] R.A. Stefański, 'Nadzór służbowy prokuratora nad postępowaniem przygotowawczym', in: Grzegorczyk T., Olszewski R. (eds), *Verba volant, scripta manent. Proces karny, prawo karne skarbowe i prawo wykroczeń po zmianach z lat 2015–2016. Księga pamiątkowa poświęcona Profesor Monice Zbrojewskiej*, Warszawa, 2017, p. 398.

[66] Journal of Laws of 2023, item 2269.

[67] Journal of Laws of 2023, item 2413.

[68] Journal of Laws of 2024, item 204.

[69] Journal of Laws of 2024, item 225.

Police: (a) detachments of the Military Police; (b) divisions of the Military Police; (3) specialist organisational units of the Military Police. The detachments or divisions of the Military Police may contain outposts of the Military Police as their internal units located outside (Article 7(1)–(2a) AMP). In addition, the Military Police is composed of the following functional divisions: (1) investigative; (2) preventive; (3) administrative-logistical-technical (Article 8(1) AMP). The functional operational-investigative division is composed of: (1) the Criminal Directorate in the General Headquarters of the Military Police; (2) criminal departments in the Military Police branches; (3) criminal sections in the MP departments (§ 2 of Regulation No. 11/MON of the Minister of National Defence of 21 April 2020 concerning the establishment of the operational-investigative department of the Military Police[70]);

– the Central Anti-Corruption Bureau is composed of: (1) Departments (Operational-Investigative, Security, Inspection Proceedings, Analytical); (2) Bureaus (Operational Technique, Legal, Finance, Human Resources and Training, Logistics, Telecommunications, Secretariat); (3) Agencies of the Central Anti-Corruption Bureau in voivodeship cities. The Central Anti-Corruption Bureau units may have departments located outside (§ 2 (1) and (2) of the Statute of the Central Anti-Corruption Bureau, which is an annex to Regulation No. 72 of the President of the Council of Ministers of 6 October 2010 on granting the Central Anti-Corruption Bureau a statute;[71]
– units of the National Revenue Administration include: (1) organisational units of the Minister of Development and Finance; (2) the National Fiscal Information; (3) fiscal administration chambers; (4) fiscal offices; (5) customs-fiscal offices together with customs departments subordinate to them; (6) the National Fiscal School (Article 36(1) of the Act on the National Revenue Administration). There are also agencies of the National Fiscal Information and customs-fiscal offices.[72] The detailed organisational structure of the units listed in paras. (1)–(6) herein is specified in the Regulation of the Minister of Finance of 5 February 2019 concerning the organisational structure of the National Fiscal Information, fiscal administration chambers, fiscal offices and customs-fiscal offices, and granting them statutes,[73] as well as in the statutes granted by this Regulation;
– units of the Forest Guard in the State Forests include: (1) outposts in forest districts subordinate to forest managers; (2) intervention groups in regional front offices of the State Forests subordinate to the director of the regional front office of the State Forests. The Forest Guard is managed by the Chief Inspector of the

[70] Official Journal of the Ministry of National Defence of 2020, item 69.
[71] Monitor Polski of 2010, No. 76, item 953, as amended.
[72] Regulation of the Minister of Development and Finance of 1 March 2017 concerning the establishment of agencies of the organisational units of the National Revenue Administration and the territorial range of their operation and location (Official Journal of the Ministry of Finance of 2024, item 93).
[73] Official Journal of the Ministry of Finance of 2023, item 61.

Forest Guard subordinate to the Director General (Article 47(1a) and (1b) of the Act on Forests);[74]

– the Voivodeship Trade Inspection, which is part of the consolidated government administration in a voivodeship, is managed by the voivodeship inspector of the Trade Inspection (Article 5(1)(2) of the Act on the Trade Inspection). The President of the Office of Competition and Consumer Protection manages the activities of the Inspection with the assistance of the Office of Competition and Consumer Protection (Article 7(1) ATI). The voivodeship inspectorate consists of: (1) inspection departments; (2) departments for out-of-court resolution of consumer disputes or multi-person workstations for out-of-court resolution of consumer disputes; (3) legal and organisational department; (4) budget and administration department; (5) secretariat of the permanent arbitration court. The voivodeship inspection agencies consist of an inspection team or teams (§ 2 (1) and § 3 (2) of the Regulation of the President of the Council of Ministers of 26 July 2001 concerning the organisational structure of the voivodeship inspectorates of the Trade Inspection);[75]
– the organisational units of the State Sanitary Inspection include: (1) Chief Sanitary Inspectorate; (2) voivodeship sanitary-epidemiological stations; (3) county sanitary-epidemiological stations; (4) border sanitary-epidemiological stations (Article 7(3) and Article 10(4) of the Act on the State Sanitary Inspection). The structure of sanitary-epidemiological stations is determined in their statutes. For example, Annexes No. 1–39 to the Regulation of the Minister of Health of 11 October 2002 concerning the granting of statutes to the Voivodeship Sanitary-Epidemiological Station in Warsaw and county sanitary-epidemiological stations in the Mazovian Voivodeship.[76]

Wardens of the State Hunting Guard are employees of the voivodeship offices (Article 38(2) of the Game Law).

NOTIFICATION PROCEEDINGS

The body authorised to submit the notification, as indicated earlier, is the court or a prosecutor. Taking the decision is mandatory. There is a phrase 'the court shall notify' used in Article 20 § 2 CCP, and this declarative mode expresses the obligation to act. Nevertheless, the evaluative premises for taking such an action

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[74] The organisational structure and scope of operation of the Forest Guard outposts in forest districts and the intervention groups of the Forest Guard in regional front offices of the State Forests are specified in Annex No. 1 'Organisational structure and scope of operation of outposts of the Forest Guard in forest districts and intervention groups of the Forest Guard in regional front offices of the State Forests' to the Regulation No. 69 of the Director General of the State Forests of 14 November 2019 concerning the determination of the organisational structure and scope of operation of outposts of the Forest Guard in forest districts and intervention groups of the Forest Guard in regional front offices of the State Forests, and detailed rules of training forest rangers (Official Bulletin of the State Forests of 2019, No. 12, item 141).

[75] Journal of Laws of 2018, item 1173.

[76] Official Journal of the Ministry of Health of 2002, No. 10, item 56.

give the procedural body a lot of freedom in decision-making and thus mitigate the ruthlessness of the action.

The notification should indicate the name and function of the public prosecutor or the person conducting a preparatory proceeding who breached the procedural obligation, and the type of gross breach of this obligation.

An obligatory element of this notification consists in a request to send information about the action taken in response to the notification within a set deadline. Article 20 § 2 CCP explicitly states that it is necessary to include such a request. The deadline is to be strictly determined and cannot be shorter than 14 days. It is an indicative deadline; failure to meet it does not result in any negative procedural consequences. The Code of Criminal Procedure, unlike in the case of the notification of a gross breach of procedural obligations by counsel for the defence or proxy (Article 20 § 1a CCP), does not provide for a pecuniary penalty for failure to send information about actions taken within the set deadline. The court or prosecutor may only notify the superior of the person obliged to send information about the action taken. The inability to impose a pecuniary penalty in such a situation is criticised in the literature, as it violates the principle of equal treatment of the participants in the proceeding.[77] The effectiveness of the notification and the elimination of this inequality could be enhanced by the addition of § 2b to Article 20 CCP in the following wording: In the event of failure to submit information referred to in § 2 within a set deadline, at the request of the court or prosecutor, the superior of the person who committed this irregularity shall initiate official proceeding and inform the requesting party of its outcome. It is not justified to sanction this irregularity with a pecuniary penalty because it would lead to unequal treatment of employees of the state bodies.

The Code of Criminal Procedure does not indicate *expressis verbis* the form of notification. Article 93 § 1 CCP explicitly states that the court's notification takes the form of a decision. As far as a prosecutor's notification is concerned, there is no general provision that would specify what actions taken by them require the form of a decision, and such a requirement may result directly from the provision authorising them to undertake a given action or from its importance. Taking into account the fact that the notification is an important action – because a prosecutor recognises a gross breach of procedural obligations and requests that information about actions taken be sent within a set deadline, which can result in the initiation of a disciplinary proceeding – it is reasonable to opt for the form of a decision. There are no arguments for claiming that in court proceedings it has the form of a document signed by the president of the court, and in a preparatory proceeding – a document signed by the prosecutor.[78]

The court's or prosecutor's decisions are not subject to appeal. Due to the effects they have on the person concerned, it should be appealable; an appeal against a court's decision should be heard by a three-judge bench of the same court, and a complaint about a prosecutor's decision by a superior prosecutor.

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[77] J. Grajewski, S. Steinborn, in: Paprzycki L.K. (ed.), *Kodeks postępowania karnego. Komentarz do art. 1–424*, Vol. I, Warszawa, 2013, p. 134.

[78] J. Skorupka, in: Skorupka J. (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa, 2020, p. 89.

In the event of a breach committed by a prosecutor, the court shall send a copy of the notification to the Prosecutor General; in the event of a breach committed by a public prosecutor, the court shall send it to a competent body superior in relation to the immediate superior of this prosecutor (Article 20 § 2a CCP). This is intended to prompt the addressee of the notification to take effective measures to prevent the recurrence of similar irregularities and to draw adequate professional conclusions, thereby reinforcing the disciplinary value of this measure. It also allows for an appropriate response from bodies superior to the immediate superior of the person who committed the irregularity.[79] Superiors, like immediate superiors, are defined in certain legal acts, while in other cases they must be determined based on an analysis of the organisational structure of the respective bodies.

The below listed officials are superiors:

(1) In the Prosecution Service:
   A. the Prosecutor General is a superior of the prosecutors of the Prosecution Service organisational units and the prosecutors of the Institute of National Remembrance (Article 13 § 2 LPS);
   B. the National Prosecutor is a superior of the prosecutors of the National Prosecutor's Office and the prosecutors of other Prosecution Service organisational units (Article 18 § 2 LPS);
   C. a regional prosecutor is a superior of the prosecutors of the regional prosecution service, provincial prosecution offices, and prosecutors of district prosecution offices in the territory of operation of the regional prosecution service (Article 22 § 4 LPS);
   D. a deputy regional prosecutor is a superior in relation to the prosecutors of the regional prosecution service, the prosecutors of the provincial prosecution offices, and the prosecutors of the district prosecution offices within the territory of operation of the regional prosecution service (Article 22 § 5 LPS);
   E. a provincial prosecutor is a superior in relation to the prosecutors of the provincial prosecution service, as well as district prosecutors and prosecutors of district prosecution offices in the territory of operation of the provincial prosecution service (Article 23 § 4 LPS);
   F. a deputy provincial prosecutor is a superior in relation to the prosecutors of the provincial prosecution service, as well as district prosecutors and the prosecutors of the district prosecution offices in the territory of operation of the provincial prosecution service (Article 23 § 5 LPS);
   G. a district prosecutor is a superior of the prosecutors acting in this unit (Article 24 § 4 LPS); they are also a superior in relation to the prosecutors of other organisational units who perform activities in this district prosecution office, e.g., delegated prosecutors;
   H. a deputy district prosecutor is a superior in relation to the prosecutors performing activities in this unit within the scope determined by the district prosecutor (Article 24 § 5 LPS);

[79] J. Kosonoga, in: *Kodeks*…, op. cit., p. 365.

I. the Head of the Internal Affairs Department is a superior in relation to the prosecutors fulfilling their duties in this Department (Article 19 § 4 LPS);
J. the Head of the Branch of the Organised Crime and Corruption Department of the National Prosecution Service is a superior in relation to the prosecutors fulfilling their duties in this Department (Article 21 § 2 LPS).

(2) In the Police: the Chief Commander of the Police, the Commander of the Central Investigation Bureau of the Police, the Commander of the Internal Affairs Bureau of the Police, the Commander of the Central Counter-Cybercrime Bureau, the Director of the Central Forensic Laboratory of the Police, voivodeship commanders of the Police, or the Commander of the Metropolitan Police and county (city or regional) commanders of the Police, as well as the Commander--Rector of the Police Academy in Szczytno and commanders of police schools (Article 32(1) AP).
(3) In the Border Guard: the Chief Commander of the Border Guard, the Commander--Rector of the Higher School of Border Guard, the Commander of the Internal Affairs of the Border Guard, commanders of the Border Guard branches, and commanders of the Border Guard training centres (Article 36(1) ABG).
(4) In the Internal Security Agency: heads of the Agency's organisational units, the Deputy Head of the Internal Security Agency, and the Head of the Internal Security Agency (§ 2 (5) of the Regulation of the President of the Council of Ministers of 13 February 2003 on the attainment of the ranks of officers of the Internal Security Agency).[80]

The above-presented notification differs from the request of a prosecutor supervising a preparatory proceeding concerning the failure of a body that is not a prosecutor to implement their decision, ruling or instruction sent to the superior of the officer for information. It contains not only information about failure to implement a decision, ruling or instruction, but also a request for the initiation of an official proceeding. The prosecutor shall be informed about the outcome of this proceeding (Article 326 § 4 CCP).

CONCLUSIONS

1. The notification of a gross breach of procedural obligations by a public prosecutor or a person conducting a preparatory proceeding is one of the measures disciplining the participants in criminal proceedings that constitute a response of the procedural bodies to procedural irregularities.
2. The court is a body authorised to issue the notification in the proceeding before the court, and a prosecutor is one in a preparatory proceeding.

   The court issues such a notification in every proceeding before the court, including during the performance of activities in preparatory proceedings. The president of the court, the head of the division, and the judge presiding over

[80] Journal of Laws of 2024, item 225.

the bench do not have the right, which results from the linguistic interpretation of Article 20 § 2 CCP, which *expressis verbis* refers to the court.

A prosecutor has this right only in the course of a preparatory proceeding in relation to the Police and other bodies involved in the proceeding. It does not apply to the prosecutor conducting a preparatory proceeding because, regardless of the fact that a prosecutor is omitted in Article 20 § 2 *in fine* CCP, a superior prosecutor has other measures of response to breaches of professional, including procedural, obligations committed by a subordinate prosecutor, which are laid down in the Act on the Prosecution Service.

3. The subject matter of the notification is a gross breach of procedural obligations committed by a public prosecutor or a person conducting a preparatory proceeding, recognised in the course of a given preparatory proceeding, which is of an unquestionable nature and key importance for the correctness of the proceeding, in particular affecting the procedural guarantees of the accused and the aggrieved party.
4. The court's notification concerns the breach of obligations not only by a prosecutor acting as a public prosecutor, but also by other public prosecutors who are not prosecutors (of the Prosecution Service), such as state bodies having such rights based on special statutory provisions specifying the scope of their operation or provisions issued based on statute. The teleological interpretation of Article 20 § 2 CCP is in favour of applying the notification to prosecutors participating in a session concerning court activities in the preparatory proceeding. It is doubtful whether, within the scope of breaches committed in a preparatory proceeding, the notification can also cover a prosecutor supervising this proceeding. In order to eliminate all doubts in this respect, the *de lege ferenda* motion to supplement this provision with a prosecutor supervising a preparatory proceeding is justified.
5. The notification is addressed to a superior of a public prosecutor or a person conducting a preparatory proceeding. Indication of such a person requires an analysis of the organisational structure of the given body, although some acts or implementing acts issued based on them define immediate superiors, e.g., in relation to a prosecutor, a police officer, an officer of the Border Guard, or the Internal Security Agency.
6. The notification should indicate the name, surname, and function of the public prosecutor or the person conducting a preparatory proceeding who breached the procedural obligations. A request to send information about actions taken as a result of the notification within a set deadline is a mandatory element of the notification.
7. The decision of the court or prosecutor is not subject to appeal. However, due to the effects it has on the person concerned, it should be appealable; a complaint about the decision of the court should be dealt with by a three-judge bench of the same court, and of the prosecutor – by a superior prosecutor.
8. The Code of Criminal Procedure, unlike in the case of the notification of a gross breach of procedural obligations by counsel for the defence or proxy (Article 20 § 1a CCP), does not provide for the imposition of a pecuniary penalty for failure to submit information about actions taken within the set deadline. Failure to

sanction this omission in the discussed case may lead to disregarding this obligation and causes unequal treatment of the participants in a proceeding. Increasing the effectiveness of the notification and eliminating this inequality may result from the addition of § 2b to Article 20 CCP in the following wording: In the event of failure to submit information referred to in § 2 within a set deadline, at the request of the court or prosecutor, the superior of the person who committed this irregularity shall initiate official proceeding and inform the requesting party of its outcome.

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