REPUBLIC OF BULGARIA

INSPECTORATE AT THE SUPREME JUDICIAL COUNCIL

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Information in connection with the questions addressed to the ISJC about the meeting with representatives of the European Commission, held on 11th March 2022

Please, find below our answers to the questions posed by you:

I. On the first question regarding the draft act, which according to your question "is currently under public discussion and which concerns the Inspectorate at the Supreme Judicial Council", we would first like to make a few clarifications so as not to leave unresolved issues.

Presently, a draft act for amendment and supplement of the Judicial System Act (DAAS the JSA) has been submitted to the National Assembly by the Government of Republic of Bulgaria, on which the public discussion has ended. In this bill, the only provisions concerning the ISJC and the SJC relate to amendments to Art. 28, para. 1 and Art. 50, as well as to changes in art. 225, para. 1 of the JSA. The amendments proposed by the government in Art. 28, para. 1 and Art. 50 of the JSA concern the elimination of the possibility at the expiration of office or at its early termination, the elected members of the SJC, the Chief Inspector and the inspectors in the ISJC to be reinstated as a judge, prosecutor or investigator one level higher than before the election. The other amendments in the draft act regarding the ISJC and the SJC concern the waiver for the elected members of the SJC, the Chief Inspector and the inspectors in the ISJC of the right to have their length of service recognized pursuant to Art. 225, para. 1 of JSA and waiver of their right to receive monetary compensation under Art. 225, para. 4 of the JSA.

ISJC participated in the public discussion of the draft act, and at its meeting on 07.02.2022 adopted an opinion expressing disagreement with the proposed changes with detailed arguments. The opinion was published on the ISJC website and sent to the Ministry of Justice. If you wish, we will send it to you additionally.

Despite the subsequent changes in the draft act after the public discussion, approved by the Council of Ministers, our negative opinion on it remains unchanged.

After this clarification, the answer to your question about the draft act you are probably asking about, is yes:

As we have already informed you, the Inspectorate at the SJC has identified a number of good practices in the judicial systems of the EU Member States and the Council of Europe in our work on the project "Support for Improving the Capacity of the Inspectorate at the Supreme Judicial Council of Republic of Bulgaria", finalized in

2020 and funded by the Structural Reform Support Service (SRSS) of the European Commission and implemented jointly with the Department for Legal Cooperation of the Council of Europe. As a result of this project in June 2020 (by letter dated 03.06.2020 on the register of the ISJC) we sent a proposal to the Minister of Justice to establish a working group to develop a draft for amendment and supplement of the JSA in accordance with the identified positive models of judicial inspection in the EU Member States and the Council of Europe.

In connection with this proposal made by us and regardless of what is entered as a factual basis in Order No. LS-13-88/21.12.2020 of the Minister of Justice "preparation of legislative amendments to address issues related to the Inspectorate, raised as concerns in the Report on the rule of law for 2020, as well as by the Venice Commission", a working group was formed with representatives of the ISJC, SJC, SCC, SAC, SCP and magistrates at various levels in the judiciary. The working group held two meetings - on 02.02.2021, at which the ISJC representatives were assigned to prepare draft specific provisions amending and/or supplementing the JSA, and on 28.04.2021 when the discussion of our proposals sent to the Ministry of Justice on 24.02.2021 started. Since 28.04.2021 until now the working group has not met[1].

Recently, however, on 2nd February 2022, we received a new letter from the current Minister of Justice, inviting us to send our proposals for amendment and supplement of the Judicial System Act. Therefore, with a letter with ref. No. A-22-158/17.02.2022 for the third time in a row we presented our vision for better accuracy of a number of provisions of the Judicial System Act.

Our proposals are in the following main areas:

• proposals in connection with the inspections of the declarations of property and interests under Chapter Nine, Section Ia of the JSA;

• proposals in connection with the checks of the integrity of the magistrates under Chapter Nine, Section Ib of the JSA;

• proposals in connection with the identification of the disciplinary violations provided for in Art. 307, para. 3 of the JSA;

• proposals related to the status of the Inspectorate and the inspectors in the judiciary.

1. The proposed amendments and supplement **to the provisions of Chapter Nine, Section Ia of the JSA** improve the conditions and the order in which magistrates declare their property and interests in front of the ISJC.

The main purpose of the proposed changes is to ease the regime for filing an annual declaration, as the obligation to submit such a declaration remains only for persons who during the previous calendar year had a change in their property status and this change is subject to declaration (movable or immovable property over BGN 10,000). Our concept is to reduce the number of declarations submitted by magistrates - to an inaugural declaration submitted upon taking office, a final declaration upon dismissal, a declaration filed 1 year after losing the capacity of judge, prosecutor or

[1] The lack of a specific schedule for the preparation of amendments to the JSA is also noted in the Report on the Rule of Law for 2021, p. 8.

investigator, and a declaration on a change in the declared circumstances (by amending Article 175c of the JSA).

In addition, we find that the requirement to publish property declarations of judges, prosecutors and investigators should be abolished, as is the practice in most European countries not to publish these declarations. That is why we propose the declarations under Art. 175a, para. 1, items 1 and 2 of the JSA to remain outside the scope of Art. 175d, para. 1 of JSA, and the provision of Art. 175c, para. 6 of the JSA to be amended, leaving in the text only the obligation of the ISJC to publish on its website a list of persons who have not submitted declarations in time, but not the declarations themselves.

Such an amendment will not lead to the removal of the obligation for magistrates to submit declarations or to the removal of the obligation of the ISJC to verify the declared circumstances and to monitor systemic corruption factors in the work of the judiciary. At the same time, with the abolition of the requirement for filing annual declarations by magistrates in the absence of a change in their property status for the previous year, the burden of filing annual declarations will be eliminated, provided that there is no change in their property.

At the same time, the abolition of the requirement to publish the property declarations of judges, prosecutors and investigators, as is the practice in most European countries, protects the privacy of the magistrate and his family. In France, for example, the publication or disclosure in any way of all or part of the information contained in the declaration is even criminalized.

2. In Section Ib of Chapter Nine of the JSA „Checks on integrity and conflict of interest and on establishing actions that damage the prestige of the judiciary and checks related to violations of the independence of judges, prosecutors and investigators" it was also highlighted the need for changes in the provisions governing their subject matter.

At present, they are inaccurate, which makes it difficult to carry out the inspections themselves.

The significant change we propose in this section of the JSA is dictated mainly by the need for a clear interpretation of the will of the legislator in the adoption of the Law for amendment and supplement of the Constitution of Republic of Bulgaria (promulgated SG No. 100 of 18.12.2015), which assigns to the ISJC the powers to check the integrity of magistrates. As can be seen from the reasons for this law, the Inspectorate at the SJC conducts inspections for conflicts of interest of judges, prosecutors and investigators, verifies the completeness and accuracy of their property declarations, conducts inspections to identify acts damaging the prestige of the judiciary and such violating the independence of judges, prosecutors and investigators. In this sense, Art. 132a, para. 6, sentence 2 of the Constitution should not be interpreted restrictively and hence the JSA should provide for an explicit integrity check. Integrity is a moral category that also covers the performance of the powers or duties of a magistrate in order to prevent conflicts of interest, violations of the requirements of incorruptibility, independence and non-violation of the prestige of the

judiciary. It is therefore a generalizing, collective quality that every judge, prosecutor or investigator must possess. In the current art. 175k, para. 2 of the JSA, as far as the integrity check is concerned, only the acceptance of material or intangible benefits is qualified as "dishonesty", outside the law, i.e. violation of the requirement for incorruptibility, which is too inaccurate and restrictive.

On the grounds of the stated reasons and considering the almost complete overlap of the composition of the violation under Art. 175k, para. 2 of JSA with that of the crime under Art. 301 of the Penal Code (bribery), with the amendments proposed by us to the JSA, all possible manifestations of dishonesty are specified as unacceptable behaviour of magistrates. The inspections of the integrity of magistrates are clearly outlined - behaviour in conflict of interest, violation of the independence of magistrates and damage to the prestige of the judiciary, as well as the subject of each of them relating to the main components in which integrity is violated.

Thus, the concretization of the characteristics of the compositions of the violations under Art. 175k of the JSA on the one hand, will increase the effectiveness of integrity checks carried out by the ISJC under Chapter Nine, Section Ib of the JSA, and on the other hand will achieve a preventive effect - magistrates will be clarified about specific actions and inactions, the commitment of which will constitute a disciplinary violation and will be subject to sanctions.

3. Along with the specification of the compositions of the violations under Art. 175k of the JSA, we propose to list exhaustively and **to detail the types of disciplinary violations under Art. 307, para. 3 and para. 5 of the JSA.**

The amendments and additions proposed in Art. 307, para. 3 shall establish the non-fulfilment of which specific obligations of the magistrates from the ones indicated in art. 210 - 213 of the JSA, constitute a disciplinary violation for which the judge, prosecutor or investigator will have to bear disciplinary responsibility.

At the moment from the written obligations in art. 210 - 213 of the JSA presented to the magistrates, as a disciplinary violation in Art. 307, para. 3 of the JSA is specified only the non-fulfilment of the obligation under Art. 210, item 1 of the JSA that the judges, prosecutors and investigators are obliged to decide the cases and files assigned to them within the set term. On the other hand, some of the violations of integrity were not among the disciplinary violations explicitly provided for in the law (violations of the integrity and independence of magistrates). Therefore, we suggested that the following should be included as disciplinary violations: actions related to the violation of the integrity and independence of judges, prosecutors and investigators; breach of the obligation to keep as an official secret the information which has become known to them within the scope of the service, which affects the interests of the citizens, the legal entities and the state; expressing a preliminary opinion on the cases assigned to them; non-fulfilment of tasks related to their service, assigned by the administrative head; systematic non-participation in the meetings of the general assembly of the respective body of the judiciary without valid reasons.

The need to detail disciplinary violations is dictated both in view of the conduct that each judge, prosecutor and investigator must comply with (which action or

omission related to their official duties is reprehensible) and in view of clarity in conducting disciplinary proceedings.

In the new wording of Art. 307, para. 5 of the JSA as a disciplinary violation we explicitly propose to regulate the non-fulfilment of the obligation of the administrative heads of the judiciary to assist (Article 59 of the JSA) the Chief Inspector and the inspectors in exercising their powers. We find that such an obligation will have a highly disciplinary effect and will ensure the work of the Inspectorate, in a similar way as the existing regulations in Spain.

4. The last group of amendments is related to the **status of the Inspectorate and the manner of nominating inspectors.**

In this regard, the ISJC's proposal for changes in the JSA contains completely new rules regarding the nominations for Chief Inspector and Inspectors. They are dictated by the need to avoid any suspicion of political influence on the Inspectorate, as concerns were expressed in the European Commission's first Report on the rule of law. It commented that "the Venice Commission has already raised the issue of the danger of political influence" given the fact that the Chief inspector and inspectors are elected by the National Assembly on the proposal of MPs, but the JSA lacks rules on subjects who can do nominations. Therefore, our proposal provides for the possibility for the Chief Inspector and at least half of the inspectors to be nominations of the judiciary elected at the General Meetings of Judges, Prosecutors and Investigators (following the example of the election of SJC members from the professional quota).

At the same time, according to the proposals made by us, the possibility is preserved that the MPs can also make proposals for chief inspector and for inspectors, nominating persons meeting the requirements of Art. 42, para. 2 and 3 of the JSA for specific magistrate's experience, who are not acting magistrates.

We believe that in this way the JSA will establish a regulation by which the general meetings of judges, prosecutors and investigators will be able to nominate acting magistrates as inspectors, and MPs will be able to make proposals for persons who at the time of the election are not judges, prosecutors or investigators.

Thus, more than half of the members of the Inspectorate will be elected from the magistrates nominated by the professional community and the suspicions of political influence on the body will be eliminated, on the one hand, and its institutional capacity will be strengthened on the other, as far as its majority will consist of the elected judges, prosecutors and investigators, whose qualities and authority are recognized by their colleagues. At the same time, it will be able to include lawyers from other legal professions, with richer expertise – attorneys at law, researchers, etc.

5. Next, we propose to supplement the JSA by providing for the Chief Inspector to have the power to appoint two of the inspectors as his deputies. Our arguments for this are addressing the fact that the powers of the Inspectorate since its establishment in 2007 have increased many times, and in order to ensure better functioning of the body and to avoid the risk of gaps in work, it is good deputies the Chief Inspector to be responsible for the work of the individual units of the institution.

6. Again, in order to ensure the independence of the body, amendments and additions are proposed in connection with the possibility of ISJC to independently manage its budget, incl. and defend it in front of the legislator. The Inspectorate has such an opportunity at present according to the regulation in art. 132a, para. 5 of the Constitution, according to which the budget of the Inspectorate is independent within the budget of the judiciary, but it is misinterpreted by the legislator in the JSA. The proposed amendments and supplements to the JSA aim to prevent the possibility of the ISJC budget being reduced by other bodies inside or outside the judiciary.

The proposed amendments and supplements to the JSA aim to make more accurate and optimize the legal framework, and **not to increase the powers of the Inspectorate**. The current powers of the ISJC are sufficient and aim to ensure the accountability of magistrates, and our proposals will lead to their optimal implementation. Our concepts for amendments to specific provisions of the law are dictated only by our desire to increase the effectiveness of the inspections carried out by the body and to guarantee its independence. Our proposals are in no way related to increasing the powers of the ISJC, but rather to improving the work of the body.

II. Regarding the second question: "It is clear from your written contribution that there have been a number of cases in the Prosecutor's Office in which the random distribution of files seems to be circumvented. Could you clarify the case law and clarify the findings of the ISJC in this regard?“, we give the following answer:

Given the question you asked, according to which there have been a number of cases in the prosecutor's office in which the random distribution of files seems to have been circumvented, we would like to clarify. Nowhere in the information on the contribution of Republic of Bulgaria provided by the ISJC have we expressed such an opinion.

The manner of distribution of the files is regulated in Art. 9 of the Judicial System Act and the Rules for application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by an order of the Prosecutor General. Since 2016 till now, the ISJC has conducted more than 100 comprehensive scheduled inspections of prosecutor's offices on different levels across the country. We reviewed the reports on the results of these inspections and did not find a single case in which an ISJC inspection team found circumvention of the law in the distribution of files. In almost all inspections, the inspectors came to the conclusion that there was no violation of Art. 9 of the JSA and the Rules for application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by order of the Prosecutor General and in force during the inspection.

A single violation was found during an inspection in the Regional Directorate in Vidin in 2016. It was established that the order of the administrative head for distribution of the files on the principle of random selection did not comply with Art. 5

of the Rules for application of the distribution of the files and the pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by an order of the Prosecutor General and in force during the inspection. In group 4 "Implementation of sentences" and group 5 "Supervision of legality and administrative-judicial supervision", the administrative head has determined participation in these groups for the distribution of one prosecutor and a second one as a deputy. According to the Rules, there must be at least two prosecutors in the groups. The colleagues who carried out the inspection agreed that the second prosecutor should not be a deputy, but should also be the incumbent. A recommendation is given to eliminate the violation. On 18th July 2016, the ISJC was informed that the recommendation had been implemented.

During inspections in 2016 in three regional prosecutor's offices (RP - Berkovitsa, RP - Asenovgrad and RP - Montana) and two military district prosecutor's offices (Military District Prosecutor of Plovdiv and Military District Prosecutor of Sliven) the inspection team found that the protocols from the distribution of files on the principle of random selection were collected in a common folder kept by the administrative secretary. Many of the other prosecutor's offices in the country apply these protocols to the files used by the supervisory prosecutors, which we call supervisory proceedings. This practice facilitates the inspections and therefore, the inspection team has given recommendations to the already mentioned 6 prosecutors' offices to enclose the protocols to the prosecutor's files. These recommendations have been implemented and the inspections carried out in 2021 have shown that all protocols on the distribution of files on a random basis are in the supervisory proceedings and files. It is important to clarify that in this case, there has been no breach of the principle of random selection in the distribution of files. In these 6 prosecutor's offices the files are distributed in strict compliance with the principle of random selection in the order of their receipt through the electronic system of the Prosecutor's Office – UIS (Unified Information System). The recommendations refer to the organization of the record keeping related to the storing of the protocols from the distribution, and not to the distribution itself.

During the next 5 years in the period from 2017 to 2021, the ISJC did not find any violations related to the distribution of files on the principle of random selection.

With the exception of the isolated case in the Vidin Regional Prosecutor's Office in 2016, **in all more than 100 inspections of prosecutor's offices of different levels, the ISJC found no violation of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria**. The reports on the results of our inspections are public and anyone who wishes can find them on the ISJC website and get acquainted with them.

We would like to acquaint you in more detail with the issue of the distribution of cases and files in the **Prosecutor's Office of Republic of Bulgaria**. It is carried out on the basis of the **Rules for the application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by an order of the Prosecutor General.** Since

2016, the Rules approved by Order No. RD-02-41 of 14.10.2015, amended and supplemented by subsequent orders and repealed in September 2021 and the Rules for the application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by Order No. RD-02-23/13.09.2021 of the Prosecutor General, which are still in force. There are no significant differences between the two acts regulating the distribution of files on a random basis.

The Rules stipulate that the distribution of files in the prosecutor's offices, in the separate investigation departments to them, in the National Investigation Service and in the departments of the Supreme Cassation and Supreme Administrative Prosecutor's Offices is carried out on the principle of random selection by even electronic distribution with the electronic UIS system in accordance with the sequence of their receipt.

It is stated that the heads of departments in the Supreme Prosecutor's Office and the Supreme Administrative Prosecutor's Office, the director of the National Investigation Service and the administrative heads of the prosecutor's offices set up an organization for distribution of files on the principle of random selection.

The unified **distribution groups** for the different instance levels in the prosecution and the investigation departments are regulated. It is required that at least two prosecutors or investigators be included in each distribution group, and that the maximum workload of a prosecutor and an investigator in one group be 100%. The groups which include the administrative heads and their deputies are specified including the respective heads of investigative departments. Their minimum required workload is indicated, according to the different instance levels. Every 6 months the administrative secretary in the respective prosecutor's office submits to the administrative head a report on the number of distributed files and pre-trial proceedings in the respective groups. At least once a calendar year, and during our inspections we found that in fact every 6 months the higher prosecutor's offices carry out inspections on the compliance of the distribution of files on a random basis and in case of violations, take measures to eliminate them and notify the SCP. The correct formation of the groups, the correct indication of the motivation for a certain choice and the correct categorization of the files are checked.

The method of distribution:

The files are distributed on the day of their receipt. The administrative heads or their deputies shall determine the group to which the file is to be distributed. The file is then made available to the staff assigned to make the distribution, who distribute the file through the UIS. After the distribution of the files, a general protocol for the distribution made for the day is printed, which is reported to the administrative head of the prosecutor's office. He/she gets acquainted with it and signs it, after which the protocol is kept in the archive. A copy of the protocol for the distribution of the specific file shall be attached to the same. The system administrator of the respective prosecutor's office prepares an electronic copy of the general protocol and provides access to it to all prosecutors from the respective prosecutor's office, respectively to

the knowledge of all investigators from the respective department. The Information Services and Technologies Directorate of the Prosecutor General's Administration provides the technical possibility to automatically send all protocols for random distribution to a server of the Supreme Judicial Council electronically, immediately after its implementation. The Administrative Secretary shall keep in a separate folder the signed protocols for the distribution of files on a random basis.

Exceptions to the application of the principle of random selection in the distribution of files are exhaustively stated. They are:

- impending prolonged absence of a prosecutor or investigator - leave, business trip, sick leave or temporary incapacity for work;
- forthcoming retirement;
- in the cases of art. 165, para. 1, items 3 - 9 of JSA - incompatibility, disciplinary dismissal, etc.;
- due to the heavy workload of a prosecutor, for no more than 20 days. In this case, the order is announced to all prosecutors and investigators of the respective prosecutor's office;
- in case of division of files and pre-trial proceedings - it is assigned to the supervising prosecutor or investigator. However, in view of the timely closure of the file, the administrative head may assign it to another subject to the principle of random selection;
- in case of merging of files, supervised in the same prosecutor's office, the merging is done to the file, which was formulated first chronologically;
- when appointing a team of prosecutors and investigators on one file, the teams are determined on the principle of random selection;
- the formed files for ruling by the order of the instance and official control are distributed on the principle of random selection at their initial filing.

The application of the exceptions is made by the administrative head with a written resolution, which is introduced in the UIS.

The cases of redistribution of **a file or pre-trial proceedings to a new supervising prosecutor (redistribution on the principle of random selection)** are also exhaustively indicated. They are:

- disqualification or respected self-disqualification of a prosecutor or investigator;
- error in the distribution - the prosecutor should have been excluded from the distribution, but this was not done;
- the file should be allocated to a group in which the already appointed prosecutor does not participate. The change in the composition of the groups is not a ground for appointing a new supervising prosecutor, if the already appointed prosecutor or investigator was in the respective group at the time of the initial distribution of the file;
- when the prosecutor or investigator has quitted.

Election of a Deputy Prosecutor/Investigator:

- in the absence of the supervising prosecutor or investigator, if urgent action is required. Upon the return of the originally appointed prosecutor or investigator, the supervision of the file/investigation shall be reassigned to him/her;
- in the absence of the supervising prosecutor within the legal term for resolving fast track proceedings.

The cases of inapplicability of **random selection** are also exhaustively indicated, as follows:

- does not apply to files of an administrative and organizational, financial and economic, informational and analytical nature;
- does not apply to files that require immediate action, i.e. they are assigned to the prosecutor on duty;
- does not apply to related files - when materials have been received from other institutions related to files already opened in the prosecutor's office, but the newly received materials have been registered under another number;
- in the cases of art. 208, item 3 of the PPC - when the perpetrator has appeared in person in front of a prosecutor with a confession of a crime and the act is within the competence of the respective prosecutor's office;
- in the cases of art. 208, item 4 of the PPC - when the prosecutor has directly revealed signs of a crime and the act is within the competence of the respective prosecutor's office - the file is distributed to the same prosecutor with a resolution of the respective administrative head;
- does not apply to the participation of prosecutors in court hearings - the supervising prosecutor participates in a court hearing, and in case of objective impossibility the administrative head appoints another prosecutor. The administrative head determines a monthly schedule for participation in court hearings.

Each administrative head issues an order for distribution of files and pre-trial proceedings on the principle of random selection based on the Rules for application of the distribution of files and pre-trial proceedings on the principle of random selection in the Prosecutor's Office of Republic of Bulgaria, approved by order of the Prosecutor General. The order states:

– the groups of files and pre-trial proceedings, defined in the above-mentioned rules for the specific prosecutor's office, to be entered in the software for distribution on the principle of random selection;

– the distribution of prosecutors and investigators in the groups;

– the percentage of workload of each prosecutor or investigator in the respective group;

– the magistrates or judicial staff who will carry out the random distribution of cases. During our inspections we found that this is done by employees. We have not found a case in which the distribution is made by a magistrate. These persons are provided with a qualified electronic signature, with which they sign each protocol for the random distribution made by them.

In conclusion, we reiterate that the practice established by the Inspectorate at the SJC in the Prosecutor's Office of Republic of Bulgaria is to comply with the

principle of random selection, regulated by the Judicial System Act and the Rules for applying the distribution of files and pre-trial proceedings in the Prosecutor's Office of Republic of Bulgaria, approved by orders of the Prosecutor General.

III. On the third question: "Is there a question of legality in relation to violations of ethical rules by magistrates and subsequent disciplinary proceedings?" In particular, are the ethical rules clear enough to determine the initiation of disciplinary proceedings?“, we give the following answer:

To clarify this issue, we would first like to note that our view is that the JSA (Art. 307, para. 3, item 3) states very generally that violations of the Code of Ethical Conduct of Bulgarian Magistrates (CECBM), which damage the prestige of the judiciary are disciplinary violations. This legislative decision poses a number of practical difficulties both for the judges, prosecutors and investigators themselves, and for us as a body investigating such violations and for the disciplinary panels, which should decide whether or not a breach of ethical rules has been committed.

On the one hand, the JSA itself does not provide a clear wording of the actions and omissions that magistrates should refrain from in order not to damage the prestige of the judiciary. On the other hand, the norms of CECBM to which the legislator refers in practice, as all moral norms have a high degree of abstraction. Their content is an expression of actually established in society generally accepted rules of conduct, ensuring the protection of those values that at a certain stage of its development society has considered significant and as a building block of the prestige of the judiciary. For this reason, ethical rules do not have a hypothesis, disposition and sanction, but prescribe a certain result.

This situation could be overcome. In our opinion, an amendment could be considered in the Judicial System Act itself, which would provide a legal definition of "breach of ethical rules". This is the case, for example, in the Kingdom of the Netherlands, where a breach of ethical rules is considered to be “any act or omission during or outside working hours which constitutes a breach of law, rules of office, official guideline, guidelines of conduct/codes of ethics or failure to perform official duties, including conduct that constitutes a crime”.

We believe that such a decision will achieve several results: First of all, the magistrates themselves will know what specific actions they should refrain from in order not to violate ethical rules by avoiding acts of dishonesty, damage to independence or damage to the prestige of the judiciary. In addition, the Inspectorate, as a body that identifies breaches of ethical rules, will have a clear range of issues to clarify in order to gather sufficient information on whether the actions of a particular magistrate constitute a breach and to propose disciplinary action. Finally, the disciplinary sanctioning body will be able, based on the evidence gathered by it, to establish whether in factual point of view the act - action or omission, is illegal from

an objective point of view, i.e. whether there is an objective discrepancy between legally due and actual behaviour, whether in a subjective point of view, there is guilt of the perpetrator - intent or negligence, whether there is a legally relevant result (harm) and whether there is a causal link between the act and the result and, depending on that - to impose disciplinary penalty. In our opinion, such an approach would minimize the risk of arbitrary interpretation, which may arise from the current very general wording in the JSA and the CECBM. This will lead to predictability in engaging the disciplinary responsibility of the offending magistrate.

Apart from the above, the violations of the ethical rules by the magistrates raise another question: who is the competent body that should establish the violation, when it is not clear from the alert whether the prestige of the judiciary is violated or other ethical rules are violated, for which the relevant Professional Ethics Committee (PEC) of the higher judicial body is competent to rule. In particular, there is currently no statutory distinguishing criterion providing reasons for inspection by the ISJC in case of unclear allegations as to whether the prestige of the judiciary has been damaged or whether the relevant Professional Ethics Committee should be referred. In our opinion, it would be appropriate the JSA to include specific hypotheses in which the ISJC will have the authority to refer the case to the competent PEC. In this regard, we would like to draw attention to the fact that under the Constitution and JSA the Inspectorate conducts inspections only in cases in which the behaviour of the judge, prosecutor or investigator is so drastic that it covers the composition of the violation damage to the prestige of the judiciary.

Last but not least, there is the issue of proving the alleged violation in the alert. In most cases, the ISJC receives alerts with allegations of acts or omissions that are contrary to the principles of integrity, damage the prestige of the judiciary or are related to the violation of the independence of a magistrate, but when these facts need to be established, which is most often achieved with witnesses, there are none or the persons indicated in the alert refuse to provide information to the ISJC. Although the amendments to the JSA from 2020 stipulate that both the sender of the alert and the persons who have information, written or physical evidence and documents in the case are obliged to provide them to the ISJC upon request, the same, in most cases, refuse to assist in clarifying the facts. Of course, I should point out that there are many cases in which a violation of integrity is reported only due to dissatisfaction with a court decision and when the sender is instructed to provide information about the specific behaviour, specific actions performed by the magistrate or inaction that is contrary to the principles of integrity, the same does not do so, because there is no such behaviour.

Experience has shown that this is not a fear of giving information, a fear of possible repressive measures against the alert sender or witnesses, but unfortunately it is a lack of the necessary level of civic consciousness. Bulgarians, as a society, will have to go a long way to reach the public consciousness necessary for any developed society, which should be manifested both in intolerance of unacceptable phenomena

and in providing assistance to the institutions assigned with the task to counteract them.

IV. On the fourth question: "Could you clarify the disciplinary procedure in the hands of the administrative heads following the recommendations of the Inspectorate at the Supreme Judicial Council?" How does it differ from the direct proposals of the Inspectorate for instituting disciplinary proceedings?“, we give the following answer:

In carrying out its activity under Art. 54, para. 1, items 1 and 2 of the JSA - carrying out an inspection on an alert received by the ISJC or when conducting a comprehensive scheduled inspection in a body of the judiciary, the ISJC may establish a violation of the formation and movement of judicial, prosecutorial and investigative cases, and of their completion within the established terms. In these cases of established violation, the inspector assesses the gravity of the violation, the form of guilt, the circumstances under which the violation was committed and the behaviour of the violator. In this sense, when it comes to the delay in the movement and/or the completion of 1-2 cases and the delay is not great, there are no other reasonable alerts against the magistrate, the inspector gives a recommendation to the administrative head of the judiciary body to impose a disciplinary measure “Pay attention” (Art. 327 of the JSA) or to impose the lightest disciplinary sanction – “Remark”, given his/her powers under Art. 314, para. 1 and Art. 327 of the JSA.

This practice of making recommendations to the administrative head has been adopted and approved in the activity of the Inspectorate, as, on the one hand, the gravity of the established violation is not great and the circumstances under which it was committed do not indicate systematic non-compliance with deadlines specified in the procedural laws by the judge, prosecutor or investigator, i.e. it is an isolated case of violation. On the other hand, only the administrative head has the power to draw the attention of a judge, prosecutor or investigator to their violations in the formation and movement of cases or in their organization of work, which is a disciplinary measure and not a disciplinary sanction. As we mentioned, the administrative head also has the power to impose the lightest disciplinary sanction - a “Remark”. Also, when in the course of disciplinary proceedings it is established that there are grounds for imposing a heavier penalty than a remark, the administrative head is obliged to make a reasoned proposal to impose a more severe disciplinary sanction to the relevant board of the SJC.

The administrative head shall notify the respective board of the SJC of the imposed penalty, sending the file and the order to it immediately after its service to the person brought to disciplinary responsibility. The relevant board of the SJC may, within 1 month of receiving the order, confirm or revoke the penalty imposed. When it deems that there are grounds for replacing the imposed punishment with a more severe one, the respective board of the SJC shall continue the disciplinary proceedings under the JSA - Art. 316 - 322 of the JSA.

It should be emphasized that both the order “Pay attention” under Art. 327 of the JSA, and the penalty “Remark” imposed by the administrative head, are subject to appeal under the procedure regulated by the JSA.

This approach in the work of the ISJC to make a recommendation to the administrative head to take a disciplinary measure or to impose the lightest disciplinary sanction “Remark”, was adopted both for the above reasons (this is an isolated case in the work of the magistrate, committed delay is not great, etc.) and because of the speed with which the disciplinary proceedings end. These cases usually end within 2 months - from the violation found by the ISJC to the imposition of a disciplinary measure “Pay attention” or disciplinary penalty “”Remark”. This is due to the fact that report on the comprehensive scheduled inspection or the alert sent by the ISJC to the administrative head contains a recommendation to apply the measure Pay attention and/or to impose a disciplinary sanction and a deadline for its implementation, which in most cases is not more than 1 month. The administrative head shall notify the Chief Inspector of ISJC of the measures taken by him/her in implementation of the given recommendations within the term indicated by the Inspectorate. There are cases in which the administrative head does not impose a disciplinary measure ”Pay attention” or a disciplinary sanction “Remark”, and for this decision he/she provides a written opinion, as a result of his/her additional inspection of the magistrate.

The above also answers the question „How does the disciplinary procedure carried out by the administrative head differ from the direct proposals of the Inspectorate for instituting disciplinary proceedings?”, while it is necessary to add the following:

When in the course of a comprehensive scheduled inspection of a judicial body a serious violation of the movement and/or completion of judicial, prosecutorial or investigative cases is established, the inspector shall reflect this fact in the inspection report, which shall be served on the inspected magistrates. After the expiration of the term for objections, respectively after the decision of the Chief Inspector on the objection received from the inspected magistrate, the inspector who performed the inspection prepares a proposal for disciplinary proceedings for imposition of a disciplinary sanction on the magistrate who has committed the violation. The proposal for initiating disciplinary proceedings is discussed at a meeting of the ISJC and with a decision of the Inspectorate the proposal is accepted and sent to the relevant board of the SJC for instituting disciplinary proceedings.

When data on a serious violation by a magistrate is established during the examination of an alert received by the ISJC, the inspector shall notify the Chief Inspector for the issuance of an inspection order. On the basis of the order, an inspection of the work of the respective judge, prosecutor or investigator is carried out, an act for the results of the inspection is prepared, which is handed over to the magistrate. Then the same procedure is followed, namely, after the expiration of the period for objections, respectively after the decision of the Chief Inspector on the objection received from the inspected magistrate, the inspector who performed the

inspection prepares a proposal for disciplinary proceedings for imposition of disciplinary sanctions on the magistrate committing the disciplinary offence. The proposal for initiating disciplinary proceedings is discussed at a meeting of the ISJC, which is adopted by a decision of the Inspectorate and sent to the relevant board of the SJC.

As an example of serious violations, we would like to point out the proposals for instituting disciplinary proceedings sent to the Panel of judges at the SJC by a decision of the ISJC of 07.03.2022. The inspector who made a comprehensive scheduled inspection of a regional court has found delays in the completion of the cases of two judges. The delays found out in the issuance of the court decision for one of the judges concern 73 cases, the delays reaching to 3 years and 8 months, and as regards the second judge, delays in the issuance of court decision are established in 68 cases, reaching to 2 years and 4 months. At the same time, no objective reasons for the delays were found.

We would like to draw your attention to the fact that the time required for the ISJC inspection, preparation of the inspection report, service of the inspection report to the inspected magistrates, expiration of the term for objections, respectively ruling of the Chief Inspector on the objections received, preparation of a proposal for initiation of disciplinary proceedings, its discussion and sending it to the relevant board of the SJC is at least 5 months, and within 6 months from the discovery of the violation the relevant college of the SJC must initiate disciplinary proceedings. After the initiation of the disciplinary case, the respective board of the SJC conducts the disciplinary proceedings, which may last longer – about 2-3 years.

Practice shows that the time required for conducting disciplinary proceedings by the administrative head is much less than the time required for conducting proceedings instituted on the proposal of the ISJC. The speed of the disciplinary proceedings is essential to achieve the purpose of the penalty.

In view of this, we believe that the practice of making a recommendation to the relevant administrative head to impose a disciplinary measure or to impose the lightest disciplinary sanction, when the severity of the violation is not material, is good and it works.

V. On the fifth question, according to which "the SJC has taken steps to clarify the standards and expectations regarding the conduct of magistrates by publishing on its official website anonymous cases of violations, and with which you would like us to point out:

a. Number and type of cases generated (detected, assessed and terminated, with or without sanctions);

b. Number and type of events or initiatives taken to conduct education, training or awareness raising;

c. Number and type of consultations conducted, advice provided to these employees, including the most common/important topics“, we will make a few clarifications again:

The first is about an inaccuracy: not the SJC, but the ISJC has taken steps to clarify standards and expectations regarding magistrates' behaviour by publishing anonymous cases of violations on its official website.

The second clarification is that we **publish only cases of established violations of the integrity of judges, prosecutors and investigators**, but we do not publish proposals for instituting disciplinary proceedings, given the requirement of Art. 313, para. 3 of the JSA (facts and circumstances in connection with the disciplinary proceedings cannot be disclosed until the enactment of the act for imposition of a disciplinary penalty).

The third is that we publish only such cases in which the decision to impose a disciplinary sanction for conduct incompatible with the integrity of the magistrate has entered into force. The opposite decision could lead to inadmissible damage to the personality and professionalism of a particular magistrate.

In this sense, the cases we have published are not many - only three.

Regarding the number and type of generated cases (detected, assessed and terminated, with or without sanctions), we provide the following information:

For the period from 1st January 2017 to 11th March 2022, a total of 338 files were opened. Inspections were initiated in 82 of the cases, of which 74 ended with a report of the inspecting inspector and 8 are still being inspected. The remaining files were closed with an opinion - either due to failure to eliminate the irregularities in the alert, or due to the inadmissibility of the signal, and 17 files are still pending. Of the 74 inspections initiated, only in 6 cases sufficient data were established for a violation of the integrity of the magistrates, for which we have submitted a proposal to the relevant board of the SJC to initiate disciplinary proceedings. The boards of the SJC imposed disciplinary sanctions in only 3 of the initiated disciplinary proceedings – two disciplinary sanctions “Remark” and one penalty “disciplinary dismissal“.

These statistics lead to two conclusions:

- the first is that most of the files are closed without inspections, and
- the second is that the majority of the initiated inspections are terminated without collecting sufficient data for the committed violation.

These conclusions could give the wrong impression that the ISJC is not effectively fulfilling its obligations under Chapter Nine, Section Ib of the JSA. However, a careful analysis of the legal provisions, from the moment we receive an alert alleging a breach of integrity by a judge, prosecutor or investigator, to the moment we pronounce a decision on it, would categorically refute such an opinion. The legislation in the JSA stipulates that an inspection is initiated only if the alert meets the requirements for regularity, regulated in Art. 175l, para. 5 of the JSA - three names, unique civil number of the sender of the alert, specific data about the alleged violation, including place and period of its perpetration, description of the act and other circumstances under which it was committed. In most cases, the reports do not indicate specific data on the breach of integrity or the circumstances in which it was

committed. In 99% of the cases there is no data on persons who could confirm what is stated in them.

Due to the lack of specific requisites that must be contained in an alert in order to be proper, the sender is given a term to eliminate the irregularities, after the expiry which, in case of non-compliance, the file is terminated. In most cases, we do not receive any answers to the letters sent to eliminate irregularities, or the received replies often repeat the contents of the originally submitted alert.

Due to the formalism of the law, which requires an inspection only if the alert is proper and admissible (to be filed against a magistrate, the term under Article 310 of the JSA for instituting disciplinary proceedings has not expired, and no disciplinary proceedings have been instituted for the same violation) for a significant part of the alerts no inspections are initiated at all.

We always initiate inspections on the alerts that are proper and admissible. The number of cases in which we have identified violations of integrity during the inspections performed by the ISJC is not large. This fact is due both to the lack of collection of sufficient data for the perpetration of such violations and to the legal framework on the basis of which violations can be effectively identified and proven. As mentioned above, since February 2020, with the amendment of the JSA, the right of the ISJC to request information and documents from third parties has been bound by the obligation of citizens to provide them. Practice shows that third parties do not cooperate in the course of the inspection, and the lack of such cooperation often leads to the failure to collect sufficient data on the violation of many of the inspections.

For the failure to establish relevant violations under Art. 175k of the JSA also contributes to the absence of clear legally identified constituent characteristics of violations, discussed in our answer to the first question, for which we have proposed amendments to the JSA.

However, in order to achieve the desired integrity of the magistrates, it is not enough to emphasize their punishment, but rather to create a legal framework that ensures the prevention and unacceptance of cases of unethical behaviour.

With regards to the other issues you raise about the number and type of events or initiatives taken to conduct education, training or awareness raising and consultations, we should note that the ISJC has not taken such action, as it has no such powers. The standards regarding the conduct of magistrates are approved by the Supreme Judicial Council. It adopts the Code of Ethical Conduct for Bulgarian Magistrates. The Inspectorate at the SJC only applies these standards, inspecting whether the conduct of judges, prosecutors and investigators complies with the Code of Ethics of Bulgarian Magistrates. The publication of anonymized cases of violations undertaken by the ISJC is only one of the initiatives that you are considering and that should be taken, but after legislative changes.

Instead, with the above-mentioned letters initiating the establishment of a working group on amendments and supplement to the JSA, we proposed to the Minister of Justice to consider establishing a system of deontological prevention,

following the example of the existing system of bodies in France. It could provide a mechanism to explain and support the ethical conduct of judges, prosecutors and investigators. In the proposal, we pointed out that, in our opinion, deontological prevention should be expressed in continuous deontological monitoring and impact on the behaviour of judges, prosecutors and investigators, which means:

1. To provide for the administrative head to conduct a deontological interview with the magistrate upon inauguration into the judiciary. The provision of art. 181, para. 4, item 8 of the JSA has some minimal suggestion - when applying for initial appointment, a template questionnaire is filled prepared by the relevant board of the Supreme Judicial Council relating to the moral qualities possessed by the candidate.

We find that regardless of the completed questionnaire, prepared and adopted by the SJC, the head of the relevant judiciary should conduct a deontological interview with each magistrate who enters the judiciary, during which the magistrate should discuss and be guided by the administrative manager, if there are any circumstances of a personal nature, indicating the occurrence of a conflict of interest in connection with the exercise of the relevant magistrate position. Deontological assistance should be provided throughout the stay of the magistrate at the appropriate level. We also believe that when moving to a higher level in the judiciary, a new deontological interview should be conducted on the same principle in order to continue deontological monitoring.

2. To establish a **Deontological Assistance and Supervision Service at the SJC** (or at the professional ethics committees of the respective council colleges) with advisory powers.

This service could support the publication of a Collection of Deontological Precedents for Magistrates and answer questions about conflicts of interest or the application of the Code of Ethical Conduct for Bulgarian Magistrates.

3. To outline the parameters of the possible **deontological assistance** that can be provided by the professional ethics committees to the respective bodies of the judiciary.

We hope that after the Minister of Justice forms a new working group, including representatives of the ISJC, the SJC and the judiciary at various hierarchical levels, our proposals will meet understanding and support. Only then, after a wide professional debate within such a group and after getting acquainted with the vision of the members of the working group on our ideas, we will make specific proposals for changes in JSA in connection with deontological prevention.

VI. On the **last question - the project "Providing software and methodological support and building the administrative capacity of the ISJC for the prevention of corruption in the judiciary", funded by the OPGG,**

a. What is the time frame of the project?

b. Who is the main beneficiary of the project and its implementation partners?

c. What is the status of the implementation so far?“, We provide you with the following information:

The beneficiary of the project is ISJC. The Supreme Judicial Council is a partner in its implementation. The project envisages seven activities, the main ones being: Activity 1: "Development of an electronic public register of electronic declarations of circumstances related to the prevention and detection of conflicts of interest and property declarations" (EPRED) and Activity 2: "Development of electronic public a register of recusals, including the demanded recusals and the reasons why they are approved or not for each judge”(EPRR). Responsible institution for the development of the first of the registers is the ISJC, and for the second - the SJC.

A partnership agreement was signed between the ISJC and the SJC on 05.07.2017. According to the agreement, the development of the two registers should have been assigned by the beneficiary of the project - ISJC in a single public procurement. That is why we assigned one in 2018, and after conducting the procedure under the Public Procurement Act, a contract was concluded with the selected contractor on 18th December 2018.

On 16.07.2019 the contract was terminated due to non-fulfilment of any stage of it and in order to prevent improper spending of EU funds.

Subsequently, we announced 6 more procedures, and only in one of them we again signed a contract with a participant who is actually the system integrator of our country, so we hoped that it would implement Activity 1 in full and on time in the best way. Instead, two months after the start of the contract between us and the participant selected under the Public Procurement Act, the contractor twice informed us that the actual volume of activities, sub-activities and tasks set in the scope of public procurement significantly exceeds the forecasted and initially set resource for development by them and expressed a desire to terminate the contract. After our disagreement as a contracting authority, the contractor stopped fulfilling its obligations under the contract. For this reason, we were forced to end it.

Subsequently, we announced procedures again, but either there were no participants or the only participant submitted a technical proposal that did not meet the technical specifications and the requirements for implementation of the contract. This again became a reason for terminating the procedures under the Public Procurement Act.

In the meantime, given the lack of interest in participating in our public procurement and the inability of the selected contractors to implement Activity 1 in full, of relevant quality and on time, we made several requests to the MA of the OPGG to amend the project, proposing to reduce the scope of activities - by dropping the functionalities related to the powers of the ISJC on inspections of the organization of the administrative activity of the courts, prosecutor's offices and investigative bodies and the organization of the initiation and movement of cases, prosecutorial files and investigative cases.

Both, at the time of preparation of the project proposal, resp. of application for financing with OPGG, and until now, the electronic register of electronic declarations includes several modules: "Registration" module, which is actually a record keeping system for processing all incoming and outgoing documents on the register of the ISJC regarding all its powers under Art. 54 of the JSA, including integrity checks; "Declarations" module, ensuring the submission of declarations to the register of declarations and "WEB" module, representing an update of the website of the Inspectorate. Our requests (removal of the functionalities related to the powers of the ISJC relating to inspections of the organization of administrative activities of courts, prosecutors' offices and investigative bodies and the organization of the initiation and movement of cases, prosecutorial files and investigative cases) were not approved by the MA of OPGG on the grounds that the reduction of the scope of Activity 1, respectively of the functionalities of the Register contradicts the objectives of the project.

Therefore, on 8th November 2021, we submitted a new request for amendment of the project, in which we proposed:

- reallocation of funds from savings from other activities and co-financing by the ISJC (taking into account instructions of the MA of the OPGG in this sense), so that the total amount of funds under Activity 1 "Development of electronic public register of electronic declarations of circumstances related to prevention and establishing conflicts of interest and property declarations" to be increased, motivated by our experience so far that there are no particularly willing companies to participate in the public procurement, which we have announced;

- the term for implementation of the project to be extended at least until 31.12.2022, in view of the forthcoming selection of a contractor under a public procurement announced on 15.10.2021.

Our request for amendment of the project was partially approved, and on 17.01.2022 a Supplementary Agreement No. 7 to the Contract c BG05SFOP001-3.001-0016-C01/17.7.2017 was concluded. The latter amended the amount of Activity 1 with this proposed by ISJC with the addition of funds from the savings, and the deadline for project implementation was extended to 31.03.2022.

At the moment, however, we do not have a selected contractor again, as the only bid received at the last 7th consecutive public tender did not meet the technical specifications and requirements for the implementation of the contract, so on 28.02.2022 we terminated the procedure. A new request is to be submitted to the MA of the OPGG to reduce the scope of the project, as well as to extend the deadline for its implementation. As can be seen from our experience so far, with this huge volume and functionality of the software, it turns out that no one can make it or refuses to make it.

The most important point, however, is that we do not get an understanding by the OPGG on the requested reduction in scope, as there is no real need to create a register of the entire ISJC's activities - neither on the inspections of the direct work of magistrates, nor on those of the applications for violations of the right cases being

considered and resolved in a reasonable term, nor with regards to the supervisory functions of the ISJC under the Personal Data Protection Act which would really contribute to increasing the effectiveness of conflict of interest prevention and increase our opportunities to monitor systemic corruption factors in the work of the judiciary, and hence to directly identify cases of violations. Reducing the scope of the project will not lead to non-implementation of measure 1.3.1 “Integrated policy to prevent conflicts of interest and corruption within the judiciary. Electronic registers for declaring a wide range of circumstances, including de facto cohabitation, membership in non-public organizations, etc." under Specific Objective 3 “Systematic Policy for Prevention of Corruption in the Judiciary" of the Updated Strategy for Continuing Judicial Reform and the Road map for its implementation.

Moreover, our project proposal had been made before the ISJC began the actual exercise of its powers under Chapter Nine, Section Ia and Section Ib of the JSA. Now, from the point of view of the accumulated experience, we see that the inclusion in EPRED of functionalities relating to all our powers is unnecessary.

We hope that this time the MA of OPGG will approve our request.

In conclusion, we would like **to clarify that all other project activities are being implemented.**

Activity 3 "Development of internal rules for conducting checks on the integrity of magistrates" and Activity 4 „Development of internal rules for the verification of property declarations of judges, prosecutors and investigators” have been implemented. The activities have been successfully implemented and have been reported to the MA of the OPGG.

Activity 6 “Purchase of computer equipment and other hardware” is fully implemented under the project in 2019.

On 30.07.2021 the implementation of Activity 2 of the project "Development of an electronic public register of recusals, including the demanded recusals and the grounds for approval or not for each judge" was finalized as the Electronic Public Register of recusals was implemented and launched in actual operation. The register provides an opportunity to track all requests for recusal of the court or self-recusals made at the initiative of the court in all cases.

All implemented activities have been carried out within the approved project budget.

The other activities to be carried out are planned within the framework of the project financing, as well as with funds from the budget of the ISJC.

As can be seen from all the above, despite the volume and complexity of the project, we make every effort to complete it successfully, but there are many objective obstacles that prevent us from doing so at this stage.