

163. The Venice Commission therefore recommends to Romanian authorities to:

- Re-consider the system for the appointment / dismissal of high-ranking prosecutors, including by revising related provisions of the Constitution, with a view to providing conditions for a neutral and objective appointment/dismissal process by maintaining the role of the institutions, such as the President and the SCM, able to balance the influence of the Minister of Justice;
- Remove or better define the provisions enabling the superior prosecutors to invalidate prosecutors' solution for groundlessness;
- Remove the proposed restriction on judges and prosecutors freedom of expression;
- Supplement the provisions on magistrates' material liability by explicitly stating that, in the absence of bad faith and/or gross negligence, magistrates are not liable for a solution which could be disputed by another court; amend the mechanism for recovery action in such a way as to ensure that the action for recovery only takes place once and if liability of the magistrate has been established through the disciplinary procedure;
- Reconsider the proposed establishment of a separate prosecutor's office structure for the investigation of offences committed by judges and prosecutors; the recourse to specialized prosecutors, coupled with effective procedural safeguards appears as a suitable alternative in this respect ;
- Re-examine, with a view to better specifying them, the grounds for the revocation of SCM members; remove the possibility to revoke elected members of the SCM through the no-confidence vote of the general meetings of courts or prosecutors' offices (including by the way of petition);
- Identify solutions enabling more effective participation, in the work of the SCM, of SCM members who are outside of the judiciary;
- Abandon the proposed early retirement scheme unless it can be ascertained that it will have no adverse impact on the functioning of the system;
- Ensure that the proposed "screening" measures of magistrates are based on clearly specified criteria and coupled with adequate procedural safeguards and a right of appeal to a court of law, and identify ways to strengthen oversight mechanisms of the intelligence services.

164. The Venice Commission remains at the disposal of the Romanian authorities for further assistance.