

ORGANIZATION AND FUNCTIONS OF THE PROSECUTION OFFICE IN HUNGARY

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At first it is necessary to describe in brief the Hungarian judicial system, to make clear the situation of the prosecution service within it.

Hungary's court system is based on four levels as a result of the reform which was launched in 1997. At the first level the local courts deal with the first instance cases. The second level is the network of 19 county courts and the Municipal Court of Budapest. These courts hear the appeals submitted against the decisions of the local courts, but in cases specified by the Code on Criminal Procedure they act as courts of first instance. As a result of the reform a third judicial level was inserted between the county courts and the Supreme Court, namely the Courts of Appeal. The five Regional Courts of Appeal which were established in two steps, in 2003 and 2005, hear appeals from the county courts. On the top of the judicial organization is the Supreme Court, which shall assure the uniformity of the administration of justice by the courts and its resolutions concerning uniformity shall be binding for all courts.

Under the Hungarian Constitution judges are independent and responsible only before the law. Judges may not be members of political parties and may not engage in political activities.

The functioning of the judicial system has undergone a reform of historical importance. The aim of the reform was to develop a judicial system, which is in conformity with the criteria for admission to the European Union. In preparing the new laws, the convention and the recommendations of the Council of Europe in respect of the functioning of the judicial system and, furthermore, the decisions of the European Commission and Court of Human Rights with regard to the fairness of justice were duly taken into consideration.

In order to separate consequently the judiciary from the executive, the administration of the courts was transmitted from the Minister of Justice to the newly established National Council of Justice. It was another main element of the reform. The President of the Supreme Court is the President of the Council. The National Council of Justice is in charge of the selection, promotion, evaluation and training of judges and is also responsible for the elaboration of the budgetary chapter for the judiciary. The National Council of Justice is entitled to submit its budget proposal directly to the Parliament.

The prosecution is a centralized body within the judicial system and is independent from government. The Prosecution Service is a hierarchical organization, operating on the basis of a strict internal hierarchy, with the Prosecutor General on top, who leads and directs the whole organization according to Act V on the Public Prosecution of 1972. The Prosecutor General is elected by Parliament, upon proposal by the President of the Republic, for a six-year term. His deputies are appointed by the President of the Republic for

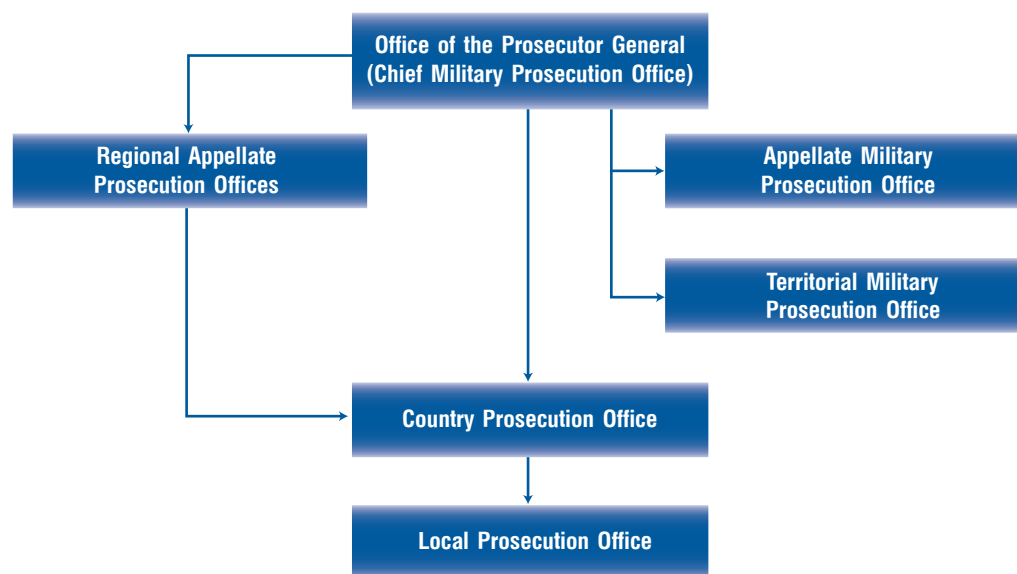
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an indefinite period of time. All other public prosecutors are appointed by the Prosecutor General for an indefinite period of time. Under the Constitution – similarly to judges – public prosecutors may not be members of political parties and may not engage in political activities. Except teaching, scientific, artistic and other similar activities they shall not pursue any wage-earning activity.

The Act on the Public Prosecution establishes its organization:

- a) Office of the Prosecutor General;
- b) 5 Regional Appellate Prosecution Offices attached to the Courts of Appeals and the Appellate Military Prosecution Office;
- c) 19 County Prosecution Offices and the Prosecution Office of the Capital besides 5 Territorial Military Prosecution Offices;
- d) Local Prosecution Offices.

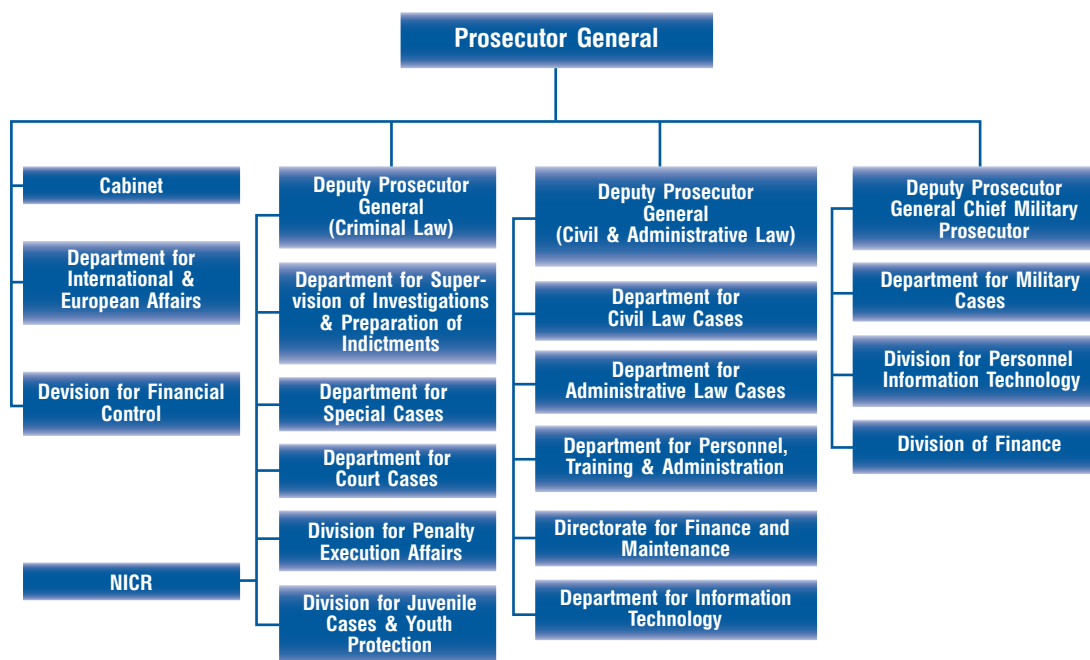
Organization of the Public Prosecution



The Prosecution Service is – unlike in a number of European countries – an independent organization, which – in contrast to the courts – does not form a separate branch of power, but is still an independent organization existing on the basis of the Constitution.

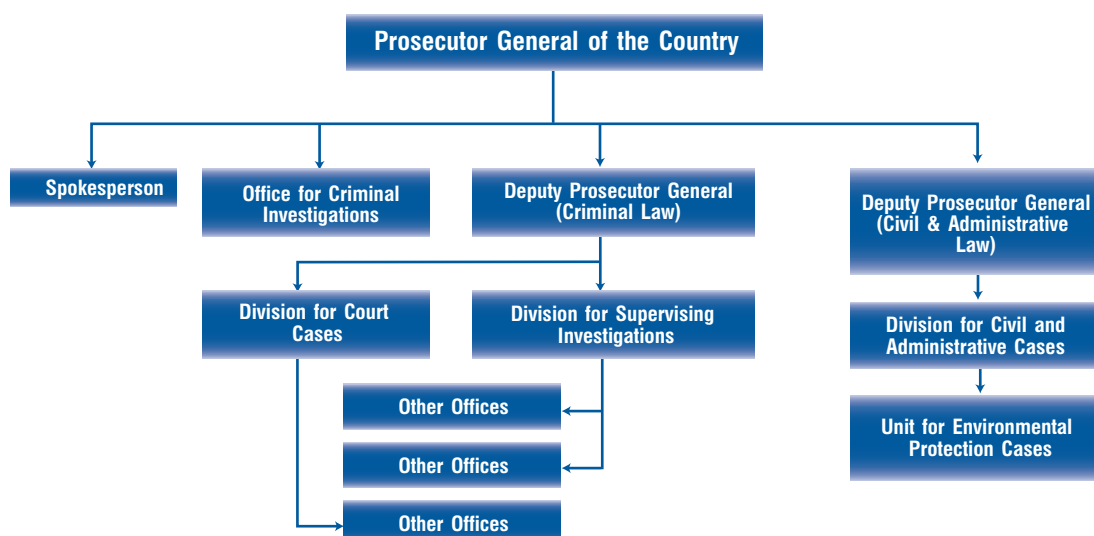
The Constitution stipulates that the Prosecutor General is responsible to the Parliament: he/she submits general reports annually and can be asked questions by any Members of Parliament in plenary or in standing committee sessions. The Parliament may accept or reject the Prosecutor General's answer by voting. But according to a decision of the Constitutional Court [3/2004 (II. 17.)] the Prosecutor General is not politically accountable to the Parliament for individual decisions taken by him while performing his/her duties. Consequently, the rejection of his/her answer given to a question does not affect his/her status.

Organization of the Office of the Prosecutor General of the Republic of Hungary



No other bodies, including the Parliament or any of its committees, are empowered to revise decisions taken by the Prosecution Service, or to force the Prosecution Service to change its decision. The independence of the Prosecutor General and the Prosecution Service is ensured also through the right of the Prosecutor General to draw up the Prosecution Service's chapter in the Central State budget, which the Minister of Finance shall present unchanged to the Parliament.

Structure of the Country Prosecution Office



The preparation for EU accession was a complex task: it included internal reforms, the installation of modern information technology infrastructure (including networks), training in EC and third pillar law, intensive language training for the middle-aged generation of prosecutors (prosecutors belonging to the younger generation already speak one or more foreign languages), and last but not least, the integration of the Hungarian prosecutors into the mechanism of the European judicial co-operation.

A comprehensive structural reform was implemented within the Prosecution Service with a view to responding to the new challenges of the 3rd millennium. The need for more effective fight against new forms of crime (especially organized, economic, environmental crime and corruption), as well as the increasing workload and the complexity of cases made it necessary to establish new units and redistribute human and financial resources within the Prosecution Service.

The main elements of this reform were as follows:

- Establishment of the Central Prosecutorial Investigation Office at the Budapest Chief Public Prosecution Office, with nation-wide competence to investigate cases of national importance;
- Establishment of the Division of Special Cases at the Office of the Prosecutor General to exercise reinforced supervision over the investigation of especially complex cases, such as corruption, organized and economic crimes;
- Laying down the structural framework to ensure the integration of the Prosecution Service into European judicial co-operation through establishing a new department dealing with European affairs at the Office of the Prosecutor General and through designating prosecutors within all county offices to facilitate direct contacts in mutual assistance cases.

The workload of the prosecutors has increased since the reform but their performance has improved or preserved its high quality. Prosecutors' offices have been functioning smoothly, without any backlog.

The scope of powers of the public prosecutors can be divided into two principal groups. The first group relates to the criminal justice, the second one covers the entirety of the public prosecutors' other activities aiming at ensuring the respect of legality.

A new Code on Criminal Procedure (Act XIX of 1998 on Criminal Proceedings) entered into force on 1 July 2003. Under the new Code, the powers of the prosecutor were significantly increased. The inquisitorial type of criminal proceedings mixed a lot of adversarial elements with a more active participation of the prosecutor in the penal proceedings. The prosecutor fully directs the phase of investigation and instructs the investigating authorities. The prosecutor shall order or perform an investigation to establish the conditions for accusation. The prosecutor shall instruct the investigating authority. The investigating authority shall perform the instructions of the prosecutor regarding the investigation of the case by the deadline and inform the prosecutor verbally or in writing – as instructed – on ordering the investigation and the status of the case.

The prosecutor:

- a) may order an investigation, assign the investigating authority to conduct the investigation, and instruct the investigating authority to perform – within its own territorial jurisdiction – further investigative actions or further investigation, or to conclude the investigation within the deadline designated by the prosecutor;
- b) may be present at the investigative actions, and may examine or send for the documents produced during the investigation;
- c) may amend or repeal the decision of the investigating authority, and may consider the complaints received against the decision of the investigating authority;
- d) may reject the complaint, terminate the investigation and order the investigating authority to terminate the investigation;
- e) may refer the proceedings in his own competence.

The prosecutor shall act as public accuser. Public prosecutors have the “monopoly of accusation” with regard to all offences where the law does not entitle the victim to conduct private or substitute private prosecution. This means that a court may not decide on the criminal responsibility of an individual unless a charge (accusation) against him has been brought before the court by the public prosecutor. The Prosecution Service has the exclusive right to decide whether to prosecute or not, that is, whether to bring the case before the court or not, and whether to drop the case in the court phase or not.

The prosecutor shall represent the charge before the court, or decide on the postponement or partial omission of filing an indictment. The prosecutor may drop or modify the charge. In the course of the judicial phase, the prosecutor may examine the documents of the case and may have the right of motion in any issue arising in connection with the case in which the court has the right to decide.

The prosecutor shall oversee lawful enforcement of coercive measures ordered in the course of the criminal proceedings and entailing the restriction or deprivation of personal freedom.

The investigation of certain criminal offenses is in the exclusive competence of the prosecutor’s office. In other words, the police have no power to investigate in these cases. These crimes, for instance criminal offences committed by a judge, a prosecutor, a clerk or secretary or executive of the court or the prosecutor’s office, an inspector at the prosecutor’s office, murder or violence against the enumerated officials; criminal offences committed by persons enjoying immunity due to holding a public office (these persons are for example the Members of Parliament, judges of the Constitutional Court, ombudsmen); criminal offences committed by the members of the police if the offence is not subject to the military law; from among criminal offences against the administration of justice: false accusation, misleading the authority, false testimony, obstruction of official procedure, non-disclosure of extenuating circumstances.