

# INSTITUTIONAL UNCERTAINTIES OF THE RULE OF LAW – THE PUBLIC PROSECUTOR’S OFFICE BETWEEN THE EXECUTIVE AND THE JUDICIARY

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## Abstract

The Romanian society, the state, the administration and the judiciary are facing several essential challenges of the contemporary world, and these challenges have to be addressed as soon as possible.

The position and the role of the Public Prosecutor’s Office within the rule of law should be clarified since it is a well known fact that the judiciary and public administration systems are not yet capable to manage the changes necessary for the integration in the European juridical space. With the advancement of the Romanian public administration reform, the Public Prosecutor’s Office and the public administration have become the two main actors involved in the struggle against corruption. Corruption is considered to be an important factor underlying the inability of the public administration and the judiciary systems to act and to meet the citizen’s needs. The Romanian citizen has been facing the burden of corruption and bureaucracy, and the Public Prosecutor’s Office is one of the institutions called upon not to eradicate this phenomenon, but to prevent it and to keep it under control.

Within the current framework, when the political and legal debate raises issues regarding a new review of the Romanian Constitution, one of the questions raised is whether the Public Prosecutor’s Office is a public authority belonging to the executive or to the judiciary. The following paper studies the place of the Public Prosecutor’s Office within the legal systems and consequently will identify and determine its place and role at the intersection between the executive and the judiciary.

## **1. Constitutionality and legality in the Romanian rule of law**

The rule of law institutes the supremacy of legality in the political area. In these systems which have written constitutions, this essential guiding rule is referred to as the principle of the supremacy of the constitution. In the systems with flexible, customary constitutions, constitutionality is referred to as the principle of the supremacy of the law. All the physical and juridical persons are equal before the constitution or the law, whether they are mere individuals or public authorities, interest groups, companies.

As Gwyn (1986, p. 65) remarks the entire intellectual tradition of the separation of powers, usually referred to as constitutionalism, is a broad one, concerned not only with prescribing governmental arrangements but also with revealing the social, cultural, and economic prerequisites for the success. Although the constitutionalists seems to be more concerned with the protection of people against government than with the success of government.

Positively, the goal of constitutionalism has historically been referred to as 'liberty', 'the public interests', 'the common good', or the 'the rule of law' (Gwyn, 1986). In this respect Montesquieu (1749, p. 151) wrote 'The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have his liberty, it is requisite the government be as constituted as one man need not be afraid of another'.

No one is above the law, according to this essential principle of the organization and functioning of the rule of the law. But the constitution or the laws regulate the state legal framework, i.e. the juridical and political framework, which shapes and structures the system of the public powers (the legislative, the executive and the judiciary, as well as their specific functions).

The accountability accompanying the rule of law requires not the independence of the legislature from the executive but the independence of whatever institution performs the accountability functions (Gwyn, 1986). In order to achieve a balance in this power game, the constitutions or the laws establish cooperation and control mechanisms among the state powers. The Constitutional Court or the Constitutional Council controls the whole state activity regarding to the observance of the constitutional norms, within the rule of law.

In its 1991 Constitution, Romania chose the rule of the law, as stated in art. 1 par. 3: 'Romania is a rule of law, democratic and social...', promoting universal and equal rights, according to art. 15 par. 1 'Citizens benefit by the rights and liberties laid down in the Constitution and other laws', and art. 16 par. 1 'All citizens are equal before the law and before the public authorities, with no privileges or discriminations.' Besides Romania, Spain is another European state based on similar principles; but these are not the only European states which promote and stipulate fundamental rights and liberties, based on the corollary of the equality before the law. Spain though included other principles in its Constitution as well, which we consider particularly important in the context of our discussion about the rule of the law. These principles establish once again, if needed, that the legal norms are hierarchically ordered, and their

enforcement entails the limitation of arbitrariness: art. 3 – ‘The Constitution guarantees the principle of legality and of the hierarchy of the legal norms ... and the banning of arbitrariness in the activity of public powers.’ Following this example, Romania also stipulated these principles, through the 2003 Law on the revision of the Constitution, limiting itself to provide that ‘In Romania, compliance with the Constitution, with its supremacy and with the laws is mandatory’. Therefore, if we interpret the law in the same constitutional spirit, we can assert that the principle of the supremacy of the Constitution is grounded on its supra-ordinate position, at the top of the legal system hierarchy and generates the constitutional supra-legality applicable to the whole system. The mandatory character of the law, namely the pre-eminence of the law in the regulation of the social relations, is what ensures the legal order, as stated by art. 16 par. 2 of the Romanian Constitution: ‘*No one is above the law*’.

The fundamental principle of the rule of law is the separation of powers, stating that the legislative power should be exercised by the Parliament, the executive power should be exercised by the President and/or Government, and the judiciary power – by the courts, within the limits of the Constitution. As Wilson (1913, p. 284) put it, ‘power and strict accountability for its use are the essential constituents of good Government’. As a virtue of the constitutional division of responsibility, the separation of the legislative and executive power leads to fractioned powers and enhances accountability (Cutler, 1986).

The law on the revision of the Romanian Constitution added two essential principles to the provisions in art. 1: the separation and the balance of powers within the state. Romania chose an express consecration of Montesquieu’s principle. A comparative law study proves that there is no constitution of a EU Member State which does not include this principle, even if, most of the times, it is not expressly stipulated, but inferred from the content of the constitutions and from the prerogatives of the state bodies endowed with the exercise of public power. The express consecration of this principle has the advantage that any written, express norm has over the one resulting from interpretation, and this advantage is called certainty. In this sense, we may notice that, explicitly or implicitly, the rule of law is organized and structured through bodies with distinct prerogatives; thus, the legislative creates the law, the executive applies the law and the judiciary enforces the law, judging according to the law. As John Adams (1959, p. 134) in one of his letters to Thomas Jefferson wrote ‘checks and balance, Jefferson, ... are our only Security, for the progress of Mind, as well as the Security of Body’.

The state prosecution service is an executive authority, but it is also, like the courts, an independent organ administering the law. So it cannot easily be classified as belonging to one or the other branch of the state.

The Public Prosecutor’s Office in the Romanian rule of law has been caught somewhere between the executive and judicial power. This is the reason why we will study the legal norms and the state of facts to establish the place of the Public Prosecution’s Office in the institutional uncertainty created by the constitutional provisions.

It is not difficult to notice that philosophers and political scientists study power; constitutionalists analyze the system of the legislative, executive or judiciary bodies (the Parliament, the head of the state, the head of the government, the government, and the courts with their different jurisdiction layers). Specialists in administration examine the legal acts and facts of the legislative and executive, as well as the matter of the judicial review exercised by the courts regarding the lawfulness of the actions carried out by the administration and historians study the succession of political, administrative or legal regimes. Each discipline studies the state powers from its own point of view (political, sociological, organisational etc.) but, unfortunately, an interdisciplinary approach, cutting across the traditional boundaries, of the legislative, executive or judiciary is to a great extent neglected in these studies.

In this sense, we intend to tackle the problems connected to the Public Prosecutor's Office and its place in the public system. But, before we proceed with this study, we need to assess the legislative, the executive and the judicial powers, in order to provide the instruments which allow us to determine and define the position of this institution.

For more than a decade, since totalitarianism was banned from Romania, we have been witnessing acts and actions of the legislative, the executive and the courts of justice, by which they want to prove that they are separate powers within the state, and they define themselves as such.

At the same time, the need to subject the political power and the bureaucracy deriving from it to the judiciary review exercised by the courts, has been an important issue on the agenda of the state leaders. This concern is the result of the democratic process according to which the citizens are the rulers of the society and so the citizens can no longer be forced to face the arbitrariness of bureaucracy and they have the opportunity to really assume their role in front of an independent body – the court of justice.

The government structure developed different interference mechanisms, triggered by the set of methods or forms by which the governing institutions cooperate to carry out the ruling of the social system, of the state.

In May 1990, after the reorganization of the Parliament into a Constituent Assembly, Romania decided to elaborate and adopt a new Constitution which had to accomplish the society requirements at that time. The Romanian Constituent Assembly didn't grant absolute power to any of the public powers; on the contrary, it provided for a mutual check and balance system, through which each power watches the others so that they don't abuse their powers and break the existing balance.

One of the implications commonly read into the separation of powers doctrine is that the three branches of government ought to be composed of different persons. Matters may be so designed in such a way that each branch operates as a check on the others. (De Smith and Brazier, 1989)

Constitutions in the broadest sense grow and assume their particular character from a combination of formal mechanism, informal structure and political culture.

The weight that each of these poses in any regime is something that political can only roughly gauge. (Ceaser, 1986)

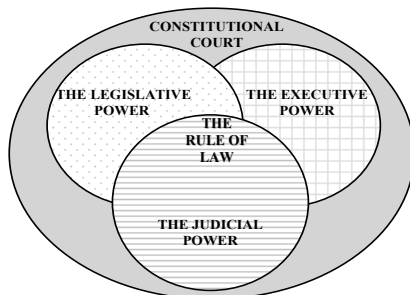
The political system in a society is especially distinguished by its relation to accepted (legitimate) coercion: the policies made by the political system can legitimately be backed up by coercion and obedience. In order to carry out their many activities, political systems have institutions, or structures such as parliaments, bureaucracies, courts, and political parties, which carry on specific activities, or functions, which in turn enable the political systems to formulate and enforce its policies (Almond, 1988, p. 3). According to Brown-Foster (2009) in the world we have three political regimes: authoritarian, totalitarian and democratic. In the authoritarian and totalitarian regimes the rule of law and the separation of powers don't exist and so only democratic states promote the separation of powers as an important pillar (Salzberger and Voigt, 2009). As Almond (1988, p. 106) observe parliamentary, presidential and parliamentary-presidential regimes are characterized by some form of legal or customary limitation on authority; authoritarian systems tend not to accept this idea.

The separation regime of powers can be organised as a rigid one or as supple or double-jointed one. In a rigid regime we will find a strict separation of powers between the legislative and the executive branch of the state such as the presidential regime or parliamentarian regime. But in a world which is under a continuous quest to lose the chain of power held by one institution or person we will discover new political regime which appeared at the interference of the state powers. Such regimes can be instituted as semi-parliamentary or semi-presidential depending on the tasks and roles played by the state institutions (Debbasch *et al.*, 2001).

The political systems and the political regime (Cadoux, 1973) is affected by the interference (cooperation) of the three powers, applied separately by the Parliament and Government, according to the prerogatives granted to each of them by the Constitution. They are also affected by such factor as the principles governing the relation between the governing bodies and also by the methods used for putting these principles into practice. These factors can be used as reference system for qualifying the regime as democratic or, on the contrary totalitarian political regime.

The interference of the legislative power with the executive and the judiciary is the outcome of applying the power separation principle. As the theory (Debbasch *et al.*, 2001), but also the constitutional practice remarks, a possible absolute separation of powers would be the equivalent of a constitutional blocking. The three branches are expected to form a whole coherent governing power, each performing its particular function (Anderson, 1986, p. 141). For the constitutional mechanism not to get blocked, as Anderson (1986) remarks, an interference system among powers was established, a system which was supposed to conduce corrective actions (either positive actions or of resistance) and even ways of cooperating and collaborating among themselves. It is essential for any constitutional system that the substance of the separation principle should not be affected, despite the interaction of the powers.

As Wilson (1981, p. 2) states ‘the separation of powers, far from being a stumbling block to good government, is in fact its guarantor, for it impedes action and thus reduces the chance of precipitous policy’.



**Figure 1:** The separation and balance of powers within the state

## **2. The Public Prosecutor’s Office – an authority at the intersection of the state powers**

The Government accepted the case for transferring the main prosecution role to an independent body. By the concept of ‘Public Prosecutor’s Office’, the doctrine understands a system integrated into a hierarchy of state agents, called prosecutors who are legally qualified to discover where the criminal law has been infringed, to notify the competent courts of justice or to participate in the hearing of criminal cases. Also, prosecutors can carry out other activities, as they have competence in civil matters as well, in cases involving under-aged and disabled people, as well as in matters of commercial, fiscal, social, disciplinary law etc. (in states like France, Belgium, Germany etc.)

The diversity in the organization and functioning types of the Public Prosecutor’s Office made some authors group and categorize these organization types into models or systems. In researches carried out by the member states of the EU (Eurojustice Conference) and presented as country reports on the tasks and powers of the prosecution office, including the relations between the prosecutors and the Ministry of justice, we can observe that different legal systems have produced different types of organization of the prosecution office. Also in this respect in the CEPEJ Studies no. 11 (2008) we can observe which the public prosecutors’ powers in 44 countries are. Maintaining this idea, in Romania the Ministry of justice has developed a study (2004) over 21 European countries.

Consequently, in the doctrinarian files (Alexandru, 2008) it has been stated that the Public Prosecutor’s Office can be organized within the frameworks of several systems and models, as follows:

- One model is that of the *Public Prosecutor’s Office functioning under the authority of the Ministry of Justice*, made up of agents with a legal status similar to that of the administrative judges, characterized by the fact that the prosecutors are at the service of the Public Ministry. They can be transferred to an equivalent position, for at least the same salary. At the same time, they benefit of stability,

having the right to practice and to exercise the prerogatives of their position; also, their removal and suspension are restricted to the situation provided by the law, and only in cases of serious offences, under a jurisdictional procedure. In Romania, this system was in place starting from the Organic Regulations (1831/1832) until 1948. According to this model, applied in several states, among which France, Poland, the Netherlands and Luxembourg, the magistrates within the Public Prosecutor's Office exercise their duties under the authority of the Ministry of Justice, and the prerogatives of the Public Ministry are exercised by the state attorney general, who supervises and guides the magistrates within the Public Prosecutor's Office.

- A second model is that of the *Public Prosecutor's Office under the authority of the Ministry of Justice made up of prosecutors with a stable and even immovable status*.

This model is mainly characterized by the fact that the Ministry of Justice cannot interfere by rulings in the activity of the Public Prosecutor's Office; the Ministry of Justice has only the role of organizing the judiciary services and of pursuing the good functioning of justice. We can provide in this respect the example of Italy, and, up to a certain extent, of Spain.

- A third model is that of the *Public Prosecutor's Office independent of the executive power*, i.e. not under the authority of the Ministry of Justice. In the post-war period, through successive legal norms (Decree no. 2/1948, then the 1952 Constitution, Law no. 6/1952 and Law no. 60/1968), Romania abolished the Public Prosecutor's Office organization system which had functioned in the pre-war period, transforming it, following the Soviet model, into the Prosecution of the Popular Republic of Romania, as a system of bodies which carried out a so-called fourth basic form of activity within the state. However, the Prosecution wasn't independent, on the contrary, it was completely subordinated to the political power, and it represented an extremely powerful instrument obedient to the policy of the unique party.

In the circumstances of political pluralism, such a model which aims to ensure the prosecution's real independence from the executive power represents an aspiration of the constitutional norms in many states, and also in Romania.

For instance, the 1976 Constitution of Portugal assigns a specific status to the Prosecution, which is run by the Republic's Attorney General, and whose members are elected by the Republic's Assembly (Dias *et al.*, 2007) In this category we may include other states, such as Sweden, where the Prosecution – as a public prosecuting system – is independent, separate from both the judicial power and the police. The same for Norway, where the Prosecution is run by the General Director of the Public Prosecution, which is hierarchically subordinated to the King, and not to the Minister of Justice – so that this institution is actually independent. In Cyprus, all criminal prosecution procedures are carried out under the Republic's Attorney General – a sort

of general prosecutor who is independent, running the Republic's Legal Office, which is an independent service, independent of any ministry. In Lithuania, the prosecutors are independent and answering only to the law, and the Attorney General is appointed and relieved of his post by the Parliament, at the proposal of the legal committee of the Parliament, which in turn receives these proposals from the President of the Supreme Court of Justice and the Minister of Justice.

- Finally, there are *mixed models* or those models which do not fall under any of the categories mentioned above, in which the attorneys general are appointed by the ministers of justice or, at the latter's proposals, by the heads of state, being, thus, revocable. But the other prosecutors benefit of a marked immovability or stability, and are organized according to the principle of hierarchical subordination, where the higher ranking prosecutor can substitute for the lower ranking prosecutors. For instance, even though in the German public law it is considered that the prosecutor is part of the executive power, he has a specific status, since he also belongs to the judicial power, benefiting of immovability. It can thus not easily be classified as belonging to one or the other branch of government (Robbers, 2006).

### **3. The position of the Public Prosecutor's Office within the Romanian public authority system**

Studying these models, and also the realities of the Romanian public life, in the current political and legal debate the problem was raised as to whether the Public Prosecutor's Office is a public authority of an executive or a judiciary nature. The current controversy on this topic stemmed not only from political grounds, but also from the fact that there would be a regulation conflict: the current regulation of the Public Prosecutor's Office in the Constitution is under Title III, Section 2 of Chapter VI, which is called 'The judicial authority'. On the other hand, art. 132, par. (1) of the same Constitution stipulates that 'Prosecutors function, according to the principles of legality, impartiality and hierarchical control, under the authority of the Ministry of Justice'.

In these circumstances, in the recent legal doctrine we can identify three diverging opinions regarding the position and missions of the Public Prosecutor's Office within the system of public authorities. In Romania it is accepted, by few theoretician and politicians (Vida, et al., 1992), that the Public Prosecutor's Office has the nature of an authority belonging to the executive power, based on the constitutional and organic legal norms. Supporters of a second opinion argue that the Public Prosecutor's Office belongs to the judicial power, according to the missions which are assigned to it by art. 131 (2)<sup>1</sup> and art. 132 (1) of the Constitution and by Law no. 304/2004<sup>2</sup>, as well

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1 'The Public Ministry shall exercise its attributions through public prosecutors constituted into prosecution offices, subject to the law'.

2 Law on judicial organisation, re-published in the Official Journal of Romania, Part I, No. 827/13.09.2005, stipulates in Article 1 par. (1) 'The judicial authority is exercised by the High Court of Cassation and Justice and by the other judicial courts established by the law'.

as according to arguments resulted from the criminal procedural law (Cochinescu, 2000). In support of the same theory, Neagu (1997) argued that the authority of the Ministry of Justice over the prosecutors functioning attached to the courts of justice is a legal relation based on the administrative law, which is the same in nature as the relation between the Ministry of Justice and the judges.

Finally, supporters of a third opinion, which draw on a view originally expressed by Paul Negulescu and George Alexianu and then reformulated by other important theorists (Drăganu, 1998, p. 356), consider that the Public Prosecutor's Office was conceived as an executive body, of a specific nature, similar to the French Public Prosecutor's Office.

Other researches (Pantea, 1998; Ciobanu, 1997; Negulescu and Alexianu, 1943) identified the Public Prosecutor's Office as a civic power institution of an executive and judicial nature.

### **3.1. The Public Prosecutor's Office and the Executive Power**

The argument that the Public Prosecutor's Office has an *activity of an executive type*, supporting the courts of justice and representing an 'auxiliary' of the same, is the most widespread. It is often stated that the Public Prosecutor's Office only acts to inform the courts, to represent the state in a trial, to supervise and control certain administrative bodies etc., i.e. carries out '*actions of an executive character*' (Drăganu, 1998, p. 360). It has also been stated that the Public Prosecutor's Office supports the carrying out of justice, as shown in art. 131 (1) of the Constitution – '*...standing for the general interests of the society and defending the legal order, as well as the citizens' rights and liberties*'.

However, we should make a distinction between the judicial activity and the carrying out of justice. By judicial activity (DEX, 1998) we understand an activity related to the judiciary, to its authority, to the activity concentrated in the courts. So the entire trial, including conviction and sentencing, lies in the hands of the judge. The whole process of investigating criminal activities up to the stage of charging the accused with the crime and the presentation of the case at trial in front of a judge is realized by the prosecution service. As Evans (2006, p. 2) notices, the public prosecutor is appointed by the State to scrutinize allegations that citizens have broken the law, and usually works with the investigator to examine the details before subjecting the accused. The prosecutors will present cases in court fairly and deal with appeals as necessary, ensuring that the court is provided with all the relevant facts. The mission of the public prosecutor is to prosecute in the name of society and its task is to ask for the application of criminal law which explains why the prosecutor is sometimes called 'the society's attorney'.

Therefore, prosecution offices do not carry out justice, they do not distribute justice, they carry out an activity which is related to justice, connected and auxiliary

to it. According to the Constitution and the laws in force, prosecutors are considered magistrates, but not judges<sup>3</sup>.

The executive character of the prerogatives and duties of public offices is also emphasized by art. 62 (1) in Law no. 304/2004, which states that the Public Prosecutor's Office 'exercises its prerogatives and duties in accordance with the law and is run by the Attorney General of the Prosecution Office attached to the High Court of Cassation and Justice'. In the same article par. (2) states that 'Prosecutors function according to the principles of legality, impartiality and hierarchical control, under the authority of the Ministry of Justice, in accordance with the law'.

The dependence of the Public Prosecutor's Office on the Romanian current executive power results (as stated by art. 54 in Law no. 303/2004 on the judges' and prosecutors' status, republished) from the fact that the Attorney General attached to the High Court of Cassation and Justice is appointed and revoked from his post by the Romanian President, at the proposal of the minister of justice, with the assent of the Superior Council of Magistracy<sup>4</sup>.

For a better understanding of the authority of the Ministry of Justice over the prosecutors, we carried out an analysis of the legal regulations in the field and we reached the conclusion that the Public Prosecutor's Office is neither under the authority nor under the supervision of the Ministry of Justice, and in this respect the prosecutors cannot receive orders from the public servants working in this ministry.

The legal ground of the relation between the Public Prosecutor's Office and the Minister of Justice is represented by art. 69 in Law 304/2004 on the organization of the judiciary, which establishes, among others, that:

1. The Minister of Justice can, when necessary, exercise control over prosecutors, *through prosecutors specifically nominated* by the attorney general of the Prosecution Office attached to the High Court of Cassation and Justice, by the chief prosecutor of the National Anti-Corruption Directorate, or by the minister

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3 After the revision of the Romanian Constitution (October, 2003) the Parliament adopted the Law no. 303/2004 on the statute of magistrates which in 2005 has been modified through Law no. 247; the main item of modification was the replacement of the term 'magistrates' with 'judges and prosecutors'.

4 In September 2008 a legislative initiative focused on the art. 54 of the Law no. 303/2004 tried to modify the nomination and relieve procedure of prosecutors. 'The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, his prime-deputy and deputy, the chief prosecutor of the Anti-corruption Directorate, his deputies, the prosecutors-chiefs of section of these prosecutor's offices, as well as the prosecutor-chief of the Directorate for Investigation of Offences of Organised Crime and Terrorism and their deputies, shall be appointed by the general assembly of the Superior Council of Magistrates, at the proposal of the Ministry of Justice with the authorisation of the prosecutors' section within the Superior Council of Magistrates'. The law which tried to modify this article it was declared unconstitutional through the Constitutional Court Decision no. 1029/8.10.2008 because it didn't respect the principle of a bicameral parliament.

- of justice. Between October 2006–August 2009, designated prosecutors from the Criminal Investigation and Forensic Section within the Public Ministry exercised control activities on the subordinated offices in 56 cases.
2. The control consists of the *assessment of the managerial efficiency*, of the way in which the specific *duties are carried out*, as well as of the *work relations* with the law subjects and with the other parties involved in the activities falling under the competence of the prosecution offices. So the control cannot target the measures ordered by the prosecutor concerning the criminal prosecution or the adopted solutions.
  3. The Minister of Justice *can request* from the attorney general of the Prosecution Office attached to the High Court of Cassation and Justice, or from the chief prosecutor of the National Anti-Corruption Directorate, respectively, *reports on the activity of the prosecution offices*, and can *give written instructions* regarding the measures to be taken in order to prevent and efficiently combat crime.

To carry out his role fairly and to be seen as a strong bulwark of the rule of law, the Public Prosecutor must not be, nor be seen to be, too close to any other official organ of the State or grouping, or other powerful corporate or individual interest. (Evans, 2006)

The prosecutors' independence is not threatened by the executive. For example in the Public Ministry Reports for 2005-2008 we find out only mentions about the good relation which facilitated the project cooperation under the Phare Programme and the elaboration of normative rules; they only enable the cooperation among the state bodies in their common struggle against crime in general.

Also, according to the provisions stipulated in art. 414 of the Code of Criminal Procedure and in art. 329 of the Code of Civil Procedure, *the Minister of Justice can demand* from the Attorney General of the Prosecution Office attached the High Court of Cassation and Justice *to file an appeal in the interest of the law* before the High Court of Cassation and Justice, in either civil or criminal matters.

The Public Prosecutor's Office is not subordinated, either financially or organizationally, to the Ministry of Justice, since it has his own legal personality and it is a primary expenditure decision-maker.

According to these regulations, we can notice the restricted role of the Ministry of Justice in the activity of the Public Prosecutor's Office, and the meaninglessness of subordination according to its prerogatives.

### **3.2. The Public Ministry and the Judicial Authority**

The legal regulation in the matter is given by art. 62 (4) of Law 304/2004, which establishes that 'Prosecution offices are independent in their relations with the courts of justice, as well as with the other public authorities'. It follows that the relation between the courts of justice and the prosecution offices is based on the principles of independence and non-interference, of the separation of functions, and, finally, of coordination and cooperation (Pop, 1946).

According to art. 235 and 262 of the Code of Criminal Procedure, the prosecutor is entitled to decide on the criminal prosecution and with the notification of the courts of justice.

As far as the prosecutor's participation in the trials is concerned, the control possibilities are completely ruled out by the provisions in art. 67 (2) of Law 304/2004, republished, which state that the prosecutor is free to present before the court the conclusions he considers grounded in accordance to the law, considering the evidence provided in the case.

The independence of the Public Prosecutor's Office from the judicial authority is translated in the complete freedom of action and in the right to exercise its prerogatives autonomously, only according to the law and in order to ensure the respect of the law, with no external influences.

The courts of justice cannot prevent the carrying out of the missions of the prosecution office and cannot substitute the latter by issuing procedural acts in its place. Consequently, the courts do not have the right to modify its notifications or to express considerations orally or to motivate their rulings referring to the value of the prosecutors' actions. Also, the president of the panel is not entitled to deny the prosecutor's right to address the court.

Based on the principle of the independence of these two categories of bodies, prosecutors are not subjected to the disciplinary power of the court in which they function, and the possible complaints or observations against them will be addressed to the hierarchically superior bodies, to which they are subordinated.

From what has been stated above, it follows that between the prosecution offices and the courts of justice in the same jurisdiction there are only cooperation relations, formalized through the legal norms mentioned above, and the prosecutor acts in a specific manner in all the fields of activity typical of prosecution offices, being completely sovereign in adopting solutions. The two authorities also cooperate in the matter of enforcing the court orders or any other enforceable orders.

The status of the Public Prosecutor's Office, as an authority which exercises its prerogatives and duties according to the law and in order to ensure the respect of the law, based on the principle of independence, creates an obligation for the courts of justice, as well as for the other state authorities, to abstain from any interference in the activity of the prosecution offices.

According to the 'Standards responsibility and statement of the essential duties and rights of prosecutors' (1999), the prosecutors play a crucial role in the administration of criminal justice and shall strive to be, and to be seen to be, consistent, independent and impartial.

### ***3.3. The importance of ensuring the independence of the Public Prosecutor's Office***

The prosecutor's political independence within the framework of guaranteeing the legality and impartiality of the criminal prosecution was also emphasized within the 1995 Cairo UN Congress on crime prevention and delinquents' treatment.

From the content of the framework documents presented at this congress, it follows that it is necessary to proceed to a reconsideration and reassertion of the prosecutor's crucial role in the management of criminal cases, as well as to guarantee the exercise, independent of any political interference, of these important responsibilities, in accordance with the spirit of the UN guiding principles.

Nevertheless, these principles can also be found in Recommendation no. 19 (2000) issued by the Council of Europe's Committee of Ministers; this document, starts from the premises that the Public Prosecutor's Office plays a vital role in the criminal justice system, and establish that 'States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference (from the executive power – author's note) or unjustified exposure to civil, penal or other liability. ... Public prosecutors should not interfere with the competence of the legislative and the executive powers.'

'Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognized by international law.'

#### **4. The judiciary – as hindrance to illegal administrative activities**

The actions of the administrations sometimes cause dissatisfaction, offends interests, bring about complaints. These complaints come especially from individuals, who are in contact with the public administration. But within the administrative structures there are local authorities, public establishments, corporations etc., which are elements of these administrative structures, and which also often complain against their superiors, against the central administrative bodies, against other administrative bodies, waiting for these to do what they think it is their obligation.

All these complaints must be examined in order to ensure the good functioning of the services and the carrying out of justice. The errors must be fixed and the abuses must be eradicated; the good functioning of the services must be supervised. This permanent activity of checking, fixing, restoring, is extremely important for the good of the administered, for the legal order and for the general order within the state.

People should be defended against the dissatisfactions which arise from the actions of the administration, considering that the protests generated by the actions of the administration can trigger turmoil, press campaigns, political difficulties.

In any democratic regime, the administration is subjected to the law and to the judge; it can be coerced to appear in court, before the judicial judge or before the administrative judge. The subordination of the administration to justice is more or less complete. The administration which always benefits of a range of liberties puts up a certain resistance.

The subordination of the administration to justice was the result of a slow process, and there are still tendencies of evading the process and legal possibilities to escape.

The administration gets away from the judiciary for government or state acts and for everything connected to the opportunity. It puts up resistance, often by omission,

therefore not by action, but by inaction, and for such cases, new legal texts and jurisprudence have emerged, which have confirmed the possibility of notifying the judge.

The Public Prosecutor's Office and the public administration, once the Romanian public administration reform was promoted, have become the two main actors of the struggle against corruption, which is considered to be the major factor of the inability to act and to meet the citizen's needs.

The premise of limiting the power abuse and the corruption is to make the institution accountable to the citizens, by forcing the government and all public servants to obey the law and its principles.

There are exceptional situations, when the emergency of certain imbalances generates crises in some segments of the society and consequently the political-administrative practice in Western countries revealed the need to establish the so-called 'mission administrations', i.e. authorities meant to manage imbalances, crises, projects and to disappear once the mission is accomplished.

In this sense, in Romania, the National Anti-Corruption Directorate was created, an authority meant to carry out inquiries at all competence levels in order to restrict and limit the possibilities of the public servants to use the law for purposes which are not in accordance with its reason of being.

The National Anti-Corruption Directorate was founded through the Government Emergency Ordinance no. 43/2002 under the name of the National Anti-Corruption Prosecution Office; following the successive legislative modifications, it became the structure, with juridical personality, within the Prosecution Office attached to the High Court of Cassation and Justice, specializing in the struggle against corruption at a high and middle level.

The Attorney General of the Prosecution Office attached to the High Court of Cassation and Justice runs the National Anti-Corruption Directorate through the chief prosecutor of this Directorate, assimilated to First Deputy Attorney General, two deputy chief prosecutors, assimilated to the deputy attorney general and four head of department prosecutors. They are appointed, according to the provisions in art. 54 of Law no. 303/2004, by the President of Romania, at the proposal of the Minister of Justice, with the assent of the Superior Council of Magistracy, for a period of 3 years, with the possibility of a single re-appointment.

In accordance with the organization law, the National Anti-Corruption Directorate is a complex structure, in the sense that the prosecutors working within the Directorate are assisted in the prosecuting activity both by judiciary police officers and agents, and by highly qualified specialists in fields such as: economics, finance, banking, customs, IT, as well as in other fields.

The National Anti-Corruption Directorate has, by law, financial independence, in the sense that it is financed from the state budget, and its funds are distinctly emphasized in the budget of the Prosecution Office attached the High Court of Cassation and Justice, and the chief prosecutor of the directorate is a secondary credit release authority.

It is an independent entity in relation to the courts of justice, with the prosecution offices, as well as with the other public authorities, exercising its prerogatives only on legal grounds and in order to ensure the respect of the law.

##### **5. Prosecution Office or Directorate – a body specializing in the struggle against corruption**

The body specializing in the struggle against corruption was set up through the Government Emergency Ordinance no. 43/2002, as shown above, under the name of the National Anti-Corruption Prosecution Office, an autonomous structure, with legal personality, within the Public Prosecutor's Office, which is run by a prosecutor-chief of the Public Prosecutor's Office attached to the High Court of Cassation and Justice.

The prosecution office carried out its activity according to the principles of legality, impartiality and hierarchical control, under the authority of the minister of justice.

Following the debates on the place and missions of the Public Prosecution Office within the system of public authorities, a (probably too) important place was held by the debate on the legal nature of the National Anti-Corruption Prosecution Office (the present National Anti-Corruption Directorate). Should the National Anti-Corruption Prosecution Office have been an *independent body, should it have been autonomous, taken from under the authority of the Public Prosecution Office, and, consequently, from under the authority of the Ministry of Justice as well?* These are the questions which agitated the political scene, and even the experts in the field.

Within the constitutional and legal framework of the time when this institution was created, there wasn't a full awareness of its importance and role in combating corruption. Most importantly, it wasn't noticed that this institution was unable to bring high officials – deputies and senators – to justice, in court, and therefore it cannot be autonomous.

It was the organizational flaws, caused by the taking over of the same organizational system with that of the Public Prosecutor's Office, which brought about harsh criticism regarding the existence of the institution. Moreover, the 2004 Monitoring Report on the struggle against corruption, fraud and money laundering remarked that 'The National Anti-Corruption Prosecution Office is perceived as inefficient, privileged from a logistic point of view, and targeting only the small and sporadic corruption, and not the «high» corruption which it was supposed to investigate' (paragraph 27).

During 2002-2004, in the attempt to answer the alarming proportions of the corruption phenomenon, there were numerous legislative interventions aimed at the activity of this institution, but the one that significantly affected the institution occurred in 2005.

Three years after the Prosecution Office was founded, the Constitutional Court, through its Decision no. 235/2005, took out of its jurisdiction the offences committed by deputies and senators, arguing that *only* the Prosecution Office attached to the High Court of Cassation and Justice has the constitutional right, according to art.

72 (2) of the Constitution<sup>5</sup>, to prosecute a Member of Parliament and bring him to court under criminal charges.<sup>6</sup> Through this ruling, the investigation of high-level corruption was thus fragmented, which allowed file disjoining, procrastinations and conflicts of competence between the National Anti-Corruption Prosecution Office and the Prosecution Office attached to the High Court of Cassation and Justice, all these adversely influencing the efficiency of the struggle against high level corruption.

In this sense, amending the legal regulation of the matter became a necessity, and this was to be done by reorganizing the National Anti-Corruption Prosecution Office and turning it into a Directorate, an autonomous structure, with legal personality, within the Prosecution Office attached to the High Court of Cassation and Justice.

The institution is meant to play the accuser's role in the corruption cases as soon as they are identified. We can identify its competence area, i.e. the offences<sup>7</sup> provided by Law no. 78/2000 on the prevention, discovering and punishing of corruption offences, with the subsequent amendments and additions, offences committed, by superior clerks such as: deputies, senators, members of the Government, prosecutors and judges, including those working within the High Court of Cassation and Justice and the Constitutional Court, members of the Superior Council of Magistracy, the president of the Legislative Council, the Ombudsman, the presidential counsellors and the state counselors within the Presidential Administration, members and financial reviewers of the Court of Auditors and of the regional chambers of auditors, the governor, the first vice-governor and the vice-governor of the National Bank of Romania, the president and vice-president of the Competition Council, officers, admirals, generals and marshals, police officers, heads of the central, territorial and local administration

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5 Art. 72 (2) of the Romanian Constitution – ‘Deputies and senators can be prosecuted and sent to court for offences ... but they cannot be searched, apprehended or arrested without the consent of the Chamber they are members of, only after they have been heard. The prosecution and indictment can *only* be carried out by the Prosecution Office attached to the High Court of Cassation and Justice. The competence to hear such cases belongs to the High Court of Cassation and Justice.’

6 Two judges of the Constitutional Court expressed their separate opinions, stating that the National Anti-Corruption Prosecution Office has the competence to criminally investigate members of parliament, considering the content of art.131 (2) and (3) of the Romanian Constitution – the Public Prosecutor's Office carries out its activities through prosecutors, organized in prosecution offices, which function attached the courts of justice. Thus, it follows that the legislator is free to establish prosecution offices attached to the courts of justice, which means that the National Anti-Corruption Prosecution Office is competent to prosecute cases involving deputies and senators, since it functions attached to the High Court of Cassation and Justice.

7 Among the crimes provided in Law 78/2000, we shall mention those which have the highest impact at the level of the Romanian public life: bribery and bribing, traffic of influence, receiving undue benefits, setting a diminished value of assets, the use of information not meant to be publicized, blackmail, forgery and the use of forged documents, tax evasion, and offences against the financial interests of the European Communities.

authorities, the lawyers and commissioners of the Financial Guard, the customs personnel, the judicial liquidators etc.

We may notice that this institution has control power over all the other public authorities or institutions, no matter their power sphere; moreover, it can even bring to court the members of the constitutional guarantor itself (the judges of the Constitutional Court) for the offences committed.

The activity of the National Anti-Corruption Prosecution Office, currently Directorate, in its six years of existence, has been emphasized, praised or criticized, depending on the results achieved.

**Table 1:** The evolution of the activity of prosecuting the corruption, assimilated or connected offences, according to the Annual Reports of the National Anti-Corruption Directorate

-	Year	Total	-	Year	Total
No. of cases to solve	2003	2229	No. of cases solved (including declinings of competence and case connections)	2003	1514
	2004	2450		2004	1841
	2005	2314		2005	1633
	2006	2615		2006	1509
	2007	3319		2007	2070
	2008	3959	2008	2302	
No. of solved cases	2003	715	No. of indictments	2003	146
	2004	609		2004	169
	2005	681		2005	111
	2006	1106		2006	127
	2007	1249		2007	167
	2008	1657	2008	163	
No. of offenders brought to justice	2003	548	Corruption, assimilated or connected offences committed	2003	1428
	2004	451		2004	954
	2005	744		2005	2501
	2006	360		2006	929
	2007	415		2007	958
	2008	683	2008	1304	
Definitive convictions	2003	17	Unsolved cases, for more than 6 months from the start of the prosecution <sup>2</sup>	2003	24
	2004	85		2004	23
	2005	73		2005	52
	2006	80		2006	111
	2007	63		2007	128
	2008	63	2008	172	
Unsolved cases, for more than one year from the notification <sup>1</sup>	2003	-			
	2004	-			
	2005	340			
	2006	742			
	2007	499			
	2008	665			

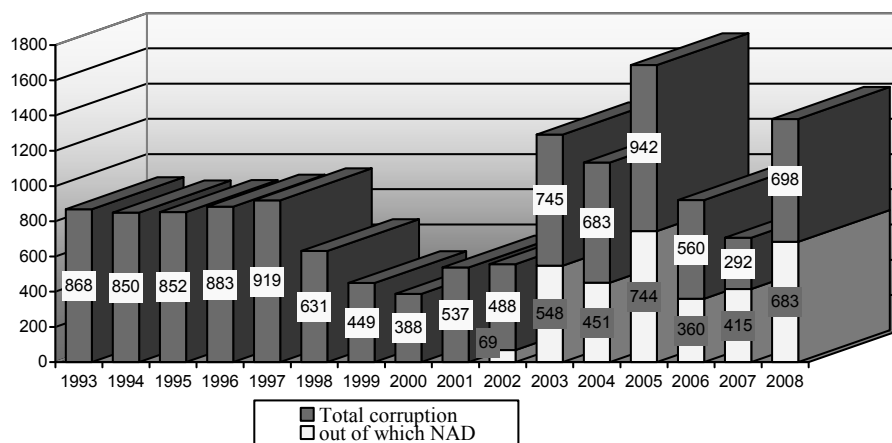
<sup>1</sup> For the year 2005 the report was made for unsolved cases for more than 3 months from the notification.

<sup>2</sup> For the period 2003-2006, the report was made for unsolved cases for more than 3 months from the start of the prosecution.

The reports submitted annually by the Directorate (see Table 1, in which we briefly present the results achieved by the National Anti-Corruption Directorate in the period 2003-2008) confirmed the success of this institution. Thus, if during the 1990s, the fact that corruption offences were not emphasized at the level of the society, was also due to the fact that they were not perceived as affecting the social organization of the state. Once the incriminating legal regulation was adopted, in May 2000, we

could also notice an increase of the corruption perception index<sup>8</sup> which triggered the emergency of setting up the National Anti-Corruption Prosecution Office in 2002.

With the emergence of the institution, we may notice an increase in the number of offenders brought to justice for corruption offences.



**Figure 2:** Offenders brought to justice for corruption offences.

Total out of which the National Anti-Corruption Directorate, 1993-2008

Although there was a significant increase in the number of the cases notified to the Directorate and in the cases solved out of the total of cases to be solved, we notice that the level of the definitive conviction sentences is the same (the year with the highest number of convictions is 2004, with 85 convictions, as opposed to the 63 in the last two years). Also, we may notice a high number of associated or connected corruption offences committed by an accused person (the average of two offences per accused, given that the year 2005 witnessed the highest number of offences per accused person) one accused person committed an average of three offences, we have to admit that the year 2005 is the Directorate's most prolific year.

If we analyze the Reports of the Directorate in more detail, we can notice that the offences for which the prosecutors drew up the greatest number of indictments were, respectively:

- Public malversation;
- Forgery and use of forged documents;
- Bribery.

With respect to this offence, we notice that there is no correspondence with bribing, which is four times less frequent. For instance, in 2008 we have 111 bribery cases (soliciting bribe) and only 25 of bribing (offering bribe), and in 2007 – 125 cases of bribery, as opposed to 39 of bribing.

- Offences against the financial interests of the European Communities.

8 [Online] at [http://www.transparency.org.ro/politici\\_si\\_studii/indici/ipc/index.html](http://www.transparency.org.ro/politici_si_studii/indici/ipc/index.html), accessed July 23 2009

Since Romania acceded to the European Union, the attention has also been focused on the offences against the financial interests of the European Communities<sup>9</sup>, so that, if in 2005 the National Anti-Corruption Directorate drew up indictments for only 14 cases, the number of indictments increased as follows: in 2006 – 32 cases, 2007 – 81 cases, 2008 – 93 cases.

The whole activity carried out by this institution denies what a Member of Parliament stated when it was founded, namely that it would become the ‘National Anti-Corruption Closet’<sup>10</sup>. The specialization of this Directorate, the functional autonomy that it has within the Public Prosecutor’s Office, its independence in relation to the courts of justice, its composition (judiciary police officers, specialists in different fields who will make up a multidisciplinary team) represent, together with the gradual operability, the facts which guarantee its well-functioning.

## 6. Conclusions

Coming back to the issue regarding the position of the Public Prosecutor’s Office within the state structures, once we examined the place, position, role and activity of the National Anti-Corruption Directorate, we can draw a number of conclusions regarding the institutional uncertainty of such institutions within the Romanian rule of law.

We can consider the Public Prosecutor’s Office, as we described it above, as an institution which (originally) emerged in the Romanian constitutional system at the junction of the state powers, but which didn’t remain in that position. We support this opinion, based on legal provisions included in the Romanian Constitution and in the essential institutional regulations, all presented in this study.

While exploring this issue, we could notice that the Public Prosecutor’s Office and the National Anti-Corruption Directorate were placed at the intersection of the three powers, and this couldn’t ensure the required independence and impartiality. Considering the original regulations<sup>11</sup> regarding the National Anti-Corruption Prosecution Office, as part of the Public Prosecutor’s Office, we could notice that it was meant to submit the

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9 This category of offences was brought under the competence of the National Anti-Corruption Directorate in 2005.

10 Deputy Bolcaş, Lucian, Augustin, in the Deputy Chamber session of 2006, February 27, for re-examining the Law which repealed the Government Emergency Ordinance no. 134/2005, which was later adopted.

11 The National Anti-Corruption Prosecution Office was supposed to draw up its annual activity report and to present it before the Parliament (art. 3 (1)(e) of the Government Emergency Ordinance no. 43/2002 regarding the National Anti-Corruption Prosecution Office). This legal provision was modified by the Government Emergency Ordinance no. 134/2005. Thus, the annual activity report of the National Anti-Corruption Directorate is to be drawn up and submitted to the Superior Council of Magistracy and to the Minister of Justice no later than February of the next year, and the Minister of Justice will present before Parliament his conclusions on the activity report of the National Anti-Corruption Directorate.

Annual Report to the Parliament for debate, although the institution was supposed to carry out the criminal prosecution of members of the legislative.<sup>12</sup> Since this provision was eliminated, there is no interference any longer between the Public Prosecutor's Office and the present National Anti-Corruption Directorate, on one hand, and the legislative power, on the other.

The regulations regarding the relation between the Public Prosecutor's Office and the executive power do not have the same outcome; thus, prosecutors are appointed by the head of the state at the proposal of the Superior Council of Magistracy, they are under the authority of the minister of justice, they are controlled by the Minister of Justice whenever he considers it appropriate, and the National Anti-Corruption Directorate submits to the Minister of Justice its annual report, which is then to be submitted to the Parliament. It follows that the Public Prosecutor's Office has relations with both entities belonging to the executive. We can also remark that certain organizing principles were borrowed from the administration, e.g. the hierarchical subordination – 'Prosecutors in each prosecution office are subordinated to the chief of the respective prosecution office. The chief of a prosecution office is subordinated to the chief of the higher-ranking prosecution office from the same jurisdiction' (art. 62 (1) and (2), Law no. 304/2004).

For Romania, if the Public Prosecutor's Office were no longer under the authority of the executive power and if it has absolute autonomy, the effects of this solution would be harmful, since this would actually mean a return to the Soviet model, in which the Prosecution<sup>13</sup> was the toughest instrument at the disposal of the political power, of the unique party. In our view, such a formula is not compatible with political pluralism and the separation of powers, and *the removal of the Public Prosecutor's Office from under the authority of the Ministry of Justice, and the Executive Power, respectively, cannot result in a so-called removal of the influence of the political sphere over the prosecutors*; on the contrary, this would create a totally independent entity which could be subject to the influence of the political sphere. A new power would actually be created. In this case, we need to add an explanation: it is not the bond of

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<sup>12</sup>In this sense, the Attorney General Amarie, Ion rightfully asserted in 2004 that 'The presentation of and debate on the activity report in Parliament would adversely influence the ongoing criminal investigations in these cases', and, also, 'it would bring about political debates and accusations of political partisanship, which would lead to the politicization of the struggle against corruption and to the exertion of new pressures on the normal course of the activity of the National Anti-Corruption Prosecution Office', <http://www.newsbcovina.ro/actualitate>, 9 June 2004.

<sup>13</sup>Law no. 6/1952 on the establishment and organization of the Prosecution eliminated the phrase 'Public Prosecutor's Office' from all legal texts, replacing it by 'prosecution', and the Prosecution Office is also named Prosecution. The new institution was an independent body, exclusively subordinated to the supreme body of the state power – the Great National Assembly, which appointed the attorney general – and the Council of Ministers. The Prosecution had the function to supervise and to enforce the law, to protect citizens' rights and legal interests. It was considered to be a separate, independent power.

the Public Prosecutor's Office to the Executive power that creates the conditions for exercising political pressure (the real political power is held by the Parliament – the real holder of the primary regulatory power), but the way in which competencies are distributed and the way in which the conditions of exercising these competences are guaranteed. Political pressure can be exerted no matter the power which the Public Prosecutor's Office is subordinated to. As we have stated in more than one occasion, some of the attempts which are being made to remove the Public Prosecutor's Office from the Executive constitute an overriding of the legal provisions and of the European practice in the matter. On the other hand, the problem has already been solved, so to say, from a legal point of view, by the highest authorized body, namely the European Commission for Democracy through Law (the Venetia Commission), which came to a conclusion similar to our assertions<sup>14</sup>.

With respect to the relation between the judicial authority and the Public Prosecutor's Office, considering that they are both independent (art. 59 (4), Law on the organization of the judiciary no. 304/2004), we notice that the latter most often interacts with the Superior Council of Magistracy<sup>15</sup> which has the role of a court of justice, through its divisions, in the matter of the prosecutors' disciplinary liability (art. 134 (2), the Romanian Constitution), which can request for a prosecutor to be appointed and relieved of his post by the head of the state, it can also request to the Minister of Justice to order a control of the prosecutors, and which decides on the establishment or removal of the divisions subordinated to the National Anti-Corruption Directorate. For a better understanding of the place of the Public Prosecutor's Office in between the executive and the judiciary, we render the following graphic representation.

In order to emphasize the independence granted to the Public Prosecutor's Office, the Law on the organization of the Office established that the Attorney General of the Prosecution Office attached to the High Court of Cassation and Justice is a primary credit release authority (art. 67 (3), Law no. 304/2004); and the chief prosecutor of the National Anti-Corruption Directorate is a secondary expenditure decision-maker (art. 4 (2), Government Emergency Ordinance no. 43/2002). Therefore we cannot identify a financial subordination to the Minister of Justice or any other public authority.

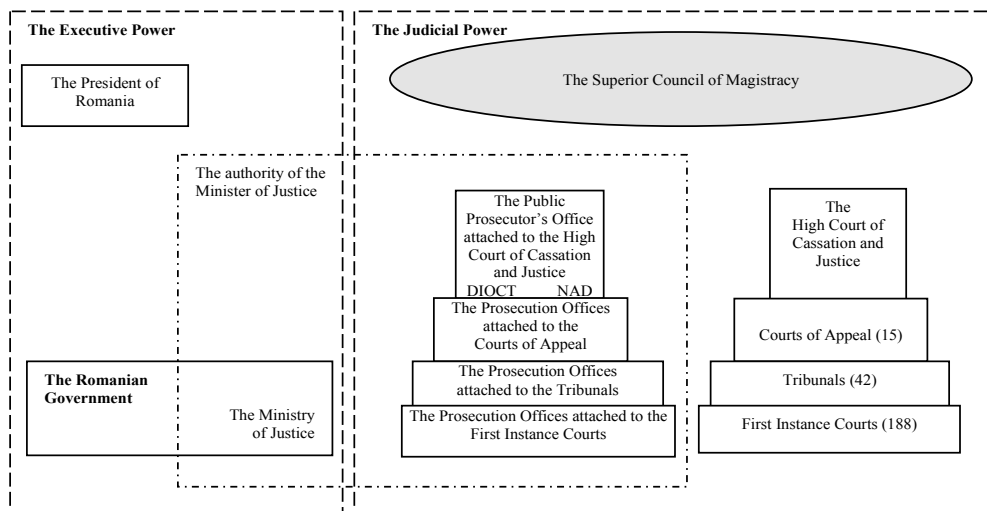
Following this study over the Romanian Public Prosecution Office in between the executive and the judiciary we could not find a general answer to the main question raised - 'Does the Public Prosecution Office have an uncertain status in the rule of law?'. When we started this analysis, we thought that in the case of Romania, the

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<sup>14</sup>The Commission reiterates that the prosecution service does not necessarily have to be independent, since to guarantee consistency in crime policy, as defined by the Government in a democratic context, it is preferable that the prosecution service be attached to the Ministry of Justice, although each prosecutor retains full discretion to deal with individual cases as he or she sees fit. [Online] at [http://www.coe.ro/pdf/CDL-AD\(2002\)021-e.pdf](http://www.coe.ro/pdf/CDL-AD(2002)021-e.pdf), accessed July 23 2009.

<sup>15</sup>Guarantor of the independence of justice (art. 134 (4) of the Romanian Constitution) also referred to as the 'umbrella' of the judiciary.

Public Prosecution Office had an uncertain status, but we have to recognize that, taking into consideration the legal system it is no longer the case.



**Figure 3:** The position of the Public Prosecutor’s Office in between the executive and the judiciary

The independence of the Public Prosecutor’s Office and the National Anti-Corruption Directorate stipulated in legal norms, constitution and organic laws, respectively, is very important, especially if we consider their role in the society. Therefore, we consider that it is the duty of the government institutions to ensure the independence of the magistrates – both judges and prosecutors. The legislative and the executive should abstain from taking measures which could jeopardize this independence. We consider that there are still things to be made in this Directorate. Thus, the legislation should include provisions regarding the sanctions applicable to the persons who try to influence the magistrates by any means. Also, magistrates should not be forced to provide information on the current cases, except within the judiciary.

In the activity of the Public Prosecutor’s Office, procrastination of the trial in the court of justice until the offence falls under the statute of limitations has a particularly adverse effect, and therefore we consider it useful and necessary to institute a deadline for bringing an offence in court, which should vary according to the complexity of the case.

From the analysis of the Romanian judicial system, it follows that this system mainly aims to guarantee the actual independence of the judiciary, to ensure the transparency of the proceedings, to improve the quality of the proceedings, to increase efficiency and to turn the judicial system accountable, to guarantee the free access to justice, as well as to combat corruption.

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