



**OFFICE OF THE
PROSECUTOR
(ICC) – LEGAL
POSITION
WITHIN THE
COURT**

Zrinko Tenšek
Faculty of law
Zagreb

PRESUMPTION OF INNOCENCE

Everyone shall be presumed innocent until proved guilty **by the Prosecutor** before the Court in accordance with law.

ARTICLE 42

- Office of the prosecutor shall act independently as a separate **organ of the Court**. It should be responsible for receiving referrals on any substantiated information of the crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court.
- The Prosecutor and deputy Prosecutor shall be persons of **high moral character**, be highly competent in and have extensive practical experiences in the prosecution or trial of criminal cases.

ORGANS OF THE COURT :

1. The Presidency

2. An Appeals Division, Trial Division and Pre-Trial Division

3. Office of the Prosecutor

4. The Registry



3 FUNCTIONAL DIVISIONS

- Prosecutor and deputy prosecutor
(shall be elected by an absolute majority of the members of the assembly of States Parties)
- Investigations division
- Jurisdiction, complementarity and cooperation division

EXERCISE OF JURISDICTION

(Prosecutor = key figure)

- The court may exercise its jurisdiction with respect to crime referred to in article 5 if :
 - Prosecutor is referred to by a **State Party**
 - Prosecutor is referred to by **Security Council**
 - **Proprio motu**

INITIATION OF AN INVESTIGATION

- The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:
 - (a) The information available to the Prosecutor provides a *reasonable basis* to believe that a crime within the jurisdiction of the Court has been or is being committed;
 - (b) The case is or would be admissible
 - (c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve **the interests of justice.**
- If the Prosecutor determines that there is no reasonable basis to proceed and his or her determination is based solely on subparagraph (c) above, he or she shall inform the Pre-Trial Chamber

The Prosecutor shall:

- (a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate **incriminating and exonerating** circumstances equally;
- (b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and
- (c) Fully respect the **rights of persons** arising under this Statute.

• The Prosecutor may:

- (a) Collect and examine evidence;
- (b) Request the presence of and question persons being investigated, victims and witnesses;
- (c) Seek the cooperation of any State or intergovernmental organization or arrangement in accordance with its respective competence and/or mandate;
- (d) Enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;
- (e) Agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents; and
- (f) Take necessary measures, or request that necessary measures be taken, to ensure the confidentiality of information, the protection of any person or the preservation of evidence.

CONFIRMATION OF CHARGES

- Pre- Trial Chamber shall hold a hearing to confirm the charges on which the Prosecutor **intends to seek trial.**

Prosecutors presence is condicio sine qua non !

At a hearing the Prosecutor will support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charge.

Chamber shall determine whether there is sufficient evidence to establish substantial grounds to believe

Prosecutor in Croatia (article 125 of the Constitution)

- “The Public Prosecutor Service is an autonomous and **independent judicial body** empowered and duty-bound to instigate prosecution of perpetrators of criminal and other penal offences”



The Statute..

- The seat of the Court shall be established at The Hague in the Netherlands
- The court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its function and the fulfilment of its purposes
- The Court shall apply: In the first place, this Statute, Elements of Crimes, and its Rules of Procedure and Evidence

- 1. When a situation has been referred to the Court pursuant to article 13 (a) and the **Prosecutor** has determined that there would be a reasonable basis to commence an investigation, or the **Prosecutor** initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The **Prosecutor** may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.
- 2. Within one month of receipt of that notification, a State may inform **the Court** that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

THANK YOU FOR YOUR
ATTENTION!!