

PROSECUTION AND INVESTIGATIVE AUTHORITIES IN ROMANIA: CURRENT STATUS AND FUTURE REFORMS

*Monica Otavă*⁵⁷

Romania is increasing its efforts to integrate in the European Union and harmonize its national legislation with the European regulations. In the process of accession a very special attention was paid by the Romanian government to the reform of the judiciary.

The Romanian Public Ministry is placed by the Romanian Constitution in the chapter about the judicial power. Article 131 of the Constitution defines the role of the Public Ministry. In judiciary activity the Public Ministry represents the general interest of society and protects the rule of law as well as citizens' rights and freedoms. The Public Ministry acts through prosecutors constituted in prosecutor's offices according to the law. The prosecutor's offices, attached to the courts, lead and supervise criminal investigations of the judicial police.

The working principles of the Romanian Public Ministry are the principles of legality, impartiality and hierarchical control. The principles are also provided for by the Romanian Constitution and the Law on Judicial Organization. The Constitution was changed by a referendum in 2003 and the Law on Judicial Organization, the Law on the Statute of Magistrates and the Law on Mutual Judicial Cooperation were adopted in 2004.

The prosecutor's offices are independent in relation with the courts of law and other public authorities according to a provision in the Constitution.

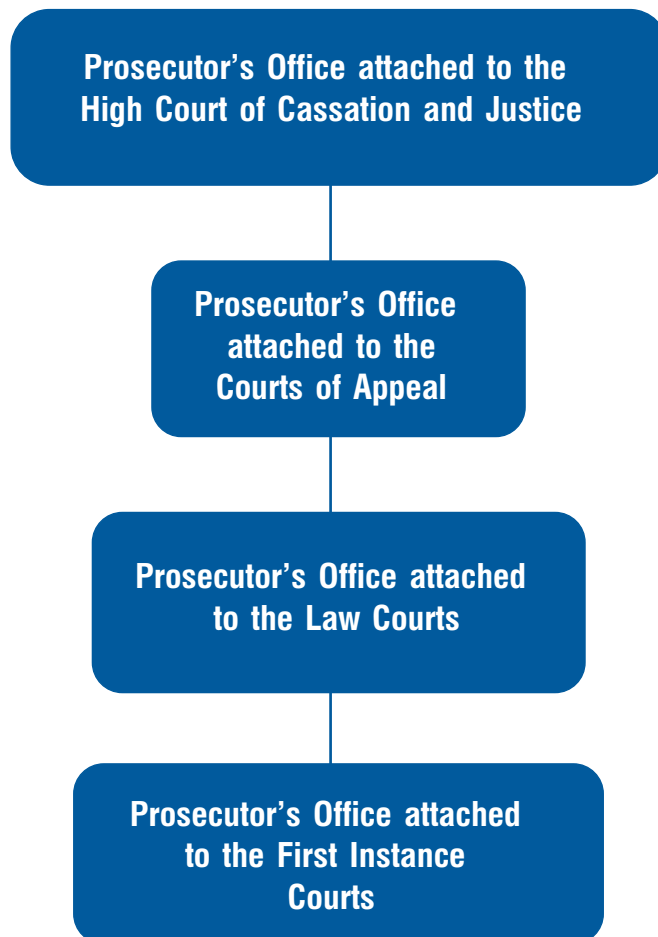
The duties of the Public Ministry provided by the Law on Judicial Organization are to:

1. Carry out the criminal investigation within the conditions provided by the law and participate as per law in resolving conflicts through alternative means;
2. Lead and coordinate the investigative activities carried out by the judiciary police, lead and control the activity of other investigative bodies;
3. Institute proceedings before courts of law for the trial of criminal cases;
4. Undertake civil action in the cases provided by the law;
5. Participate in the court sessions as per law;
6. Protest judicial decisions, if necessary;

⁵⁷ Ms. Monica Otavă is Prosecutor in the Section of International Cooperation, European Integration, Public Information and Relations with Media in the Prosecution Office attached to the High Court of Cassation and Justice of Romania. She holds a Law degree from the Law Faculty of Bucharest University. She attended the National Institute of Magistracy in Bucharest (First graduated "Magna Cum Laude") and the National School of Magistracy in Paris.

7. Protect the rights and legitimate interests of minors, disappeared persons and other citizens as per law;
8. Contribute to preventing and fighting crime under Justice Ministry's coordination in order to pursue a common criminal policy;
9. Conduct studies on the causes and conditions for criminality and propose solutions and amendments to the criminal legislation in this area;
10. Perform all other duties provided by the law.

The Public Ministry has a pyramidal structure with different competencies for each level. On the top is the Prosecutor's Office attached to the High Court of Cassation and Justice. Then there are the 15 Prosecutor's Offices attached to the Courts of Appeal, the 41 Prosecutor's Offices attached to the Law Courts and the 177 First Instance Prosecutor's Offices attached to the First Instance Courts.



In the framework of the institutional reform the main measure was to set up several structures for combating organized crime, corruption and terrorism at the level of the Romanian Public Ministry as well as at the level of the Romanian Police and other state bodies.

The National Anticorruption Prosecutor's Office was set up in 2002 as a prosecutor's office specialized in investigating corruption and related crimes. It

is an autonomous unit of the prosecutor's office and it is very important that it has a multifunctional team of professionals (police, finance, etc.).

In November 2004 the Directorate for the Investigation of Organized Crime and Terrorism was created, within the General Prosecutor's Office. It is under the direct coordination of the General Prosecutor of Romania. This directorate comprises specialized offices by organized crime types (financial crime, drug trafficking, trafficking in human beings, cybercrime, etc.). It is led by prosecutors and employs different types of professionals: financial, customs, banking, IT, etc. We figured out that making people work together in the same institution is a better approach to combating this kind of crime.

At the level of the Prosecutor's Office attached to the High Court of Cassation and Justice new offices were created: Bureau for Protection of Intellectual Property Rights, Office for Juvenile Criminality and Independent Service for Combating Trans-Border Macrocriminality (a structure, which is dedicated to processing information in combating high-level economic crime and financial and banking crime).

The functional reform included the introduction of new means of investigation. They were introduced in the Romanian system in 2000 in special law adopted for combating corruption. New means of investigation are also provided in the special law against trafficking in human beings, money laundering and organized crime. The new means of investigation include putting bank accounts under surveillance, surveillance and interception of communications, access to IT systems, using undercover agents and insiders. These means of investigation are now provided for in the new Criminal Procedure Code, which was adopted in 2003.

Romania has special legislation on the protection of witnesses, victims and experts and a new Law on Mutual Judicial Cooperation, related to the new provision of the European Arrest Warrant. The Criminal Procedure Code was also improved. Now only can a judge order the arrest of the offender, there is also a special procedure provided for under authorization of the judge.

The next steps include the implementation of the new National Strategy for Combating of Organized Criminality, adopted in December 2004, and the consolidation of international cooperation. Romania is on the way to sign an agreement with Eurojust and already has a point of contact for Eurojust at the General Prosecutor's Office.