



**“Support to the improvement of the capacity of the
Inspectorate to the Supreme Judicial Council of Bulgaria”**

**JUDICIAL INSPECTION AND DISCIPLINARY PROCEEDINGS IN SPAIN:
SUPPORT IN THE FULFILMENT OF INTEGRITY CHECKS OF THE
INSPECTORATE OF BULGARIA**

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EXECUTIVE SUMMARY	3
REPORT ON THE SPANISH JUDICIAL INSPECTION SERVICE AND THE DISCIPLINARY	
SYSTEM OF JUDGES IN SPAIN.....	5
I. Introduction.....	5
II. Brief introduction to the Spanish Judiciary	7
III. The Judicial Inspection Service.....	8
IV. Disciplinary proceedings and disciplinary offences	13
V. Judicial Ethical standards and Code of Ethics.....	21

EXECUTIVE SUMMARY

Spanish Inspection system and integrity checks: model for the Bulgarian Inspectorate?

Summary of conclusions

Diverse functions and structure of the Bulgarian and Spanish Inspection Service

1. Throughout this report, the main features of the Spanish system on accountability of judges and prevention of misconducts, as well as ensuring ethical standards, will be presented. It is for the Bulgarian authorities to identify what elements and practices of this system could be taken over into the Bulgarian judicial inspection and disciplinary system. Marking differences regarding the context in which the judiciary operates, the institutional framework of the Inspectorate as well as the diverse powers of the Spanish Judicial Inspection Service and the Bulgarian Inspection Service make a strict comparison difficult, if not impossible. While the Bulgarian Inspectorate has powers to investigate disciplinary offences, the Judicial Inspection Service of Spain only checks performance of courts, mainly upon quantitative data.

Declaration of assets/ prevention of corruption

2. As has been explained, no background integrity checks (save the existence of a criminal record) is carried out in Spain to enter into the judiciary; judges are not requested to present declaration of assets (in Spain only politicians and high ranked political appointments, but no civil servant), divergences between their declared income (via tax declaration) and properties or assets would primarily be identified by the tax offices, and in such case, lead to a criminal investigation. Thus, such functions are not carried out by the Judicial Inspection Service. On the other side, the absence of corruption problems in the Spanish judiciary make such an approach not necessary.

Unethical behaviour, disrespect, and/or breach of professional duties

3. Misconduct of judges is investigated in Spain by the Promoter of the Disciplinary Action, a unit within the GCJ, upon the wide reporting channels opened to the citizens. According to their functions related to the investigation of disciplinary infringements a certain analogy can be traced between the Bulgarian Inspectorate and the Spanish Promoter of the Disciplinary Action. This analogy would be functional, because there is a marking structural difference: the Spanish Promoter of the Disciplinary Action is a body integrated within the GCJ, and its members are appointed and selected by the GCJ, while the Bulgarian Inspectorate is an independent body, whose members are appointed by Parliament. This is a relevant difference that needs to be taken into account when analysing their functions and the safeguards for the judicial independence. Both units carry out the investigation of possible disciplinary infringements of judges and draft a recommendation or proposal for applying the legally provided disciplinary sanction to the competent body.

Investigating powers of the Promoter of the Disciplinary Action

4. The Spanish Promoter of the Disciplinary Action has powers to collect evidence for establishing the disciplinary liability of the relevant judge. The legal obligation to cooperate with this body allows it to carry out the investigation of the facts and the

gathering of the evidence adequately. The relevant units interviewed during the study visit in Madrid have not reported any problems in gathering the evidence. It seems that the Bulgarian Inspectorate faces some problems at this stage, due to the lack of cooperation of the relevant judges or the possible witnesses. Establishing the obligation to cooperate and providing for consequences for the lack of cooperation would allow the Bulgarian Inspectorate to carry out its functions more efficiently.

5. The legal provision in the Spanish LJ, establishing as a disciplinary sanction for the hindering of the judicial inspection as well as the non-cooperation with the disciplinary proceedings might aid in addressing the problem faced by the Bulgarian Inspectorate.
6. The evidence gathered by the Promoter of the Disciplinary Action is usually limited to: interrogation of the relevant judge; witness examination and documents. No further investigative powers seem to be necessary, taking into account that the disciplinary system in Spain does not sanction conducts of judges within their private life.

Decision on the disciplinary sanction

7. The Spanish Promoter of the Disciplinary Action, after carrying out the relevant investigation respecting the defence rights of the investigated judge and granting access to the file to him/her, either closes the case, or prepares a proposal for sanction, according to the law. The sanction shall be taken by the competent body (Plenary GCJ in case of proposed dismissal; the Chair of the relevant Court in case of warning; and the Disciplinary Commission for all other sanctions). The proceedings before the Promoter of the Disciplinary Action shall not last longer than 6 months, and the whole disciplinary proceedings shall not last more than one year.
8. The body competent to impose the sanction decides upon the written file prepared by the Promoter and does not practice further evidence. If they consider the facts are not sufficiently established or there are relevant elements missing in the file, they will send the file back to the Promoter. The deciding body cannot impose a sanction for other facts nor impose a harder sanction than the one proposed by the Promoter. In practice, most of the proposals of the Promoter are followed. This relationship between investigating/proposing body and deciding body, might be taken into account to improve the disciplinary proceedings in the Bulgarian system.
9. The interruption of the period of limitations when initiating a disciplinary investigation and the establishment of a maximum duration of the whole disciplinary proceedings might also be considered for improving the Bulgarian disciplinary system.

REPORT ON THE SPANISH JUDICIAL INSPECTION SERVICE AND THE DISCIPLINARY SYSTEM OF JUDGES IN SPAIN

I. Introduction

10. The present report aims at providing support and further guidance to the Inspectorate to the Supreme Judicial Council of Bulgaria, on its role in carrying out integrity checks. The Inspectorate to the SJC of Bulgaria (hereinafter “the Inspectorate”) exercises inspection over the courts, but also over the public prosecution and the investigators. In this report only the functions related to the judiciary will be addressed. Being a key actor in ensuring an efficient functioning of the courts in compliance with ethical standards of the judges, the Inspectorate to the SJC is foreseen in the Bulgarian Constitution (Article 132a).
11. While its role in monitoring the efficient functioning of courts does not seem to give rise to discussions, it appears that the debate lies with the scope in checking activities and conducts of individual judges: “the discussion remains about the extent to which inspections on the administration of judicial activity also extends to the activities of individual magistrates, as well as the more distinct separation of powers between the SCJ and the Inspectorate”.¹ In order to address the needs in providing a more effective system of judicial accountability, while preserving the safeguards of the judicial independence, the Bulgarian authorities expressed their desire to have a comparative view of other judicial inspection services. In particular, they requested to be informed about the French and the Spanish judicial inspection bodies, and how they deal with integrity checks.
12. This report, seeks to present how the integrity checks of judges are carried out in the Spanish legal system, with the aim of presenting the Bulgarian counterparts a model of solutions that might be followed/not followed in their own system, and for improving the functions of the Inspectorate in ensuring the integrity of the judges of Bulgaria, while respecting and safeguarding the judicial independence.
13. The reasons for selecting the two countries/systems to be analysed (France and Spain), is unknown to this expert, and it is not relevant at this stage. However, it is important to mention it here for it will determine the scope of this report. The Bulgarian Inspectorate expressed its interest in being informed and visiting the Spanish Judicial Inspection to learn more about how they carry out integrity checks. They also expressed their particular interest in being informed on the so-called “virtual or on-line inspections”, that are carried out by the Spanish Judicial Inspection Service to carry out integrity checks. However, the fact is that the Spanish Judicial Inspection Service does not carry out integrity checks and no other body carries out “integrity checks” upon judges in Spain; possible misconducts of judges are dealt with by way of disciplinary liability.
14. For this reason, the report –and study visit– were re-designed to include the Spanish judicial disciplinary system and its proceedings, which deal with disciplinary offences, and thus indirectly with “integrity checks”.

¹ See Y. Stoilov, “Inspections by the Inspectorate to SJC and the Independence of the Judiciary: Between Formalism and Substance”, in *10 Years Inspectorate to the Supreme Judicial Council*, Sofia 2018, pp. 27-35, p. 28.

15. To that end, this report will: 1) briefly explain the main features of the Spanish judicial system; 2) it will address the rules and functioning of the Judicial Inspection Service in Spain; 3) the rules and functioning of the judge's Disciplinary proceedings; and finally 4) try to identify what elements could be taken over by the Inspectorate of Bulgaria for improving their role in preventing corruption and/or unethical behaviours of judges in Bulgaria, as well as in strengthening their efficiency in fulfilling their competences.
16. This report, however, is not aimed at analysing the Bulgarian Inspectorate, nor its regulation, its strengths or weaknesses. Neither is it aimed at assessing the level of corruption of the judiciary in Bulgaria or the need for improving integrity checks. All those issues are to be addressed in a separate report. However, since this expert has got acquainted with the regulation of the Inspectorate of Bulgaria and is aware of some of the problems the Bulgarian Inspectorate faces in practice in carrying out integrity checks and in ensuring the disciplinary liability of judges in Bulgaria, some recommendations will be drafted. In particular, which of the elements of the Spanish system might be taken into account when addressing the needs of the Bulgarian Inspectorate.
17. The report is based primarily on the desk research on the Spanish judicial system, the analysis of the rules and practice of the two bodies dealing with the judge's inspection and disciplinary oversight: the Judicial Inspection Service and the Disciplinary Commission and its bodies. The analysis has been however complemented with the information gathered during the study visit to Madrid by the Bulgarian delegation of the Inspectorate, where we had the chance to listen to the presentations prepared by members of the Spanish Judicial Inspection and the Disciplinary Commission, and discuss with them the main aspects of concern of the Bulgarian Inspectorate. Finally, as this report should take into account which aspects of the Spanish system could be considered by the Bulgarian Inspectorate useful to improve their own institutional setting and the performance of their functions, this expert has been provided with the relevant legislation and materials by the Inspectorate of Bulgaria. Those materials have also been taken into account in preparing this report. The meeting held in Sofia on the 1st October with the members of the Inspectorate of Bulgaria allowed also getting insight of the Inspectorate of Bulgaria.
18. This report has been prepared by Prof. Dr. Lorena Bachmaier², under the auspices of the Project on "Support to the improvement of the capacity of the Inspectorate to the Supreme Judicial Council of Bulgaria" funded by the Structural Reform Support Service of the European Commission (SRSS) and the Council of Europe. I want to express my gratitude to the members of the Bulgarian Inspectorate for providing this expert with relevant information, and for sharing their concerns on the need for improvement in preventing and combating conducts against judicial integrity. My gratitude also to the Spanish General Council of Justice, for the generous and professional cooperation.

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II. Brief introduction to the Spanish Judiciary

19. In order to understand the role of the Judicial Inspectorate and the Disciplinary Commission of judges of Spain, in preventing and dealing with so-called integrity checks, it might be useful to first explain some facts about the Spanish judiciary: only having a contextual picture about the reality in which this legal framework applies, is it possible to understand what is their role in ensuring the best judicial administration service. Judicial independence, integrity checks and prevention of corruption within the Spanish system can only be understood once the context of the Spanish judiciary is clear.
20. Following the Constitution of 1978 Spain is a democratic social State and the political model is a parliamentary monarchy where the people is sovereign. The main principles regarding the Judiciary in Spain are set out in Article 117 Spanish Constitution (SC). Its two first paragraphs state:
- “1. Justice emanates from the people and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable, and liable and subject only to the rule of law.
2. Judges and Magistrates may only be dismissed, suspended, transferred or retired on the grounds, and subject to the guarantees provided by law.”
21. Article 122 of the Constitution provides for the establishment of the General Council of Justice (GCJ), which consists of 20 members, plus the President of the Supreme Court, who is member *ex officio*. All members are appointed for a single mandate of five years. 12 of them shall be judges, elected by judges, although all of the members are appointed by Parliament with a qualified majority of votes of 3/5 of the MPs (10 by the Senate and 10 by the Congress of Deputies, following the procedure set out in the respective Regulations)³. The 12 judges shall be appointed out of a list of 36 candidates prepared by the different Judicial Associations. Any judge with the support of 25 other judges or with the support of any of the judicial associations, can present his/her candidature⁴. In practice, only those who have the support of the judicial associations are usually appointed by Parliament.⁵ The other 8 members shall be appointed among lawyers and jurists of recognized experience who have at least 15 years professional experience.
22. Spanish population is approx. 46.7 million. According to the data provided by the GCJ⁶ there are 5.419 judges in Spain, where a 53.9% are women (data for 2017). Apart from these career judges, every village where there is no first instance court, has a lay judge (Justice of the peace, *Juzgado de Paz*) appointed by the municipality for four years, who has jurisdiction for petty civil claims (up to 90 euros) and can also act in duties of judicial cooperation, such as judicial notifications. Spain has also a

³ See *Reglamento del Congreso de los Diputados*, Articles 204-206; and *Reglamento del Senado*, Article 184, as amended 27 July 2001.

⁴ Articles 572-578 Organic Law on the Judiciary (LJ).

⁵ See R. Serra Cristóbal, “La elección de miembros del Consejo General del Poder Judicial. Una propuesta de Consejo más integradora e independiente”, in *Teoría y Realidad Constitucional*, 1/2013, accesible at: <https://www.researchgate.net/publication/326298995>

⁶ See Official webpage of the Spanish General Council of Justice <http://www.poderjudicial.es/cgpj/es>

jury system, made of 9 jurors (laymen) and a presiding judge. Jury trial is competent only for very specific criminal offences, and thus the total number of jury trials annually is around 300 cases.

23. Judges enter into the judiciary after having passed an objective and very competitive examination, based on their legal knowledge. The system guarantees a fair selection of candidates based on their merits and the performance in the examinations. The exams are public. Every Spanish citizen with a law degree can take part in this exam. This has been the traditional way to enter into the judiciary. Since 1980 a side-entrance into the judiciary was introduced: one third of all judges may be appointed among lawyers or other legal professionals who have a certain number of years experience in the legal profession. They also undertake an exam, but their professional record makes already the major part of the total grading.
24. The profession of judge enjoys a high prestige in Spain and judges are not only independent in the laws, but also in practice. In general they are viewed as highly qualified professionals that play a crucial role in ensuring the rule of law and their work is very much respected. Their income ranges from around 2.700 euro for a newly appointed judge, approx. 4.000 euros for a senior judge and around 6.000 euros for a Supreme Court Judge.
25. Trust in the judiciary is very high although the functioning of courts is not completely satisfactory, as there are certain courts suffering of delays, mainly related to very complex criminal investigations coupled with vacancies or sick leave of a judge. It will be seen that the inspection plays an essential role in detecting needs of the courts in order to prevent excessive length of proceedings in practice, although their capacity to react lies only when the delays are caused by the judges, not due to other reasons or actors within the justice system.

III. The Judicial Inspection Service

1. Organization of the Inspection Service

26. The Judicial Inspection Service is a body within the structure of the GCJ, and acts under the powers of its Permanent Commission.⁷ According to Article 560 of the Law on the Judiciary (LJ), the GCJ shall: “1.8. Exercise the high inspection of Courts, as well as the supervision and coordination of the ordinary inspection activity of the Presidents and Government Chambers of the Courts.” This monitoring function shall be done by carrying out the actions and visits agreed by the GCJ, without prejudice to the competence of the governing bodies of the Courts and in coordination with them (Articles 560 and 615 LJ). Its functions are to supervise and control of the functioning of the services of the Administration of Justice. These functions are listed in detail under Article 615 JL:

⁷ The Plenary Session of the General Council of Justice shall elect the members of the Permanent Commission annually. The Permanent Commission will be composed of the President of the Supreme Court and of the GCJ, which will preside over it, and seven of its members: four appointed among the judges members. (Articles 601 and 602 JL)

- “1. The Inspection Service shall carry out, under the dependency of the Permanent Commission, the functions of verification and control of the operation of the Justice Administration services referred to in section 1.8 of article 560 of this Organic Law, by carrying out the actions and visits that are agreed by the Council, all without prejudice to the competence of the governing bodies of the Courts and in coordination with them.
2. However, the inspection of the **Supreme Court** shall be carried out by the President of the said Court or, in case of delegation thereof, by the Vice President of the same.
3. The **Chief of the Inspection Service** shall be appointed and separated in the same manner as the Promoter of Disciplinary Action. The elected person will remain in a situation of special services and will be considered, during the time that he/she remains in office, as Judge of the Supreme Court.”
27. The Head of the Judicial Inspection Service is appointed by the Plenary Session of the General Council of Justice, and shall be either a Supreme Court Judge or another Judge with at least 25 years in the judicial career. While exercising the functions as head of the Inspection Service he/she shall have the category of Supreme Court Judge. His/her mandate will be the same as the Council that appointed him/her (5 years, but renewable for another 5 years). The Central Inspection Unit consists of the Head, a deputy (who shall be a judge) and a Judicial Registrar (*Letrado de la Administración de Justicia*)⁸ and the relevant support staff.
28. The Inspection Service is organized in five inspection units, all of them made of one or several delegated inspectors and one or several Judicial Registrars. The units are divided by judicial branches, which are: civil, criminal, labour, and administrative courts unit. In addition there is the central unit, the mixed unit that covers family courts, capacity of persons, minors and prison supervision. Apart from the units, depending from the Head of the Inspection Service there is the Judicial Statistics Office, a crucial unit for the fulfilment of the tasks of the Inspection Service.
29. As of 20 June 2019 the Spanish Judicial Inspection Service was staffed as follows: 56 persons, out of them: 6 Inspectors in the Civil Courts Unit; 6 Inspectors in the Criminal Courts Unit; 2 Inspectors in the Labour Courts Unit; 1 Inspector in the Administrative Courts Unit, and the rest within the Central Unit and the Mixed Unit. Inspectors will not serve more than 10 years in the Judicial Inspection Service, so that they do not become alien to the day-to-day functions as a judge.
30. Inspectors shall be of a higher category within the judicial career than the court inspected. This is the reasons why the Judicial Inspection Service covers the Inspection of all courts, except the Supreme Court. The Supreme Court has its own inspection service.

⁸ The *Letrado de la Administración de Justicia*, a term that we have translated here for Judicial Registrar, is a specific figure in the Spanish court system. It is a high ranked civil servant, whose selection process is similar to the one for becoming a judge, although less strict. Its functions are mainly: act as judicial notaries; execution of judgments; responsible for the documentation activity; procedural handling of cases; management of the court office and non-judge staff; coordination with other bodies of the Administration; responsible for the judicial archives and the deposit of the goods and objects related to the judicial proceedings (Articles 440 ff. LJ).

2. Functions: virtual and on-site inspections

31. The ordinary sequence of the inspection functions is:

- 1) Detecting a deviance: alert of possible problem;
- 2) Identification of problem, its reasons and origins;
- 3) Elaboration of a report including recommendations; and
- 4) Follow up of compliance of the recommendations included in the report and the development of the problems detected.

32. The **methodology** applied is following:

- *Study of the data in the on-line software of the Organization and Management Section. If significant anomalies are detected, proceed to the next point.*
- *Study of statistical bulletins*
- *Study of the reports received in the Service regarding the court that could have an impact on the detected dysfunction (complaints about delays, requests for reinforcement, etc.)*
- *Study of the previous face-to-face or virtual Inspection reports in order to assess the evolution of the included bodies.*
- *Analysis of information from external sources*
- *Complaints and reporting activities*
- *Database of Penitentiary Institutions.*

33. For detecting any problem, the statistical information is crucial, because the control carried out by the Inspection Service is mainly quantitative (incoming cases, outgoing cases, pending cases vis a vis the performance indicators). However, an inspection can be triggered also upon information received by the relevant court, by the Ministry of Justice or by way of the complaints received in the office for attending the citizen's complaints (as will be seen below).

34. The guide on Criteria for Inspections, approved by the Plenary Session of the General Council of the Judiciary of July 22, 2010, provides for the carrying out of a virtual inspection of all courts twice a year. Upon the statistical data received from all courts, the Inspection detects possible deviations of the average performance indicators. This is possible because the HCJ has elaborated the performance criteria for every court, taking into account the territory, the type of court, and the existence of complex cases. Those algorithms allow to establish a range of number of cases every judge should reasonably handle/decide every year. The performance criteria will also be taken into account for the payment of the incentives for compliant judges.

35. A global on-line inspection consists of a systematic global study of the situation of all judicial bodies in order to identify the courts or districts that present significant deviations from the average performance of the other courts, and thus may suffer or cause dysfunctions.

36. The main goal of these "virtual inspections" is to be able to act upon the early detection of a problematic situation, the needs of a relevant court, identify the causes for such situation, and provide support to overcome the problems detected. By way of the control and monitoring of a limited number of judicial bodies whose situation deviates from certain performance criteria, and on the basis of the risk assessment, the

Inspection complies with the objective of preventing serious deficiencies, or avoid that those already detected continue or become even more serious.

37. Once a relevant deviation of the average compliance of the performance indicators is detected in a certain court, communication is established with the court to find out the possible motives, to confirm the existence of the problem, and to try to solve it. Upon those alerts, a physical inspection can be ordered. On-line or virtual inspections however do not allow accessing to the judicial files remotely. Such an access is at present not possible remotely, not only because the Inspection Service does not have the access codes to access the system of every court (data protection rules), but also because of the lack of interoperability between the different software used in the different Autonomous Communities.
38. At present, the statistical monitoring is complemented with an annual planning of on-site inspections of selected courts. Every 3 months, each inspection unit spends three weeks carrying out physical inspections of courts. These visits, which are always announced in advance to the relevant court to be inspected, can be 1) ordinary inspection, which is a comprehensive analysis of the functioning of the court; 2) abbreviated inspection, planned to check randomly courts that do not appear to present problems or have never been inspected; 3) precise inspection, to check compliance with a certain issue, e.g. to obtain information on the implementation of the e-justice programmes, or on the compliance with data protection rules; and 4) extraordinary inspection visit, triggered by an exceptional problem in a single court.
39. During the on-site inspection visits, inspectors can have access to all the files, to check, for example, whether the statistical data are recorded correctly or the software for classifying incoming cases is being used correctly. However, under no circumstances will the Inspection Service enter into checking the content of the judicial decisions or judgments, which falls only under the jurisdiction of the judges.
40. The judge serving in the inspected court shall cooperate with the Inspectors in carrying out their inspection duties. In practice it has never occurred that a judge has not cooperated actively with the Inspection Service. This may also be explained by the fact that “hindering the inspection activities” is defined as a serious disciplinary offence under Article 418.17 LJ.
41. On-site inspections allow the inspectors to interview directly the persons working in the relevant court and also gather information from other actors, such as the lawyers, the local bar association, court representatives (*procuradores*), and court users, to identify the causes for the non-compliance of the performance indicators or the delays or overburden a certain court is suffering.
42. The on-site inspections lead to the elaboration of a report, taking stock of the existence of a problem, the causes for such problems and the needs of the court. It usually includes an assessment of court upon comparative elements with the court itself (background, significant changes, etc.); and also comparative elements with the overall situation of the judicial branch and the courts within the territory, identifying courts that show the more salient deviances from the general performance data.
43. Reports include also recommendations and proposals for action. These can be, the establishment of a joint action plan elaborated together with the governing body of the relevant court; and other internal or external actions. These recommendations can be directed to external stakeholders, when the delays detected are due to cases that need to be addressed by external bodies, not my the judge or staff working in the relevant

court. These can be, for example: the need for more staff, the covering of vacancies, improvement of the IT equipment/personnel; the renovation of the premises; etc.

44. As a result of a virtual or an on-site inspection, the inspectors can identify infringements that could eventually constitute a disciplinary offence. In such a case, they would inform the Disciplinary Commission. In practice, however, the problems detected very seldom are caused by a negligent conduct of the judge, or a misconduct on their side. Most common problems of deviations (not proper functioning of a court in quantitative terms) can be traced back to the insufficient staff, vacancies not covered, sick leave of the non-judge staff, or extraordinary circumstances that have led to an increase of number of cases (as was the case with the effects of the ECJ case law upon the lawfulness of certain general clauses included in the bank mortgages).
45. The assessment report can also include internal recommendations, directed to the members –judge and non-judge– of a court. Those recommendations can be, for example, to improve the system of case-register, to gain more efficiency in the case management or to improve the implementation of the data protection rules, etc.
46. Once the report has been elaborated, it is shared with the members of the court, so that they are able to make allegations to it, show their agreement or disagreement. In practice, on very few occasions there are significant disagreements, due to the fact, that the inspections are carried out in cooperation of the relevant court staff. In fact, it is often that the members of a court request the inspection to be carried out, precisely to get support in the functioning, and also the support of the Inspection Service to cover vacancies or to get support measures from other courts (by way of temporary transfers of judges or appointing substitute judges or elevating a claim to the Ministry of Justice for more budget for the court administration).
47. Finally, the tasks of the Inspection Service, once the report has been elaborated and the recommendations drafted, a follow up activity will take place. Monitoring compliance with those recommendations and aiding the court facing problems, to overcome those. Obviously when the problems are caused by a budgetary shortcut or insufficient personnel, it is not in the hands of the Inspection Service or the inspected court, to provide for the solution, but at least to determine which support measures should be adopted while the personnel situation is normalised.
48. Only very few problems detected in the functioning of a court related to the number of cases dealt with, pending cases and average length until final closing of the case are to be attributed to the judge. Reasons lie mainly in the court office, which in Spain is mainly the responsibility of the Judicial Registrar, and whose funding is mainly dependent of the Ministry of Justice. This explains why most of the inspections do not end up with opening a disciplinary action against the judge serving in the inspected court. Misconduct or disciplinary infringements of other civil servants serving in the judicial office, shall be communicated to the relevant inspection service. The same applies in the case, when during an inspection of the Judicial Inspection Service, problems with the conduct of a certain public prosecutor might have been identified. In such a case the inspectors will notify the public prosecution service.

3. Other functions

49. During inspections the inspectors may be also informed about unethical or inappropriate behaviour of judges, not related to the quantitative performance of the jurisdictional functions. In such cases, the inspection could report to the Disciplinary Commission. However, as was confirmed during the interview with the members of the Inspection Service in Madrid, this is extremely rare, and has hardly occurred in practice.
50. Finally, the Judicial Inspection Service has also other functions, which are: authorise a judge to carry out a compatible professional activity. Judges in Spain are subject to a very stringent system of incompatibilities, not being allowed to carry out any professional activity, except: teaching and research in the legal field; and artistic activities. Nevertheless, even for these last activities, being remunerated or not, they need to ask for authorisation. The Inspection Service can deny the authorisation in cases where the court, where the judge is serving, presents delays.
51. The Judicial Inspection Service is also competent to allow study visits or permits to cooperate in judicial cooperation programs upon request of individual judges.
52. To summarise: Spanish Judicial Inspection Service undertakes the monitoring of the functioning of courts, mainly from a quantitative perspective. Compliance with the performance indicators, detecting why those performance criteria are not achieved, identifying the reasons for those deviances and proposing recommendations to improve the efficiency and performance of the courts, is its main role. This is mainly based on the statistical information every court has to provide periodically. No integrity checks are carried out by the Judicial Inspection Service, but if they get information of possible disciplinary infringements, they shall report such conducts to the relevant disciplinary body.

IV. Disciplinary proceedings and disciplinary offences

53. The corollary of judicial independence is the judge's accountability. Judges in Spain can incur into criminal and disciplinary liability. Pending a criminal procedure, the disciplinary proceedings may continue, but no decision will be taken until the criminal procedure is finalised. The facts established as proofed in the criminal procedure, are binding for the subsequent disciplinary proceedings. Disciplinary liability can be imposed after a criminal sanction only upon another legal ground (Article 415 LJ).
54. Disciplinary liability of judges is regulated in the Law on the Judiciary (Articles 414-427 LJ). After a short overview of the disciplinary offences the main features of the institutional framework and the disciplinary proceedings against judges will be explained. Conduct of judges against the principles of judicial integrity are typified as disciplinary offences. So, it can be affirmed that the prevention and sanction of inappropriate conducts of a judge, that do not entail criminal liability, takes place by way of the disciplinary liability system.

1. Disciplinary offences

55. The Law on the Judiciary differentiates between very serious, serious and less serious disciplinary offences or infringements. The penalties that may be imposed for disciplinary offences are: 1) warning; 2) pecuniary fine up to 6.000 euros; 3) transfer to another court at least 100 km away; 4) suspension up to three years; and 4) dismissal (Article 420 LJ). Less serious offences shall be sanctioned only with warning and pecuniary fine up to 500 euros; serious offences with pecuniary fines up to 6.000 euros, and transfer and dismissal may only be adopted in case of very serious disciplinary offences (Article 420.2 LJ). Statute of limitations is: two years for very serious offences; one year for serious offences and approx. 6 months (this period may vary depending of the type of conduct) for the less serious offences. The sanctions imposed are cancelled: within 6 months the warning; and at the request of the sanctioned judge: within 1 year for less serious offences; within 2 years for serious offences; and within 4 years in case of very serious offences, save the cases of dismissal. Once the sanction has been cancelled, it will be deleted from the judge's record as if it had never existed.
56. The law provides for a very detailed list of conducts that entail disciplinary liability. We will mention here the conducts that are typified as very serious offences, and briefly mention the most relevant ones under the classification of serious and less serious offences.⁹

57. **Very serious disciplinary offences** are (Article 417 LJ):

417.1: Intentional breach of the principle of loyalty to the Constitution.

(The law obliges judges to apply the Constitution, interpret every rule in conformity with the Constitution and to follow the rulings of the Constitutional Court. Not doing this willingly would constitute this disciplinary offence.)

417.2: Affiliation to political parties, labour or trade unions or working for any of them.

417.3: Causing continuous conflicts with the authorities within the judicial district for reasons not related to the judicial functions.

417.4: Interfering with the judicial functions of other judges by giving instructions or exercising any pressure.

417.5: Actions or omissions that have ended up in the establishment of civil liability in a final judgment.

417.6: Exercising any of the activities which are incompatible with the judicial profession.

417.7: Omitting information relevant in cases of appointments for vacancies and so causing the appointment against incompatibilities provided in the law.

⁹ A complete list of the disciplinary offences can be found in the Annex provided by the Spanish GCJ, which contains the legal provisions on disciplinary offences.

417.8: Knowingly not complying with the obligation to abstain in cases where there is a legal ground for self-recusal.

417.9: Reiterated neglect or unjustified delays in initiating, proceedings or deciding cases or in the exercise of any other judicial functions.

(The practice on this disciplinary offence will be explained in detail, as it is one of the most often invoked grounds and where the case-law has tried to define exactly when a negligent conduct is present and what kind of delays may give rise to disciplinary sanctions.)

417.10: Abandonment of post or unjustified absence for more than 7 days.

417.11: Willingly not telling the truth when applying for absence permits, compatibility declarations or economical allowances.

417.12: Revealing data known in the exercise of the judicial function, when this causes some kind of damage.

417.13: Abuse of the condition of judge in order to obtain any favourable treatment by authorities, public officials, or any professional.

417.14: Inexcusable ignorance in the fulfilment of the judicial functions.

417.15: Absolute lack of motivation of the judicial decisions that require it, if such lack of motivation has been found in a final judgment.

(Spanish Constitution (Article 120.3) requires the motivation of the judgments, although for certain judicial decisions forms are admitted, as long they are adapted to the specific facts and circumstances of the case. In order to clarify when a disciplinary infringement may be found under this ground, the case-law of the Supreme Court has stated that: the lack of motivation has to be manifested, not allowing to know what have been the elements taken into account for the decision, and that this defect has been stated in a final judgment (Supreme Court, Administrative Chamber 2 March 2009). Thus only an absolute lack of motivation would lead to this disciplinary offence.)

417.16: Committing a third serious disciplinary offence, having been sanctioned for two other serious offences which are not cancelled yet.

58. Serious disciplinary offences are mainly: lack of respect against other judges, parties or any citizen, abuse of authority, showing interest for a case being handled by another judge, correcting another judge's interpretation out of the way of appeals, using improper expressions in the judicial decisions or judgments, revealing information (if not very serious offence), unjustified absence less than 7 days, unjustified delays if not a very serious offence, unjustified delaying the time of commencement of the hearings, unjustified abstention to hear a case, not facilitating the judicial inspection, adopting decisions that distort the workload, exercising an incompatible function when this is not a very serious infringement (Article 418 LJ).

59. Finally, **less serious disciplinary offences** are mainly the following: showing disrespect to superiors, inferiors, parties, police officers, lawyers, etc. if not a serious offence; absence from court without any justification for up to 4 days; not attending requirements of other authorities, if this is not a serious offence.

2. Disciplinary liability and undue delays

60. As mentioned above, the “reiterated neglect or unjustified delays” in performing the judicial functions constitute a very serious offence or a serious offence (417.9 LJ). This is one of the most frequent grounds that has triggered disciplinary proceedings, and where the interaction between the disciplinary proceedings and the Inspection Service is especially close.
61. Delays are frequent in courts, but those delays will lead to a disciplinary liability of the judge only if certain circumstances are met. These circumstances are not clearly defined in the law, but have been set out in the case-law of the Spanish Supreme Court.¹⁰ The criteria taken into account are following: 1) the delay has to be “unjustified”. A delay caused by the excessive workload or the lack of personnel will not lead to disciplinary liability (but to a right to compensation by the State for malfunctioning of the justice system). However, even in courts that are overloaded, there may an “unjustified” delay, for example, for not dealing promptly with urgent cases. Thus the excessive workload will not render all delays as justified, and the judges have to be very attentive to deal swiftly with those which are specially urgent.
62. Other circumstances to be taken into account to find disciplinary liability for unjustified delays are: the general situation or the court, the importance of the delays, the consequences (damages) caused by the delays, and if it is a single situation or an extended, reiterated one. The reiteration of the delays will make a difference between the very serious and the serious disciplinary (Article 418.11 LJ) infringement. Finally the subjective element is also of significance: the negligence or delay has to be the result of the willing or negligent attitude or behaviour of the judge, to comply with the principle of guilt.
63. As to the neglect in exercising the judicial obligations, this has to be the manifest infringement of a judicial obligation, without justification. It implies an omission in acting.
64. In practice if the Inspection Service, during their inspection activities detect such a behaviour, they should report to the Promoter of the Disciplinary Liability. And the other way round: when a report regarding to undue delays reaches the Disciplinary commission, they will request data on the functioning of the relevant court and statistics regarding the number of cases, pending cases and average duration of the proceedings. The data collected by the Inspection Service will allow also the Disciplinary Commission to identify a possible misconduct of the relevant judge.

¹⁰ For example, Administrative Chamber of the Spanish Supreme Court, of 11 November 2003, interpreting Article 417.9 LJ.

3. Institutional structure of the disciplinary system of judges

65. The following bodies have competence on disciplinary proceedings and/or decisions:
- 1) President of Supreme Court, Supreme Autonomous Court and National Court;
 - 2) Management Chamber of the courts (*Sala de Gobierno*);
 - 3) The Promoter of the disciplinary proceedings;
 - 4) The Disciplinary Commission;
 - 5) The Plenary of the General Council of the Judiciary.
66. **1) Presidents of Supreme Court, National Court and Supreme Autonomous Court:** each of these courts have competence to impose a warning as a disciplinary sanction on the judges working in their courts (Article 421 LJ). The proceedings are very simple: short information of the institution of the proceedings, hearing to the relevant judge, and decision by the president, that can be appealed to the Disciplinary Commission (Article 604.3 LJ) and further to the administrative courts.
67. **2) Chambers of management of the Courts (*Salas de Gobierno*):** The internal management of the Supreme Court, National Court and Supreme Autonomous Court is carried out by these governing bodies (Article 152 LJ). They are made of: the president of the court, the presidents of each of the chambers within such court, and an equal number of judges elected by all the judges working in these courts. The Chambers of management take all the other decisions that are necessary for the functioning of these courts and its management, as for example: decisions on composition of each chamber, completing the court in case of missing judges, decisions on the substitution of judges, elaboration of the reports requested by the HCJ, elaboration of the annual report of the relevant court and the statistics, requests for covering of vacancies, etc. Among those competences, they have also disciplinary powers to impose warnings and pecuniary fines for less serious infringements on the judges working in those courts. The proceedings are the same as described above.
68. **3) The Disciplinary Commission:** The Disciplinary Commission of the General Council of Justice takes the decision on serious disciplinary infringements and proposes to the Plenary the decisions on the very serious disciplinary infringements (Articles 603 and 604 LJ). The disciplinary commission is composed of: 7 members of the GCJ, 4 coming from the ordinary judicial careers and the three others of judges appointed among lawyers with recognized competence. The disciplinary commission has to act with the total number of its 7 members, and the chair will be held by the judge with higher ranking within the judiciary of the ordinary judicial career. The decisions of the disciplinary commission can be appealed to the Plenary of the GCJ.
69. **4) The Plenary of the General Council of Justice:** Decides on the imposition of sanctions of very serious disciplinary offences. Elects the members of the GCJ who will be in the disciplinary commission and appoints the Promoter of the Disciplinary Action. All appointments are for 5 years, the same time of the mandate of the GCJ.
70. **5) The Promoter of the disciplinary proceedings:** The Promoter of the disciplinary proceedings was introduced into the Spanish system only recently by Law amending the Law the General Council of Justice was amended in 2013 (Organic Law 4/2013 of 28 June). Until then, the investigation of the complaints regarding disciplinary infringements was done by an “instructor”, which was appointed by the disciplinary commission *ad hoc* for every case. The investigation was assigned to judges who continued performing their functions in their respective courts. They were thus not specialized in disciplinary proceedings/investigations and they struggled to deal with the disciplinary complaints in individual cases besides their ordinary workload. The

disciplinary commission was competent to decide on the initiation of the disciplinary proceedings.

71. This system was considered not to fulfil completely the adversarial model and the need for impartiality as the same body that took the final decision on disciplinary liability, was also the one deciding at the preliminary stage on its commencement. Furthermore, the appointment of the instructor did not fully comply with the guarantees of the “judge pre-established by the law”, as it was an *ad hoc* appointment for each case. And finally, the instructors lacked specialized experience on these proceedings. All these grounds and the principles set out by the European Court of Human Rights, led to the amendment of the disciplinary proceedings against judges.
72. Since 2013, the Promoter will receive the complaints filed against judges, decide on the initiation or discontinuation of the disciplinary proceedings, gather all the information and evidence on the disciplinary liability of the “accused judge” (Article 605 LJ). The Promoter is appointed by the Plenary of the GCJ by an absolute majority vote and his/her mandate will last the same time of the GCJ that appointed him/her. The appointment shall lie either on a Judge of the Supreme Court or any other judge with more than 25 years in the judiciary (as the Head of the Inspection Service). Once appointed the Promoter of the Disciplinary Action will perform exclusively these functions. While in this post, he/she will have the category of Honorary Judge of the Supreme Court.
73. The Office of the Promoter of the Disciplinary Action is divided into three units, whose functioning is ruled subsidiarily by the rules on administrative bodies:

3.1. *The Unit for citizen’s assistance (Unidad de atención ciudadana)*

74. This unit receives all the complaints regarding the functioning of the courts. The aim of this unit is to seek improvement of the public service of the Administration of Justice. To that end, special attention has been given to make it very accessible to every citizen. Citizens can file complaints on-line, by registering a complaint at the GCJ or by introducing the complaint into a specific box that is provided in every court. There is a specific form, accessible on-line, but the use of such forms is not mandatory. In practice the most frequently used way is the on-line complaint.
75. Upon receipt of a complaint, the unit shall acknowledge receipt within 48 hours (if the complainant is identified). Time to respond to the complaint is a maximum of two months. The main goal is to address problems detected by citizens and to work in creating trust in the judiciary. Complaints related to the content of the judicial decisions are rejected. Those that refer to the conduct of a judge, are re-sent to the Disciplinary Commission.
76. This unit acts as the first entry for the complaints, and does the essential classification of the complaints, sending those that relate to judges to the Disciplinary Commission of the GCJ, and the rest to the relevant inspection or disciplinary bodies. The Unit for citizen’s assistance is directed by a judge, who is appointed by the Plenary of the GCJ after open competition among judges. This unit is assisted by 3 other judges and around 10 administrative staff. This unit receives annually around 10.000 complaints (all of them enter into the electronic data base). Anonymous complaints if not manifestly ill-founded are also sent to the relevant body, to decide if further preliminary investigation should be carried out or not.

77. The two most frequent grounds expressed in the complaints are: excessive length of judicial proceedings (43%); and disrespectful treatment (around 13%). With regard to the excessive length of proceedings, almost none of the delays are attributable to the judge himself/herself. Regarding the complaint of disrespectful behaviour, most of the complaints were directed against the court staff (54%) and only few cases against the judges (7,83 %). Many of the complaints are filed by the lawyers acting in court, not satisfied with the way the judge was directing the hearing.
78. Around 1000 of the received complaints are sent for preliminary inquiries, because they relate to judges and might entail a possible disciplinary liability. The decisions rejecting the complaints are notified to the claimants who can appeal the non-admission to the Disciplinary Commission. For such cases the Disciplinary Commission does not meet in plenary, but through its permanent commission (three members). Annually around 200 citizens appeal the decision on rejecting the complaint against a judge, and according to the information gathered by the commission only two of those appeals were accepted.
79. Thus the information that reaches the Promoter of the Disciplinary Action regarding possible disciplinary offences of judges comes mainly through the complaints directly presented by the citizens (around 60 to 80%), by using the “post-box”, the on-line access or sending it directly to the GCJ to the Unit for citizen’s assistance. The rest of the disciplinary complaints comes either from the presidents of the courts, the chambers of management, through the service of inspection of courts of the GCJ.

3.2. *The Unit for preliminary inquiries:*

80. This unit within the Office of the Promoter for Disciplinary Action carries out the preliminary investigation on the facts alleged in the complaints, and makes a preliminary assessment on those facts and the possible disciplinary liability. The Promoter has the power to question the judge against whom a complaint has been filed. Every court and judge has the obligation to cooperate with the investigation of the Promoter.¹¹ The law does not state which investigative actions can be carried out by the Promoter (it says “all necessary acts and evidence that are needed for the establishment of the facts”, Article 424 LJ), but the information gathered confirms that he/she can: interrogate the investigated judge, interrogate witnesses, request statistics, request reports from the Inspection Service, request judicial decisions and request information from other public or private authorities. If after carrying out this preliminary inquiry it is confirmed that the facts do not constitute a disciplinary offence, the Promoter will close the proceedings. This decision can be appealed to the Permanent Commission of the HCJ. If this body accepts the appeal, the Promoter shall continue the proceedings.

3.3. *The disciplinary proceedings Unit*

- 81.** Once the preliminary inquiry has gathered the relevant information and evidence, if there are indications of a disciplinary offence, the case will move forward to the unit

¹¹ Article 607.4 LJ: “Judges and Magistrates are obliged to cooperate with the Promoter for Disciplinary Action. The Promoter has powers to request the presence of the Judge or Magistrate against whom the case has been brought.”

within the Office of the Promoter dealing with the proceedings. An average of around 40 complaints proceed further with the disciplinary sanctioning procedure. Out of those, around half of them are closed at this stage, and the rest are transferred to the Disciplinary Commission with a proposal for sanctioning.

82. Proposal for dismissal is very rare, in recent years there was around 1 every year, decision that has to be taken by the Plenary of the GCJ.
83. As to the grounds for the sanctions finally imposed, the statistical information obtained from the Office of the Promoter, the majority were based on unjustified delays (less serious, serious and very serious), and the rest were based on infringement of compatibilities, infringement of the obligation to abstain, inexcusable ignorance, abuses of authority, not complying the timetables of hearings, disrespectful behaviour, or unjustified absence (around 2 or 3 infringements each, but the figures may not be exact, as some proceedings are based on more than one ground). Statistics for 2018 show that 23 cases were sent to the Disciplinary Commission with proposal for sanctioning. Most cases dealt with the offence regulated under Article 419.3 LJ (delays in giving the judgment or judicial decision, 13 cases out of 23); 417.9 LJ (reiterated neglect or unjustified delays in initiating, proceedings or deciding cases or in the exercise of any other judicial functions, 11 of the 23 cases); and the infringement under Article 418.11 LJ (delays in hearings, 12 cases out of those 23). Most of the proceedings deal with several disciplinary offences jointly (delays are typified under several legal provisions. Other grounds where the Promoter of the Disciplinary Action has recommended to impose a disciplinary sanction are: 418.6 LJ (use of unnecessary, unwarranted, extravagant or clearly disrespectful or offensive expressions in the legal opinion of the judgment delivered), 419.2 LJ (disrespectful conduct) 417.2 LJ (membership in political parties or trade unions, or performing duties or services for them); or 417.14 LJ (non-excusable ignorance of the applicable law). One case dealt with the offence of “Unlawful interference by means of orders or pressure in any sense in the exercise of the judicial functions of any other Judge or Magistrate” (417.4 LJ). The data of the Disciplinary Commission as to the numbers of disciplinary sanctions finally imposed has not been made available yet.
84. The proceedings will have to respect the general principles applicable to the administrative sanctioning procedure, and according to the European Court of Human Rights the safeguards provided under Article 6 ECHR under “criminal charge”, following the *Engel criteria*, apply to these sanctioning proceedings as well. These encompass, the principle of legality, the principle of guilt, the principle of proportionality, and the fair trial rights.
85. This unit will formulate the “indictment”, which shall contain the factual basis and the possible infringement committed, as well as the sanctions that would correspond according to the law. This “indictment” (*pliego de cargos*, containing the written charges) will be notified to the relevant judge (we will use the term “defendant” although it is not strictly a “defendant”). While the proceedings take place, the judge can also be provisionally suspended from his/her post, after having heard him/her and the public prosecutor. This precautionary measure can only be adopted if there are sufficient indications of a very serious disciplinary infringement (Article 424 LJ).
86. Once the defendant has received the indictment, he/she can file an answer within 8 days, making allegations, presenting evidence and/or requesting evidence to be practised (Article 425 LJ). Once the answer has been filed, after hearing the public prosecutor, the Promoter of the Disciplinary proceedings makes a proposal on the

applicable sanction to the Disciplinary Commission or the Plenary of the GCJ (depending on the type of sanction). Within 8 days, the defendant can make allegations against the proposed decision. Once these 8 days have lapsed, the whole file is sent to the deciding body.

87. The Disciplinary Commission (or the Plenary) will take a motivated decision (Article 425.8 LJ). The deciding body can take into account facts and allegations not considered by the Promoter, but only for applying a lesser sanction. The decision will be notified to the defendant and also to the person who presented the complaint. Both can appeal this decision to the administrative courts through the ordinary judicial administrative proceedings. The sanctioning decision can be enforced once the administrative proceedings are ended, even if the judicial proceedings before the administrative jurisdiction are pending.
88. Throughout the whole disciplinary proceedings, the defendant can be assisted by lawyer if he/she wants to. The public prosecutor will be party to these proceedings.
89. The Disciplinary Commission will inform the Judicial Inspection Service of the outcome of the disciplinary proceedings.

V. Judicial Ethical standards and Code of Ethics

90. The principle that has traditionally governed in the field of judicial ethics has been that “if you pick judges who know how to behave, then all will be well. If you do not, no amount of ethical problems will help” (*Judicial Ethics in England*). However this traditional approach needs to be complemented and even that affirmation is still valid, judicial standards of ethics are now defined as an essential component of public trust in the judiciary. For the last twenty years, there has been a strong movement towards adopting international standards, to promote public trust and underpin the legitimacy of the judicial power.
91. In the Spanish system, the departing stance is that the ethical behaviour of judges is presumed. Spanish judges do not undergo a previous background checking nor is it foreseen to carry out investigations of single judges. This is not done for recruiting, selection or evaluation of judges. Ethical standards are taken for granted, although misconducts, infringements and breach of the judicial ethical standards are typified as disciplinary offences. Ethics and integrity is dealt with by way of establishing a very detailed list of conducts that should be avoided, because they entail disciplinary liability. Trust in the effective functioning of the disciplinary bodies is an essential element to the effectiveness of the system.
92. Despite this approach, by Order of the GCJ of 20 December 2016, a Code of Judicial Ethics was adopted.¹² As expressed in it, “the “Principles of Judicial Ethics” aim to collect the values and rules of conduct shared by the Spanish judiciary. They seek to guide the performance of the jurisdiction and promote collective dialogue and personal reflection on the challenges faced by those who exercise it, in a complex and changing legal and social framework. They also seek to strengthen citizens' confidence in justice by making explicit the behavioural models according to which

¹²The English version of the Judicial Code of Ethics is attached also as Annex. In any event, it is accessible under <http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Buen-Gobierno-y-Codigo-etico/Codigo-Etico/>.

judges commit themselves to fulfil their functions.” They describe the highest standards every judge should seek to comply with.