

Romania / Roumanie

1. Among the general official measures envisaged, there are: legislative initiatives and amendments, the creation of working groups in order to monitor and propose solutions, inter-institutional meetings, changes in the organization and functioning of some units and so on.

2. An eloquent example is the amendment of art. 67 paragraph 2 of Law no. 304/2004 regarding the judicial organization, which, in the current version, has the following content: "The prosecutor is boundless to present to the court the conclusions he/she considers to be justified, according to the law, taking into account the administered evidences in the case. The prosecutor may appeal to the Section for prosecutors of the Superior Council of Magistracy the intervention of the superior hierarchical prosecutor, in order to influence the conclusions, in any manner.

3. Yes.

4. Yes.

5. Yes.

6. In Romania, the Public Ministry is part of the judicial authority. Prosecutors have the status of magistrates.

6. As regards the relations with the other authorities, the Public Ministry is independent and exercises its powers only under the provisions of the law and for ensuring its compliance. According to the constitutional provisions, the prosecutors carry out their activity under the authority of the Minister of Justice.

This does not mean that the Public Ministry is subordinated to the Minister of Justice.

In our legislation, the authority of the Minister of Justice does not have the meaning of a hierarchical subordination, but that of an administrative relationship, similar to the relationship between the Minister of Justice and the courts. The Public Ministry is not under the authority or subordination of the Ministry of Justice, the prosecutor cannot receive orders from the officials of this ministry.

The manners by which the Minister of Justice exercises his authority over the Public Ministry, were established by art. 69 of Law 304/2004 on judicial organization, as follows:

(1) The Minister of Justice, when he/she deems it necessary, at his/her own initiative or at the request of the Section for prosecutors of the Superior Council of Magistracy, exercises the control over the prosecutors, by the instrumentality of the prosecutors designated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, by the Chief Prosecutor of the National Anticorruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism or by the Minister of Justice.

(2) The control consists in the verification of the managerial efficiency, of the manner in which the prosecutors fulfill their duties and in which the professional relations with the litigants and with the other persons involved in the works within the competence of the prosecutor's offices. The control cannot concern the measures ordered by the prosecutor during the criminal investigation and the adopted solutions.

(3) The Minister of Justice may ask the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, the Chief Prosecutor of the National Anticorruption Directorate, the Chief Prosecutor of the Directorate for Investigating Organized Crime and Terrorism, for information on the activity of prosecutors' offices and to give written guidance on the measures to be taken in order to prevent and effectively fight crime.

These competences represent the expression of the authority of the Minister of Justice, without having the meaning of a subordination.

The Public Ministry is not financially or organizationally subordinate to the Ministry of Justice, it has its own legal personality and is the main authorizing officer.

8. The Superior Council of Magistracy is established and within it, two sections operate: one for judges and one for prosecutors.

The revised constitutional provisions stipulate the number of 19 members of the Superior Council of Magistracy, out of which:

- 14 of them are elected in the general meetings of the magistrates and validated by the Senate; they are part of two sections, one for judges and one for prosecutors; the first section is composed of 9 judges, and the second section of 5 prosecutors;
- 2 representatives of the civil society, specialists in the field of law, having at least 7 years experience in a legal profession or in higher legal education, who enjoy a high professional and moral reputation, elected by the Senate; they only participate in the plenary sessions and enjoy voting rights;
- the Minister of Justice, the President of the High Court of Cassation and Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

According to art. 75 paragraph 2 of Law 303/2004 regarding the status of judges/or prosecutors, "The section for prosecutors of the Superior Council of Magistracy has the right, respectively the obligation that, upon request or ex officio:

- a) to defend the prosecutors against any act of interference in their professional activity or related to it, which could affect their impartiality or independence in the provision of solutions ..., as well as against any act that would create suspicions regarding them;
- b) to defend the professional reputation of prosecutors."

9. By the instrumentality of its sections, The Superior Council of Magistracy fulfills the role of a court in the field of disciplinary accountability of the prosecutors and judges, as well as the assistant magistrates of the High Court of Cassation and Justice. In the case of the offenses committed by judges, prosecutors and assistant magistrates, the disciplinary action is exercised by the Judicial Inspection, through the judicial inspector. The Judicial Inspection can be notified ex officio or it can be notified in writing and motivated by any interested person, including the Superior Council of Magistracy, in connection with the disciplinary violations committed by judges and prosecutors.

10. The prosecutors are appointed for an undetermined period, but the leading positions within the Public Ministry have a determined duration.

11 . Basically, the rules are the same, but there are some differences.

12. See the answer to question no. 7.

13. The provisions of the superior hierarchical prosecutor, given in writing and in accordance with the law, are mandatory for the subordinate prosecutors. In the ordered solutions, the prosecutor is independent, under the conditions provided by the law. The prosecutor may appeal to the Section for Prosecutors of the Superior Council of Magistracy, within the verifying procedure of the conduct of judges and prosecutors, the intervention of the superior hierarchical prosecutor, expressed in any form, during carrying out the criminal prosecution or in adopting the solution. The solutions adopted by the prosecutor can be rejected by the superior hierarchical prosecutor, when they are considered to be illegal or unreasonable.

14. Within the National Institute of Magistracy, there are initial training programs for justice auditors and continuous training programs for active magistrates. Among the considered

disciplines, there are: ethics and judicial organization, ECHR jurisprudence, EU law etc. Also, the prosecutors participate or organize internal or international events, during which important aspects of the analyzed topic are being debated or popularized.

15. Generally, in Romania, the media is interested in the status, the activity and the results of prosecutors. Therefore, these decisions are of interest, as well.

16. On the website of the Public Ministry, there are basically published releases, analyzes, points of view, proposals, translations of recommendations, approvals, opinions, reports, etc., which are relative to or related to the activity or the status of prosecutors. Also, articles of interest are being published in a magazine.