

Declaration

Bucharest, 29th September 2007

UNJR deems highly necessary that the Romanian society – in its entirety – ensures and assumes a working rule of law system in Romania, in which all authorities and fundamental institutions have a well-defined place, with clear attributions and objectives for both citizens and specialists.

Among these authorities we include the General Prosecutor's Office, more precisely each Prosecutor's Office and each individual prosecutor, whose role in preserving the rule of law and in defending the rights and interests of citizens **is essential**.

The public opinion is very interested in the activity of prosecutors, in part because of broad media coverage. Sometimes even politicians or media representatives request or offer explanations themselves. More often, the prosecutors' decisions to take some cases to court make the object of public analysis and scrutiny. Within this context questions concerning the position and status of public prosecutors are legitimate. At least at a declarative level, the opinion that the prosecutor's status should protect the public interest is unanimous, while the only disagreement envisages the practical manner through which this objective can be achieved.

UNJR notes that the Fundamental Law of the Romanian State, the Constitution of Romania, is a source of confusions concerning the status of the General Prosecutor's Office, the Prosecutor's Offices and the prosecutors themselves. Thus, although their activity is ascribed to the judiciary in the broadest sense, it is still under the authority of the Minister of Justice (art. 132(1) of the Romanian Constitution). **This is obviously a contradiction of principles.**

This constitutional ambiguity has generated and still generates a climate of uncertainty for all the parties involved or interested: prosecutors, courts, citizens, institutions.

This is why UNJR appeals to the judiciary in all its branches - the professional associations of judges and prosecutors, the political class and the civil society - to give, through their specific means, a clear definition to the status of the Prosecutor's Offices and the Prosecutors. This definition

should fit the necessities of the Romanian society and ensure a genuine cooperation between the state's Constitutional authorities, without unjustified interferences among them.

UNJR asserts that the only way to clarify the status of the Prosecutor's Offices and the prosecutors is a Constitutional review, through which the Romanian society will have to decide between the following two options:

- a) the independence of the Prosecutor's Offices and prosecutors by removing them from the authority of the Minister of Justice;
- b) the inclusion of the Public Prosecutor's Offices in the system of the Executive.

UNJR, sharing the values of the "Declaration of principles concerning the public prosecutor" adopted by MEDEL (Magistrats Europeens pour la democratie et les libertes) at Naples on the 2nd of March 1993,

Acknowledging the "Guide concerning the role of Public Prosecutor", adopted on the eighth meeting of the UN on the prevention of crimes and the treatment of the accused, Havana, Cuba, 27th August-7th September 1990,

Taking into consideration the Recommendation 19/2000 of the Committee of Ministers of member states concerning the role of criminal prosecution within the system of criminal justice,

Holds that the following elements should be taken into account for a future Constitutional review of the status of the Prosecutor's Offices and the individual prosecutors:

1. An effective judiciary is unthinkable in the absence of independent judges. *Mutatis mutandis*, an effective criminal investigation can not be guaranteed in the absence of independent prosecutors. Their independence is justified by their participation to the realisation of criminal justice;

2. The quality of criminal investigation is inherently conditioned by its independence and often has a decisive influence on the criminal proceedings before the court; the lack of independence of public prosecutors in delivering their duties directly and negatively affects the independence of the entire judiciary and particularly the independence of courts and judges;

3. The hypothetical conclusion that the public prosecutor's status should be of subordination towards the Executive constitutes a real threat to the independence of justice as the main pillar of the rule of law. Placing the prosecutor's activity under the authority of the Minister of Justice is unnecessary and unjustified. It is important that Prosecutor's Offices function free of any influences and above all doubts, including in cases dealing with State representatives;

4. The independence of prosecutors is also essential through the perspective of the equal weapons, a central condition for the right to a fair trial, as defined by ECHR's case law related to the application of article 6 of the European Convention on Human Rights. This requirement also demands the separation and the distinct consolidation of the judicial functions: indictment, defence, and ruling. All these ought to be exercised with uncontested independence, free from any suspicion of external interference or pressure;

5. From the perspective of internal organization, the management of the General Prosecutor's Office and of the Prosecutor's Offices, and the procedure of appointing the General Prosecutor of Romania and the other positions of authority, the only Constitutional authority with such attributions should be the Superior Council of Magistracy, through its Prosecutor's Section. Thus all external and potentially perturbing factors, independently of their source, can be eliminated.

Dana Girbovan – President of UNJR

(Judge at the Bihor Court)

Horatiu Dumbrava – founding member of UNJR

(Judge at the Tg-Mures Appeal Court)