



ROMANIA
PUBLIC MINISTRY

THE PROSECUTOR'S OFFICE ATTACHED TO THE HIGH COURT OF
CASSATION AND JUSTICE

Operator no..3883

The proposals of The Public Ministry regarding possible alternatives of undertaking the Judicial police –

1. administrative undertaking of the judicial police by the Public Ministry
2. assignment of the officers within the prosecutors offices or
3. switching of the responsibilities regarding professional career of policemen within the jurisdiction of the Public Ministry.

Proceeding the analysis made at the Public Ministry level, it was revealed that for the efficiency of prosecution there are necessary legislative amendments that allow the activity of the judicial police employees to be developed under the exclusive control of prosecutors.

Given that for the 95.3% of criminal cases registered at the Public Ministry level the investigations are conducted by employees of the judicial police, their double subordination, in terms of administrative and prosecuting activity, to institutions that can have different priorities, leads to reduced efficiency of this structure.

The proposed legislative changes allow a clear separation of judicial and administrative functions and ensure the status of judicial police officers, whose professional career depend solely on how their work is assessed by the magistrate who supervises the criminal investigation.

It is therefore necessary to establish a working group composed of representatives of all institutions involved, to determine the most appropriate choice of the three solutions identified through the analyses to which I referred:

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a) Administrative undertaking of the judicial police by the Public Ministry;

b) Assignment of officers to units of prosecution under the Public Ministry;

c) Switching of the responsibilities regarding the professional career of the officers under the exclusive competence of prosecutors.

Mainly observations by the Prosecutor's Office attached to the High Court of Cassation and Justice are based on the fact that it is essential to differentiate between the police with administrative tasks and judicial police, the latter structure having the task of finding and tracking any criminal offense, conforming to the rules of criminal procedure and executing the measures ordered by prosecutors.

Since officers from the judicial police may order measures restricting the fundamental rights of individuals, their status is essential to exclude any possibility of receiving provisions relating to prosecuting activity outside the judiciary. To achieve this requirement, professional training of the judicial police officers should depend exclusively on the assessment of the prosecuting activity, and the prosecutor is only able to make such an assessment.

Thus, the event of a judicial police organization within the Public Ministry could be one of the solutions which guarantees the status of the police officers.

Romanian Constitution, states in Title III, ch.6 - dedicated to the judicial authority, the fact that the Judiciary, the Public Ministry shall represent general interests of the society and defend the rule of law and the rights and freedoms of the citizens. Public Ministry exercises its powers through Public Prosecutors in prosecution offices, under the law. Prosecutor's offices attached to courts of law, direct and supervise the work of the police criminal investigation, under the law - provisions included in art. 131 of the Constitution.

On the other hand, another solution would be the deployment of police units within the Public Ministry. The solution is similar to that currently regulated at the National Anticorruption Directorate, which has proven it's efficiency.

Government Emergency Ordinance no. 43/2002 regarding National Anticorruption Directorate, subsequently amended and supplemented, provides that within the National Anticorruption Directorate operate police officers, representing the judicial police of the National Anticorruption

Directorate. Judicial police officers and agents operate only within the National Anticorruption Directorate, under the exclusive authority of the Chief Prosecutor of this directorate. Assigning officers and judicial police agents within the National Anticorruption Directorate is executed at the nominal proposal of the Chief Prosecutor of the National Anticorruption Directorate, through the order of the Minister of Administration and Interior, and their appointment to an office will be by order of the Chief Prosecutor of the directorate. Officers and police agents can not receive any assignment from the superior organs.

Obviously the choice of such an organizing way would require the assignment of a number of judicial officers and police agents, established according to the evolution of some crime indicators, within the Public Ministry units.

Another solution could be that these employees of the judicial police to keep their position within the specialized structures of the Ministry of Administration and Interior, but the professional assessment of the judicial police officers should be the prosecutors' competency, to be acting in coordination, control and management of the criminal investigation activities.

Currently nr.364/2004 Law on judicial organization and operation of the police states that specialized workers operate, acting as judicial police investigation bodies being appointed by the Minister of Administration and Interior, with the favorable opinion of the general prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice, and operate under the authority of the general prosecutor of the Prosecutor's Office next to the High Court of Cassation and Justice. Judicial police investigating authority operates under the direction, supervision and control of the prosecutor being required to accomplish its provisions, and in competition with other professional activities are officers subordinated to the appointed hierarchical officers according to the competency standards approved by the Minister of Administration and Interior.

This dual subordination does not allow efficient use of investigative resources, the conditions under which workers from the judicial police may receive other assignments, of administrative kind, and their assessment is carried out by hierarchical officers, who do not know the quality of criminal investigation performed by the police officer.

Effectiveness of teamwork under the leadership of the prosecutor, as evidenced by the results obtained from the Public Ministry of specialized structures (DNA and DIICOT), but also at the level of other units subordinated to the Prosecutor's Office next to the High Court of Cassation and Justice on the priority areas of action (in particular actions taken jointly

with judicial police officers of the General Anticorruption Directorate) is an additional argument for extending this model of organizing activity and completing the legislative framework in Romania with regards to the judicial police.