



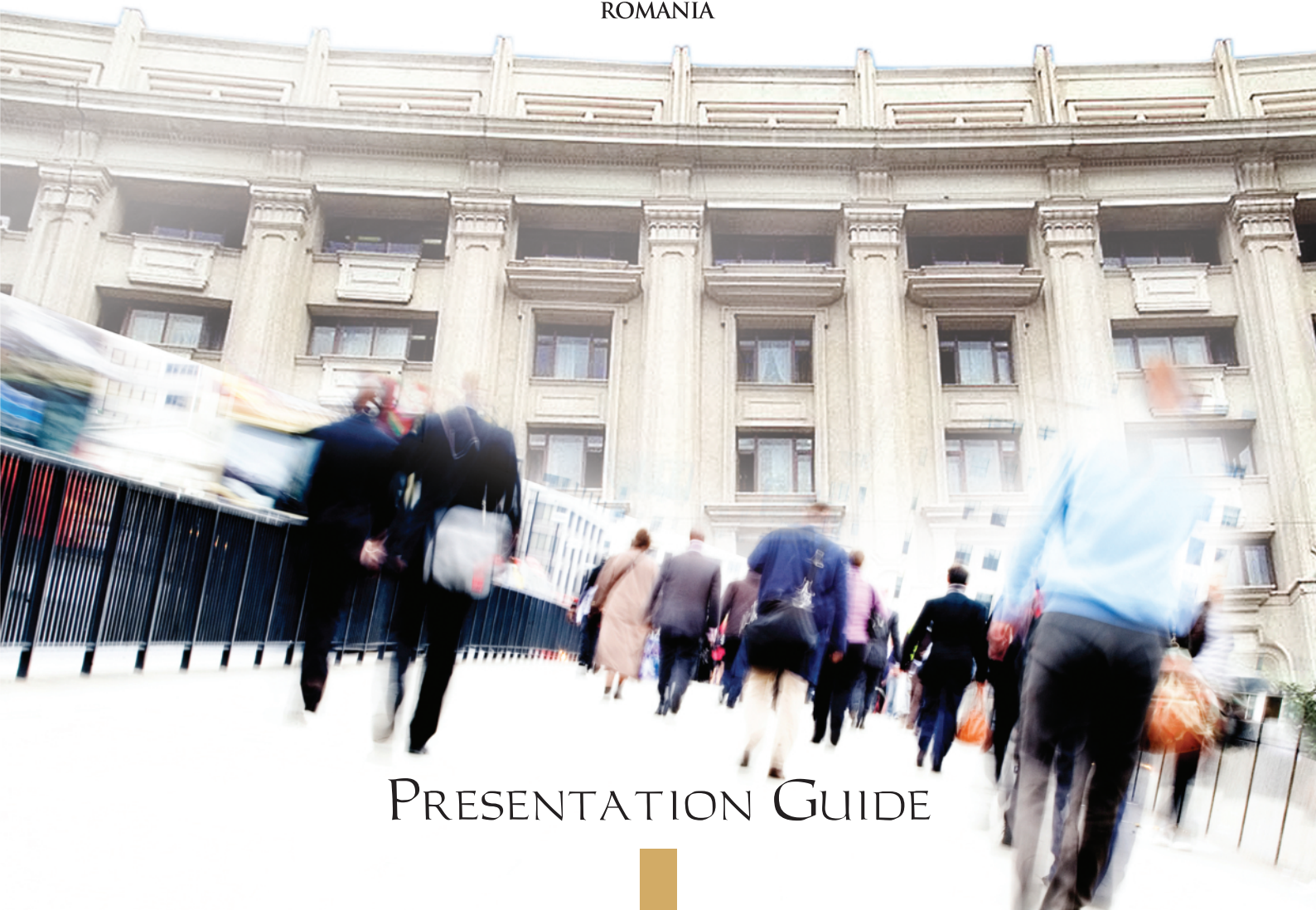
PUBLIC MINISTRY

PROSECUTOR'S OFFICE

ATTACHED TO THE

HIGH COURT OF CASATION AND JUSTICE

ROMANIA



PRESENTATION GUIDE



ROMANIA

Romania is a democratic State, working under a constitutional framework. The State Powers are divided into three branches: the Executive Branch - the President of Romania and the Government; the Legislative Branch, formed of a bicameral Parliament consisting of the Senate and the Chamber of Deputies and the Judiciary, represented by the High Court of Cassation and Justice, the ordinary courts and the Public Ministry.



A BRIEF HISTORY OUTLINE OF THE ROMANIAN PROSECUTION SERVICE

The prosecution service has a long-standing and well-founded tradition in Romania. The Organic Regulation of 1832 serves as the reference point for the establishment of the Public Ministry in Muntenia, and for the Law of March 26th, 1862 establishing the Public Ministry in Moldova. At that time, the mission of the prosecutor was to act as representative of the social community, to watch over the observance of the law during judiciary activities and the enforcement of court decisions.

A regulation from 1952 restructured "Procuratura" as an independent body, subordinated only to the Supreme State Power and Council of Ministers, and charged with supervising and ensuring the observance of the law, defending the rights and legal interests of citizens. Forty years later, after the fall of the communist regime, Law no. 92/1992 acknowledged the prosecutor as magistrate and reconfirmed his judicial attributions.

The role and status of the prosecutors were reconsidered by Law no. 303/2004 on the status of magistrates and Law no. 304/2004 on judicial organization, providing for the actual configuration and tasks of the Public Ministry.



SUPERIOR COUNCIL
OF MAGISTRACY



MINISTRY OF JUSTICE



CONSTITUTIONAL COURT



PUBLIC
MINISTRY

THE POSITIONING OF THE PUBLIC MINISTRY WITHIN THE ROMANIAN JUDICIARY

The Public Ministry is the public authority, part of the judiciary, representing the general interests of the society and defending the rule of law as well as the rights and freedoms of the citizens and performing the accusatorial function on behalf of the state in criminal law infringement cases.

The Public Ministry exercises its attributions through the prosecutors in the prosecutor's offices, under the authority of the minister of justice and under the law. However, the authority of the minister of justice should not be interpreted as hierarchical subordination but as an administrative relation similar to the one existing between the minister of justice and the courts.

The prosecutor's offices are attached to courts, but are independent in the relations with them as well as with the other public authorities.



THE ROMANIAN CRIMINAL PROCEDURE SYSTEM

The Romanian Criminal Procedure comes from a civil law system, with an inquisitorial mode of proceedings. As a rule, the magistrates (prosecutors and judges) perform most of the activities. Nevertheless, like other modern criminal procedure legislations, the Romanian Criminal Procedure Code reflects a combination of inquisitorial and accusatorial features.

Pre-trial phase

During the pre-trial phase, the written and partially secret ex officio procedure follows the inquisitorial system but at the same time the influences of the accusatorial system are evident from the fundamental rights protecting the defendant. The initiator of the criminal action is, as a rule, the state, through the Public Ministry (prosecutors). Both during the pre-trial investigation and at the end of it, there are several alternative courses of actions from which to choose: the criminal investigation may be terminated, an exemption from criminal investigation may occur, or the case may be dismissed. If the prosecutor considers that there is enough evidence to submit the case to the court, an indictment is issued. If, however, the prosecutor decides to end the pre-trial phase by not bringing the case to the court, the parties involved or even interested persons have the possibility to ask the court to review the prosecutor's decision.

Trial phase

The trial phase has accusatorial features as well, being based on such principles as orality, publicity and contradictorily. The prosecution role lies with the prosecutor, who is bound by law to respect and safeguard the rights of the accused. The accused has several rights such as to formulate requests, submit complaints, participate in certain investigation acts and ask for the annulment of such acts if they are considered illegal, to propose the administering of evidence, to complain against the criminal investigation acts and bring the legal remedies against the court decisions. The trial is the judge, who, at the end of the procedure makes the decision. Nevertheless, the role of the judge in this procedure should be an active one as to finally contribute to finding of truth and solving the case.



PUBLIC MINISTRY- ACTIVE ENFORCEMENT OF THE LAW

The Public Ministry, through its prosecutors, aims at timely and exhaustively finding offences, in such a way that any person committing a criminal deed should be punished according to that person's guilt and no innocent person should be held criminally liable.

Carrying out the criminal pursuit

The pre-trial investigation of crimes is usually performed by the police. In such cases, the prosecutor leads and controls the investigation. For certain offences, the prosecutor conducts the investigation himself (e.g. offences against the state, manslaughter, organized crime, corruption, etc.). The specialized bodies in charge with intelligence gathering and processing are bound to put at the disposal of the prosecutor all necessary data related to the commission of offences.

The prosecutor, based on the conclusion of the pre-trial investigation, makes the consideration of charges. The prosecutor assesses, for each suspect and each deed, whether the deed in fact constitutes a criminal offence. A charge is to be brought if there is reason to believe that the suspect is probably guilty. The prosecutor decides not to prosecute if the evidence is insufficient or if charges cannot be brought for some other reason.

Notifying the courts for criminal offences and participating in the trial session

The prosecutor brings charges by submitting a complaint to the competent court. The prosecutor is obliged to substantiate his demands and procure sufficient evidence in support of his charge. The court is impartial and the prosecutor shall therefore present circumstances and evidence supporting the charge for the court to assess.





Civil action

On the request of an injured party who has sustained loss or damage because of the offence, the prosecutor is to pursue the injured party's claim for damages in connection with the prosecution of the criminal case. The prosecutor may initiate the civil action when the injured party is not able to defend her/himself (minors, physically disabled, etc.).

Legal remedies

The prosecutor has the right to file an appeal with a higher court against a decision made by a lower court. In most cases, the reason for the prosecutor's appeal is the dismissal of the charge or a punishment that in the prosecutor's opinion is too lenient in view of the nature of the matter or general legal praxis. Against final court decision, the prosecutor has the right to file two types of extraordinary remedies: request for annulling in cases of formal procedure deficiencies or revision of the decision when new circumstances on the commission of the deed are revealed after the decision has been passed.

The prosecutors are independent: they alone make the decisions on cases that have been brought to them.



GUIDING PRINCIPLES

All the duties of the prosecutor are performed according to the following principles:

Legality

Prosecutors shall only act within their competences, through the means and in the cases provided by the law. In other words, they shall exert their attributions only under the law. The essential specific mission of the Public Ministry is to secure the observance of the law.

Impartiality

According to the provisions of Art. 16 of the Romanian Constitution stipulating that for “Nobody is above the law”, the prosecutor, as representative of the entire society, as defender of the rule of law, of the rights and freedoms of the citizens, must exert his attributions with objectivity, irrespective of the quality or the social and political affiliation of the investigated person. The prosecutor shall ensure that the bodies he is collaborating with or whose activity he is controlling should apply the law without any discrimination.

Hierarchic subordination

The prosecutors organized in prosecutor's offices are subordinated to the head of that prosecutor's office, the latter being in turn subordinated to the head of the hierarchically higher prosecutor's office within the same territorial unit.

The orders issued by the hierarchically superior prosecutor under the law are mandatory for the subordinated prosecutors but, during the trial, the session prosecutor is free to present the conclusions he deems to be grounded under the law, taking into account the evidence produced in the respective case. The hierarchically superior prosecutor can evidently carry out any of the attributions of the subordinated prosecutors, suspend or dismiss their acts and orders if they are contrary to the law.



RECRUITMENT AND TRAINING

Prosecutors are recruited by competition, based on their professional competence, their skills and their good reputation. The initial recruitment and the professional training required to become a prosecutor is carried out by the National Institute of the Magistracy.

The responsibility for the continuous professional training of magistrates lies with the National Institute of the Magistracy, the heads of the courts or the prosecutor's offices where they are carrying out their activity as well as with each and every magistrate through his individual training.

The National Institute of Magistracy is the Romanian training institute for magistrates, and its activity is coordinating by the Superior Council of Magistracy. The trainers are both academic staff and practitioners,

which ensures a full transfer of knowledge to the trainees.

The continuous professional training must take into account the dynamics of the legislative process and shall consist mainly in acquiring a profound knowledge of the domestic legislation, the European and international documents Romania is a party to, the jurisprudence of the European Court for Human Rights and the Court of Justice of the European Communities, the comparative law, the deontological norms related to the profession of magistrate, and in the multidisciplinary approach of the new institutions.



ORGANIZATIONAL STRUCTURE OF THE PUBLIC MINISTRY

As far as the structure of the Public Ministry is concerned, the Prosecutor's Office Attached to the High Court of Cassation and Justice (POHCCJ) is the central body, coordinating the activity of prosecutors. Two specialized structures – the National Anticorruption Directorate and the Directorate for the Investigation of Organized Crimes and Terrorism – are legal persons operating within the POHCCJ.

The second level of the Public Ministry's structure consists of 16 prosecutor's offices attached to courts of appeal, 42 prosecutor's offices attached to tribunals and 182 prosecutor's offices attached to courts of first instance. In addition, there are 12 military prosecutor's offices.

The personnel consist of:

- Prosecutors (including military prosecutors)
- Law clerks and specialists
- Administrative staff

Romanian prosecutors in figures¹:

Prosecutor`s offices	Total number of positions
POHCCJ and subordinated prosecutor`s offices	2381
Directorate for the Investigation of Organized Crime and Terrorism	230
National Anticorruption Directorate	145
Military Prosecutor`s Offices Section	93
TOTAL	2849

Length of service in the magistracy in 2008

Length of service in the magistracy	Prosecutors, total number of positions
Less than 3 years	320
Between 3-5 years	131
Between 5-10 years	359
Between 10-15 years	866
Between 15-20 years	345
Over 20 years	313

Structure by gender

Gender	No. of prosecutors
Female	1171
Male	1163

¹ According to data available in December 2008

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

Central administration of the Public Ministry

POHCCJ coordinates the activity of the other prosecutor's offices and administers the budget of the Public Ministry. This involves numerous tasks in personnel management and finance, development and public relations.

Criminal matters with wider significance

POHCCJ has also its own cases, where its staff makes the consideration of charges and prosecutes the cases before the competent court (e.g. offences committed by senior officials, magistrates, offences causing exceptionally severe injuries, etc.)

Coordinating the protection of intellectual property related actions

Besides the consideration of charges in complex offences involving the infringement of intellectual property rights, POHCCJ ensures the coordination of the institutions involved in the protection of such rights at national level, aiming at a better cooperation between the state institutions and the rights holders.

International affairs

POHCCJ acts as the central authority in the international judicial cooperation in criminal matters for the requests requiring criminal pursuit, except for the extradition and surrender procedures based on European arrest warrants as well as the transfer of convicted persons. It also ensures the liaison with Eurojust and the counterpart institutions in other states. Via its specialized offices, it attracts funding and implements technical assistance projects for the Public Ministry.

Units of the POHCCJ

- National Anticorruption Directorate
- Directorate for the Investigation of Organized Crime and Terrorism
- Criminal Investigation and Forensic Section
- Judicial Section
- Human Resources and Documentation Section
- Military Prosecution Section
- Service of International Judicial Cooperation, International Relations and Programs
- IT Department
- Public Information and Press Relations Office
- Economic, Financial and Administrative Department
- Internal Public Audit Service
- Classified Documents Department
- Project Implementation Unit



THE PROSECUTOR GENERAL

POHCCJ is headed by the Prosecutor General, assisted by a first deputy and a deputy prosecutor general. The Prosecutor General of Romania is the highest ranking authority among Romanian prosecutors and manages the prosecutorial affairs. The Prosecutor General is appointed by the President of Romania, based on a proposal by the Minister of Justice, with the assent of The Superior Council of the Magistracy², for a 3-year mandate renewable once.

Main duties

- Represents the Public Ministry in relation with the public authorities and any legal or natural person in Romania or abroad;
- Directs, coordinates and is held liable for the activity of the POHCCJ and of the subordinated prosecutor's offices;
- Initiates measures for the proper organization and functioning of the Public Ministry;
- Exercises, directly or through inspection prosecutors, control upon all prosecutor's offices;
- Solves competence conflicts;
- Appoints and dismisses the prosecutors within the Directorate for the Investigation of Organized Crime and Terrorism.

² The Superior Council of the Magistracy is the elected professional body in charge with defending judges and prosecutors of any act that could affect their independence or impartiality, ensuring the observance of the law and the criteria of competence and professional ethics in the course of the professional career of judges and prosecutors.



THE NATIONAL ANTICORRUPTION DIRECTORATE - NAD

The National Anticorruption Directorate was established in September 2002, based on the Government Emergency Ordinance No. 43/2002, as the National Anticorruption Prosecutor's Office, a prosecutor's office specialized in fighting corruption. Following successive legislative amendments, it became a legal entity within the POHCCJ, specialized in the fight against high and medium level corruption.

The Prosecutor General of the POHCCJ controls the NAD through this Directorate's chief prosecutor. The NAD Chief Prosecutor, his deputies and the chief prosecutors of the NAD sections are appointed by the President of Romania, based on a proposal by the minister of justice, with the assent of the Superior Council of the Magistracy, for a 3-year mandate renewable only once.

Organizational structure

The NAD has a central structure in Bucharest and 15 territorial services situated in the circumscription of the 15 courts of appeal.



Jurisdiction

The NAD is competent to carry out criminal investigations for the following types of offences:

- Corruption (passive and active bribery, receiving undue advantages, trading in influence),
- Offences assimilated to corruption (deliberately establishing a diminished value compared to the real market value of the goods belonging to economic agents where the state or a local public administration authority is a shareholder, granting credits or subsidies by infringing the law, use of credits or subsidies for other purposes than those for which they had been granted),
- Offences directly related to corruption (concealment of goods originating from the commission of corruption offences, forgery and the use of forgery committed for the purpose of hiding the perpetration of corruption, misuse of office against public interests when the value of the prejudice exceeds 1 million euro, blackmail, smuggling, tax evasion and money laundering committed in connection with corruption, fraudulent bankruptcy, etc.),

When:

- The value of the bribe exceeds the amount of 10,000 €;
 - The value of the damage caused exceeds the amount of 200,000 € or the commitment of the crime has produced serious disruption in the activity of a public authority or institution or of any other legal person;
 - The offence in question has been committed by dignitaries, magistrates, high public officials.
- Offences against the financial interests of the European Communities.

THE DIRECTORATE FOR THE INVESTIGATION OF ORGANIZED CRIME AND TERRORISM - DIOCT

DIOCT was established in 2004 by Law 508 as a structure within the POHCCJ, specialized in the investigation of organized crime and terrorism offences, aiming at the de-structuring of organized groups acting within the national territory but also across borders and committing serious offences. The Prosecutor General of the POHCCJ controls the DIOCT through this Directorate's Chief Prosecutor.

Organizational structure

The DIOCT has a central structure in Bucharest and 15 territorial services situated in the circumscription of the 15 courts of appeal as well as 41 territorial offices at the level of the prosecutor's offices attached to tribunals.

Jurisdiction	Special investigation techniques available to the DIOCT prosecutors
<p>DIOCT carries out investigations in serious crimes such as:</p> <ul style="list-style-type: none">• Terrorism• Organized crime• Intellectual property related crimes, if perpetrated by organized criminal groups• Trafficking in drugs and precursors• Trafficking in human beings• Money laundering• Crimes against state security• Cybercrime• Crimes related to securities market• Trafficking in human tissues, cells and organs, if perpetrated by organized criminal groups• Smuggling, irrespective of the value of the prejudice.	<ul style="list-style-type: none">• The authorization of the undercover investigator, by prosecutor's ordinance;• The authorization of the collaborator of the undercover investigator, by prosecutor's ordinance;• Authorization for drug purchasing by the investigator or collaborator, by prosecutor's ordinance;• Authorization for wiretapping, monitoring in surrounding environment, tracing and localization using GPS, ordered by the prosecutor for 48 hours or by the judge with proper jurisdiction;• Authorization for controlled deliveries, by prosecutor's ordinance, with or without total/partial substitution of drugs or precursors.

RELEVANT INTERNATIONAL LEGAL INSTRUMENTS ROMANIA IS PARTY TO

- United Nations Convention against Transnational Organized Crime and its Protocols
- United Nations Convention against corruption
- Convention of May 29, 2000 on Judicial Assistance in Criminal Matters among EU Member States and its Protocol of October 16, 2001
- European Convention on Judicial Assistance in Criminal Matters – Strasbourg, April 20, 1959 - and its Additional Protocols
- European Convention on the Transfer of Procedures in the Criminal Matters - Strasbourg, May 15, 1972
- European Convention on the International Validity of Criminal Judgments, The Hague, May 28, 1970
- European Convention on the Suppression of Terrorism - Strasbourg, January 27, 1997
- European Convention on Laundering, Search, Seizure and Confiscation of Crime Proceeds - Strasbourg, November 8, 1990
- European Convention on Information on Foreign Law, London, June 7, 1968, and the Additional Protocol - Strasbourg, March 15, 1978
- Criminal Law Convention on Corruption - Strasbourg, January 27, 1999 and its Additional Protocol - Strasbourg, May 15, 2003
- Civil Law Convention on Corruption - Strasbourg, November 11, 1999
- Convention of the Council of Europe on Cybercrime - Budapest, November 23, 2001
- European Convention on the Punishment of Road Offences - Strasbourg, November 30, 1964
- European Convention on the Nonprescription of Crimes against Humanity and War Crimes - Strasbourg, January 25, 1974
- European Convention on the Compensation of Victims of Violent Crimes of November 24, 1983
- European Convention on Extradition - Paris on December 13, 1957 and its Additional Protocols - Strasbourg on October 15, 1975 and March 17, 1978

In order to facilitate the judicial assistance in criminal matters and extradition, Romania also concluded several bilateral agreements with: Albania, Algeria, Australia, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Czech Republic, China, Hungary, North Korea, Croatia, Cuba, Egypt, France, Greece, Italy, Morocco, Moldova, Mongolia, New Zealand, Russia, Serbia, Montenegro, Syria, Slovakia, United States of America, Tunisia and Turkey.



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