



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

OVERVIEW OF THE INTEGRITY CHECKS IN THE FRENCH JUSTICE SYSTEM

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Ioana CORNESCUI

Attorney at law

CoE Justice Sector Reform consultant

LIST OF ACRONYMS

Ministry of Justice	MoJ
General Inspection of Justice (<i>Inspection Générale de la Justice</i>)	IGJ
Superior Council of Magistrates (<i>Conseil Supérieur de la Magistrature</i>)	CSM
Service for deontological aid and watch (<i>Service d'aide et de veille déontologique</i>)	SAVD
Deontological Collegium (<i>Collège de Déontologie</i>)	CdD

1. INTRODUCTION

1.1. Background

The Council of Europe (CoE) is currently implementing until 15 February 2020 the EU-funded Project on “*Support to the improvement of the capacity of the Inspectorate to the Supreme Judicial Council of Bulgaria*”, aiming at strengthening the institutional and the administrative capacity of the Inspectorate to the Supreme Judicial Council of Bulgaria in accordance with the identified best practices of the EU/CoE member States, particularly France and Spain.

There are three working groups with separate tasks.

Working Group 1 will be responsible on analysing the operating mechanisms in relation to integrity checks of the Inspectorate to the Supreme Judicial Council of Bulgaria. The national consultants and specialists will be providing the necessary and supporting material for this analysis. The group is chaired by the CoE representative.

Working Group 2 will analyse the state of affairs of the Spanish judicial inspectorate. Specifically, after a study visit to Spain they will provide an analysis of the integrity checks by the Spanish judicial inspectorate with a particular focus on online operating procedures. The Working Group is chaired by the National Project Manager (Bulgarian Judicial Inspectorate).

Working Group 3 will analyse the state of affairs of the French judicial inspectorate. After a study visit to France the group will focus on the French judicial inspectorate with a particular focus on ethical standards. The Working Group is chaired by the National Project Manager (Bulgarian Judicial Inspectorate).

Accordingly, the assistance within the Project is organised around three Lots:

Lot 1: Undertaking the analysis of the operating mechanisms in relation to integrity checks of the Inspectorate to the Supreme Judicial Council of Bulgaria and development of proposals for improvement.

Lot 2: Analysis of integrity checks by the Spanish judicial inspectorate, with particular focus on online operating procedures.

Lot 3: Analysis of integrity checks by the French judicial inspectorate, with particular focus on ethical standards.

On 1st October 2019 a joint meeting of all Working Groups and three selected CoE consultants (one per Lot) took place in Sofia, Bulgaria, hosted by the Bulgarian Inspectorate.

On 23rd and 24th October 2019, a study visit was organised for a group of six Bulgarian officials to France, to the General Inspection of Justice.

The present analysis, which is covering the subject matters under Lot 3, is based on research, debates and conclusions reached during the meeting on 1st October in Sofia (agenda attached in Annex 1) and on additional information collected during the study visit to France (programme attached in Annex 2).

While having reviewed an important number of documents about the French system, at the same time a set of relevant documents have also been analysed in relation to the current Bulgarian system¹, in order for the consultant to be able to select the appropriate topics and focus on what was considered of interest for this assignment, bearing in mind also that the present report lies at the basis of further consultations at the level of the Working Groups 3 (dedicated to the sectoral analysis on the French system of integrity checks) and 1 (at which level overall proposals for improvement will be tabled and discussed, including based on the reports and recommendations prepared in the other two Working Groups).

1.2. Preliminary remarks

From the outset, it has to be pointed that the main area of interest for the beneficiary was limited to powers of investigation by the French Inspectorate and to ways of carrying on investigations, with particular focus on gathering evidence in cases of breaches of integrity by magistrates.

However, it is important to clarify the framework of the analysis, considering that there are substantial institutional and legal differences between the French and the Bulgarian systems with regard to deontological area, ways of ensuring the integrity of the judicial system and of carrying on actions that aim at dealing with breaches in this area.

The organisation of the justice system in France is quite complex, with its duality of orders of jurisdictions²: judicial jurisdiction having at the top the Court of Cassation and the administrative jurisdiction having at its top the State Council (FR – *Conseil d'Etat*). A chart of this organisation is provided in Annex 3.

The complexity of the French system, particularly after the changes introduced in the past 5 years, made it difficult to limit the analysis to the General Inspection of Justice. Hence, references are wider and essential information is given about other institutions and mechanisms which, to the opinion of the consultant, might be of interest to the Bulgarian Inspectorate in their endeavour to improve their establishment towards a greater compliance of the judicial system with recognised standards of integrity.

It should be agreed that the ultimate purpose of the project's intervention under the area covered by the present analysis is to better protect the main values of a judicial system in a country governed by the rule of law. With this in mind, this document was not limited to administrative

¹ Both domestic documents, kindly provided by the Bulgarian Inspectorate, and external documents, such as GRECO and Venice Commission reports. The external documents related to the Bulgarian judiciary were also considered important, in order to place the assignment in an overall framework, since no action in a particular segment cannot be taken out of a context and thus make any proposal for change more meaningful

² There is also a separation between ordinary and exceptional jurisdictions, but such aspect was not treated in the present document

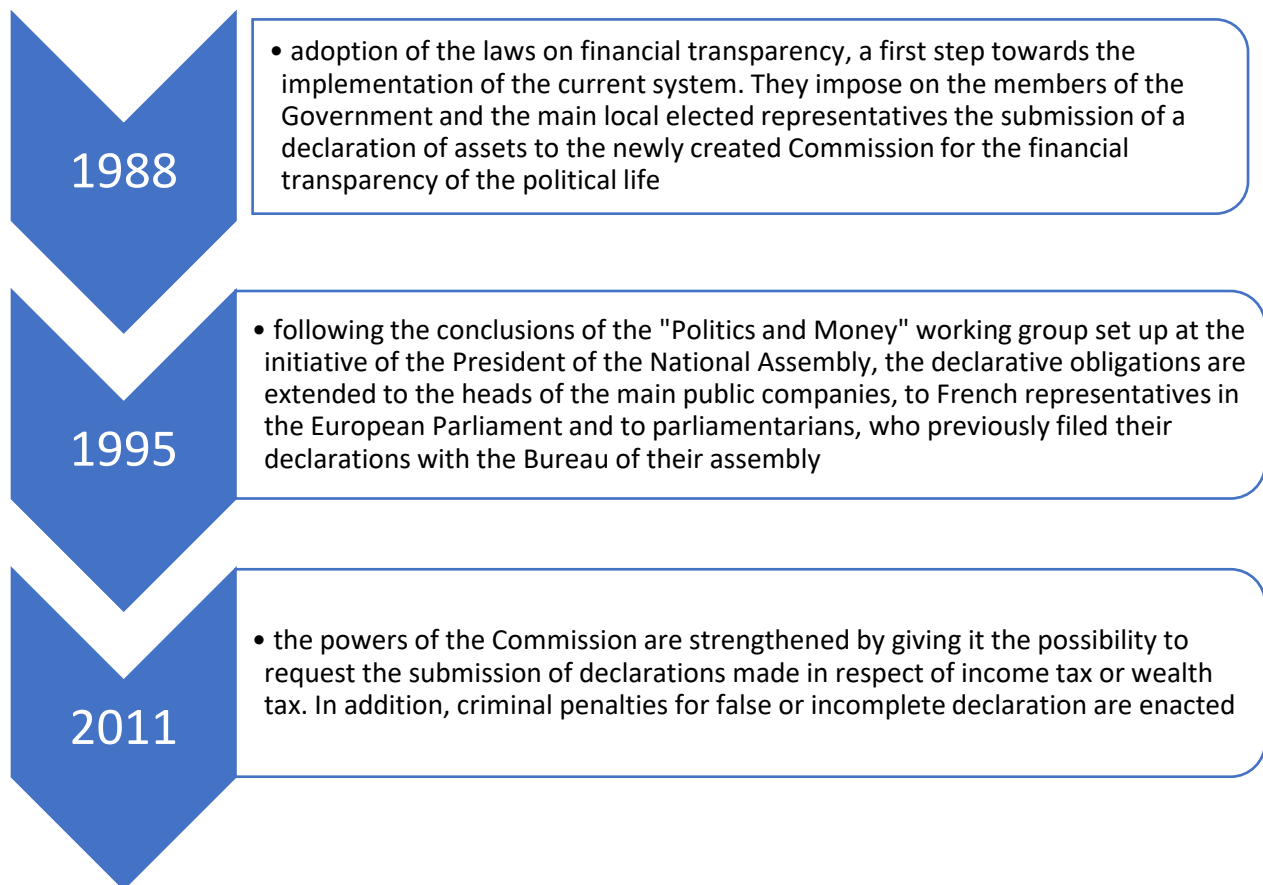
and practical information but gave also attention to the paradigm in which the French system is now functioning. This is important if the purpose is to ensure a greater adherence to fundamental values, to which end the recent mechanisms that have been developed in France represent a quite substantial different approach with far reaching and more solid results.

2. THE FRENCH SYSTEM – A COMPLEX ESTABLISHMENT

2.1. A more general framework related to renewed concern for integrity of public officials. The change of paradigm: prevention first

The creation in 2013 of the **High Authority for the transparency of public life**³ was the culmination of a gradual strengthening of transparency requirements incumbent on public officials. Until 1988, the fight against breaches of public integrity was essentially based on the penal repression of crimes such as bribery, corruption, illegal pursuit of interests or favoritism. These repressive mechanisms, although dissuasive, were not much applied.

The benchmarks until 2013:



Despite these evolutions, the mechanisms to fight against breaches of public integrity remained limited, in that they intervened only *a posteriori*. Moreover, the notion of conflict of interest was absent from the legislation, since checks were solely focused on the analysis of assets.

³ For more information, visit <https://www.hatvp.fr/la-haute-autorite/>

It is within this framework that the Commission for the reflection on the prevention of conflicts of interests in public life advocated in a report made public in January 2011 for "the development of a policy of prevention of conflicts of interests in public life ". In particular, it suggested to "identify and deal with conflicts of interest by putting in place preventive mechanisms". In the same vein, the Commission for the renovation and deontology of public life reaffirmed, in its report from November 2012, the principle according to which "the prevention of conflicts of interests is an essential stake to strengthen the confidence of citizens in the institutions ". To this end, the Commission proposed the submission of a declaration of interests and activities which "should be made public", considering that "transparency can indeed contribute to the prevention of conflicts of interest".

The laws of 2013 relating to the transparency of public life took up most of the proposals of these two reports. They created the High Authority for the transparency of public life, an independent administrative authority with strengthened powers compared to the previous Commission which it replaced. They also entrust the High Authority with a mission to prevent conflicts of interests. In particular, the concept of conflict of interest is defined for the first time as "any situation of interference between a public interest and public and private interests that prone to compromise the independent, impartial and objective exercise of a function" and provides it with injunctive power to public officials to put an end to situations of conflict of interest and, for educational purposes, with a prerogative of issuing opinions to prevent such situations.

A list of persons who have to report to the High Authority is provided in Annex 4.

2.2. The changes in the judicial landscape: a renewed institutional setup to support an increased concern for high deontological standards

Since the changes brought in 2013 (*see heading above*), specific evolutions have been registered in the judicial field, with important laws that have been enacted, increasing the requirements for high deontological standards and transparency. A complex institutional setup followed, with shared responsibilities among several categories of institutions and bodies.

2.2.1. The conflict of interest

In its current reading, after the legislative changes brought in 2016⁴, the law on the status of magistrates⁵ states that magistrates ensure that situations of conflict of interest are prevented or stopped immediately.

⁴ Law 2016-1090 of 8 August 2016 related to statutory guarantees, deontological obligations and recruitment of magistrates as well to the Superior Council of Magistrates has introduced the notion of conflict of interest in the statute of the magistrates (Law on the status of magistrates 58-1270 of 22 December 1958, to be found at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000339259>)

⁵ Law on the status of magistrates 58-1270

The **law defines the conflict of interest** as *any situation of interference between a public interest and public or private interests that is likely to influence or create the appearance to influence the independent, impartial and objective exercise of a function.*

According to the *Collection of deontological obligations of magistrates*, adopted by the Superior Council of Magistrates (CSM) in January 2019 (see below in 2.2.5 for details about this document), the magistrate **duty of vigilance**, in order to **prevent any conflict** between his/her duties as magistrate and his/her personal interests or those of close persons.

2.2.2. The declaration of interests and the declaration of assets

The declaration of interests

Within two months after taking office, magistrates have to submit a “**complete, correct and sincere**” **declaration of their interests**.

Such declaration makes an inventory of all activities, functions, mandates and participations of the declarer and has as **main objective to prevent** the conflict of interest.

Pursuant to the legal requirements, the data provided are those at the moment of taking office, and, in cases expressly required in the template of the declaration, data also covers the five previous years.

The law details the categories of persons who are entitled to receive such declarations: declarations are **submitted to the respective presidents of courts and head prosecutors**⁶. They may seek the opinion of the Deontological Collegium on the declaration **when there is doubt** about a possible conflict of interest (*about the Deontological Collegium, see below in 2.2.4*)

The interests to be declared can be **material** (property, financial, professional, commercial interests), as well as **moral**. Such declarations have thus to **cover**:

- Professional activities giving rise to remuneration or bonuses at the date of taking office, as well as during the five years prior to taking office
- Consultancy activities carried out at the date of taking office, as well as during the five years prior to taking office
- Participations in the governing bodies of a public or private body or a company at the date of taking office, as well as during the five years prior to taking office
- Direct financial participations in the capital of a company at the date of taking office
- Voluntary positions likely to give rise to a conflict of interest⁷

⁶ The Law 58-1270 provides a detailed list with the competent hierarchical person to receive such declarations, depending on the rank of the respective judges and prosecutors. The principle is that in each case the direct hierarchical superior level is the competent level to receive the declarations.

⁷ The French judicial authorities consider that **mainly two criteria are relevant in order to evaluate if a situation falls under the area of conflict of interest, when it comes to non-remunerated functions**:

- A *potential interference between this function and the judicial one* (e.g.: do they cover the same area of activity or the same subjects?)
- The *intensity of such interference*. The appearance of bias that the voluntary position may give should be evaluated from the angle of handling by the declarer of cases in court (e.g.: is the declarer called to be in contact with the structure where he/she acts as volunteer?)

- The elected positions held on the date of taking office.

To be noted that at the date of taking office the magistrate has also to give information in this declaration about the **professional activities carried out by his/her spouse or partner**.

It is important to mention that the declaration of interests **does not contain any mention of the political, trade union, religious or philosophical opinions or activities** of the magistrate, *except* when their disclosure results from declaring public functions or mandates. Membership in a political, religious, trade union or philosophical organisation does not need to be reported, **except if the declarer holds public functions of responsibility (management) or exercises a mandate**. Hence, **the mere membership in a trade union as simple member does not need to be declared**. Only functions/positions exercised within national offices of trade union organisations of magistrates have to be declared.

The declaration can be accompanied by any document the declarer considers important and illustrative. The **nature and the degree of precision of the information provided** in the declaration have to be **evaluated in each case by the declarer**, through the lens of the final purpose sought after by the legislator, which derives from the legal obligation to submit such declaration combined with the requirement of holding a deontological interview (*see further in 2.2.3 about the interview*) pursuant to the submission of the declaration of interests with a view of preventing any potential conflict of interest. Most of the headings of the declaration require comprehensive information. The voluntary positions though require a case-by-case evaluation of the concrete situations to be reported.

A new declaration has to be filed after each change of office, even in cases of remaining in the same jurisdiction. Any substantial change in the interests held shall be subject, within two months, to a supplementary declaration and may give rise to a new deontological interview.

The submission of the declaration of interests gives rise to a **deontological interview** between the magistrate and the authority⁸ to which the declaration was delivered, aiming at preventing any possible conflict of interest and to invite the respective magistrate, where appropriate, to put an end to a conflict of interest situation (*more about the deontological interview below in 2.2.3*).

The **declaration of interests is attached to the magistrate's file** in accordance with the legal requirements set forth in detail in the legislation guaranteeing its confidentiality. The law and the subsequent regulatory provisions⁹ provide in detail the conditions for safely keeping and manipulating such information. The Ministry of Justice (MoJ) Department for judicial services is in charge of taking all necessary measures in this respect.

Declarations are **kept until the expiry of a period of five years** after a magistrate ceased his/her functions. They are destroyed with due consideration to the same confidentiality requirement as regards the information within. However, when **disciplinary or criminal proceedings are**

⁸ Presidents of courts and chief prosecutors, as explained previously

⁹ Government Decree 93-21 from 7 January 1993, as modified by Decree 2017-713 from 2 May 2017 and Decision (*Circulaire*) of the minister of justice from 31 October 2017, taken in application of the Decree 2017-713. The latter includes a Guide of the declarer.

initiated (as a consequence of a breach related to the elements within the declaration), the destruction of the documents is suspended until the expiry of the period for exercising any appeal set forth by law.

When disciplinary proceedings are initiated, the **CSM** and the **minister of justice** may obtain communication of the declaration. Also, the declaration of interests **may be communicated to the General Inspection of Justice (IGJ)** in the context of the administrative investigation, pursuant to request by the minister of justice. In all circumstances, the confidentiality of the declaration has to be ensured. In this respect, however, it is worth mentioning that the declaration can be transmitted¹⁰ only **within the limits of “the need to know”**, i.e. under the circumstances that this is needed for the disciplinary procedures or the administrative investigation.

The law stipulates **criminal sanctioning for the non-submission of the declarations of interests or for omitting to declare a substantial part of the interests**: three years' imprisonment and € 45,000 fine¹¹. Even more, it is possible to impose complementary sanctions, in accordance with the Criminal Code, such as prohibition of civil rights and of the exercise of a public office ((in the modalities set forth in the Criminal Code). It is also punishable by the criminal law the fact of publishing or disclosing, in any manner, of all or part of the declarations. Such prohibition covers not only the data from the declaration, but also the information collected during the deontological interview and is addressing any person having had access to such data or information¹².

Hence, it follows that the declarations can be lawfully transmitted, as a rule, only to the Deontological Collegium for opinion (when applicable) and to the MoJ Department for judicial services for preservation.

The entire setup related to strict confidentiality rules has as purpose to protect the magistrate; however, this is not exonerating the magistrate from his/her legal duty to prevent any conflict of interest.

The declaration of assets

The **declaration of assets** of the magistrate concerns all of his own assets, as well as, where appropriate, those under common property regime with spouse or partner. Within two months from having taken office, such declaration has to be submitted to the High Authority for transparency of the public life and another declaration within two months after leaving office (ending function/position).

Any substantial change in the patrimonial situation is subject, within two months, to a **complementary** declaration.

The declaration **covers**:

- Immovable and movable assets, including securities (superior to a threshold established by regulations)

¹⁰ Actually, certified copies of the documents

¹¹ Independently from any possible disciplinary sanctioning

¹² So far, there have been no recorded cases of failure to declare and for illegal disclosure of information

- Life insurances
- Bank accounts, including savings accounts
- Vehicles (terrestrial, boats, airplanes)
- Commercial property and clientele
- Immovable and movable assets, as well as bank accounts, abroad
- Passive debts (liabilities).

As regards the **value of the assets**, the amendments brought to the legislation in 2016¹³ indicate that they have to be evaluated at the date giving rise to the obligation of submitting the declaration similarly to the situations of transfers of property without financial compensation. The High Authority can ask the magistrate to communicate the declarations submitted to the tax authorities, in conformity to the Fiscal Code. In relation to establishing the value of the assets for the purposes of their declaration, it is also worth mentioning a more general element, i.e. not limited to the judiciary, but concerning all those on whom the legislation is imposing the obligation of declaring their assets. The High Authority has drafted a Guide of the declarer, in which very detailed guidelines related to such aspects (alongside with other information of administrative nature) are provided¹⁴.

Such declaration submitted at ending of functions includes, in addition to the elements mentioned above, a presentation of the major events having affected the composition of the patrimony since the previous declaration, as well as a summary of the total income received by the magistrate since taking office.

As opposed to the declaration of interests, the one on assets **is not filed in the personal file** of the magistrate and cannot be communicated to third parties.

The High Authority can send the entire file to the prosecution, in cases when it acknowledges an evolution in the material situation for which insufficient justification is provided and after the magistrate has submitted his/her comments. Also, when the High Authority acknowledges a failure to comply with the obligation to declare the assets or when there is no answer to its injunction, it can **notify the minister of justice**.

Violations with respect to legal obligations related to submitting of declarations of assets are also **punishable under criminal law**. Similarly to the case of the declaration of interest, failure to submit the declaration or omission of substantial parts in the declaration or reporting untrue values of the assets is punishable of three years imprisonment and 45 000 € fine. Likewise for the declaration of interests, the declarer can also be subject to complementary sanctions related to lifting the exercise of certain civil rights or of a public function, pursuant to the relevant provisions of the Criminal Code.

More specifically for this type of declarations, **non-responding to injunctions by the High Authority or not communicating requested information and documents are also punishable** under criminal law by one year imprisonment and 15 000 € fine.

¹³ See footnote 4 above

¹⁴ The Guide can be found at: <https://www.hatvp.fr/wordpress/wp-content/uploads/2019/05/Guide-du-declarant-Mai-2019-web.pdf>

Currently, however, **the situation with the submission of declarations of assets by magistrates is blurred**. Following to the substantive changes brought in 2016 to the Law on the status of magistrates, by which the series of new deontological obligations have been introduced, an **appeal to the Constitutional Council** has been introduced for a series of various other provisions related to the law. During its review, the Constitutional Council acknowledged that the provisions requiring judges to submit declarations of interests were in conformity with the Constitution, but, on the other hand, the requirement that only certain high-level ranked magistrates (presidents of courts and chief prosecutors) would submit to the High Authority a declaration of their patrimonial situation was not constitutional. The Council ruled that, given the requirements of probity and integrity that weigh on magistrates exercising jurisdictional functions and the independence guaranteed to them in this exercise, which are requirements of public general interest, **restricting the obligation to file a declaration of patrimonial situation only to certain magistrates breaches the principle of equality**. On the other hand, it declared **in conformity with the Constitution the obligation of declaration of patrimonial situation introduced for the CSM members**¹⁵. The reasoning thus adopted emphasises the fact that a **reasoning of hierarchical type, consisting of imposing a declaration only to certain persons, to the exclusion of others, can be legitimate when it applies to an administration or a company, but does not have the same meaning for those whose independence is constitutionally guaranteed and who exercise, independently, jurisdictional functions**.

2.2.3. The deontological interview

The deontological interview is carried out based on the declaration of interest and has as purpose to **prevent** any possible conflict of interest and invite, if applicable, to put an end to such a situation.

Beyond the issue of the conflict of interest, the interview is the opportunity to remind the magistrate of the importance of respecting the deontological duties, as prescribed by the law and the *Collection of deontological obligations of magistrates* adopted by the CSM (*see below 2.2.5 for further details*). According to the latter, ahead of the interview, the magistrate is questioning himself in an honest way about any situation which can lead to creating a conflict of interest and to this end he/she takes into account all of his/her own interests, as well as the interests and activities of close persons.

The interview is held, as a rule, by the head of the respective jurisdiction. In some cases, delegation of such authority is allowed by law, but in all cases, the magistrate who is the declarer has to agree with this delegated competency. The head of jurisdiction holding the interview makes sure that the magistrate has well understood the need of **preventing** any situation that can lead to creating a conflict of interest. **No minutes of this meeting can be drafted**.

In cases of **doubts** on the existence of a situation likely to lead to a conflict of interest, it belongs to the head of jurisdiction to **ask the Deontological Collegium for an opinion**.

¹⁵ For the decision of the Constitutional Council, see: <https://www.conseil-constitutionnel.fr/decision/2016/2016732DC.htm>

The National School for Magistrates is in charge of providing continuous training to sitting magistrates and topics related to deontology are continuously embedded in the School's annual offer¹⁶. More specifically, in 2019 the School delivered a special module on the deontological interview¹⁷, addressed to heads of jurisdictions or their delegates, on how to best approach the issues during the interview, notably from a managerial angle, and how to hold the discussions in a benevolent atmosphere.

2.2.4. The Deontological Collegium

The Deontological Collegium of magistrates of the judiciary, was established by law¹⁸ in 2016 as a part of a broader set of reforms aimed at introducing Deontological Collegiums in all state institutions. Deontological Collegiums were created in all public institutions, and within the French justice system there are separate Collegiums for ordinary (judicial) magistrates, administrative judges and for magistrates working in financial courts.

The Deontological Collegium is composed of five members, having a mandate of three years. The members can be reappointed only once. The composition of the Collegium is published in the Official Journal. It holds at least one meeting per year and its sessions are not public.

The secondary legislation¹⁹ lays down in great detail the conditions for electing members of the Collegium and for its organisation and functioning. Members are either elected by peers (through secret ballots) or appointed by the President of the country upon proposal of the CSM (for magistrates) or, alternatively, upon proposal by the first president of the Court of Cassation or the Prosecutor General at the level of this Court (for the academic). Such membership is based on an alternate composition detailed in the law²⁰, which ensures a balanced spectrum of professionals coming from within the judiciary (including former members of the CSM, as specifically requested by the law), the prosecution, the High Administrative Court (*Conseil d'Etat*) and the academic area²¹.

The Collegium adopts its own rules of procedures (internal regulation).

It is responsible for:

- Issuing *opinions* on any question of deontology, which is of personal concern to a magistrate, upon referral by the respective magistrate or one of his superiors
- Examining *declarations of interests*, when applicable (as previously indicated, the authority to which the declaration of interest has been submitted can request the opinion

¹⁶ See, for instance, the catalogues with the National School for Magistrates' offer for continuous training for 2019: https://www.enm.justice.fr/sites/default/files/publications/Catalogue_FC_2019_fr.pdf and 2020: https://www.enm.justice.fr/sites/default/files/catalogue_formation_continue_2020_bd.pdf

¹⁷ See catalogue for 2019, page 20, training session code ADMJD05

¹⁸ Law 2016-1090 of 8 August 2016 related to statutory guarantees, deontological obligations and recruitment of magistrates as well to the Superior Council of Magistrates

¹⁹ Government Decree 93-21 from 7 January 1993, as modified by Decree 2017-713 from 2 May 2017, taken in application of the Law 58-1270 on the status of magistrates

²⁰ Law 58-1270 on the status of magistrates

²¹ Currently, a law professor, appointed upon proposal of the Court of Cassation (Supreme Court)

of the Deontological Collegium on the declaration, when there is any doubt related to a possible situation of conflict of interest).

Every year, the Collegium submits to the CSM a **public report**. This report **cannot contain any nominative information** but contains a summary of the opinions issued. The first report for the period 2017-2018 was published in June 2019²².

2.2.5. The role of the Superior Council of Magistrates in ensuring high respect of high deontological standards

As pointed out in the last CSM activity report for the year 2018²³, the deontology of magistrates lies at the heart of the missions of the CSM. According to the Constitution, the CSM is called to issue opinions in this area, upon request by the minister of justice. Additionally, according to its statutory law²⁴, it has the duty to draft and keep up-to-date the *Collection of deontological obligations of magistrates*. The Collection is not a source of positive law and is not binding. Its function is eminently **preventive**.

Collection of deontological obligations of magistrates

The French legislator did not opt for deontological code, as it is the case in other countries in Europe, and preferred the option of a document stating principles of professional conduct, articulated around the great values on which the behaviour of the magistrate has to be structured.

A first version of the *Collection* was issued in 2010. Since in the past few years there have been registered many evolutions both in society and in the legislation (particularly related to the introduction of the conflict of interest), the CSM found there was a need for an update of the document. CSM wanted to re-centre the deontology of magistrates on the notion of quality of justice. The work of the CSM was based on the following elements that fed in its analysis:

- The disciplinary activity – as this helped pointing at new needs in the area of preventing behaviours at risk and of expectations of citizens about quality of justice services
- The setup of the Service for deontological aid and watch in June 2016, which allowed to better grasp the needs of the magistrates in this field
- The exchanges that CSM members had with magistrates on the occasion of information missions conducted in the jurisdictions.

The revised version of the Collection was adopted in January 2019. It is built around the main principles and values, i.e. independence, impartiality, integrity, loyalty, professional conscience, dignity, respect for others, reserve and discretion. It is accompanied by a series of recommendations, as annex to the main document²⁵, built around thematical fiches with situations to which magistrates may be confronted and has at main aim not to give necessarily

²² The report can be found at: <https://www.courdecassation.fr/IMG///CDMJ%20Rapport%202017-2018.pdf>

²³ Found at <http://www.conseil-superieur-magistrature.fr/publications/rapports-annuels-dactivite/rapport-annuel-dactivite-2018>. The report includes in annex the new (revised version) Collection of deontological obligations of magistrates together with its annex with recommendations, adopted by CSM in January 2019.

²⁴ Law 94-100 of 5 February 1994 on the Superior Council of Magistrates

²⁵ The *Collection* and its annex are part of the last CSM activity report for 2018

ready-to-use solutions, but to assist in conducting a deep deontological reflection. It has to be noted that the *Collection* is not a disciplinary code, but a guide and its publication was aimed at contributing to reinforcing public confidence in the functioning of an independent and impartial judicial system.

The Service for deontological aid and watch (SAVD)

The Service was created in June 2016 as a mechanism for offering **practical support** to magistrates, allowing them to have access to quick and adapted answers to questions that arise in the deontological field. The SAVD is **also assisting the CSM** in continuing the reflection on updating the *Collection of deontological obligations*²⁶. The Service is composed of three members, chosen by the CSM among its former members, with due consideration to their knowledge and experience of deontology of magistrates. They are **widely trusted persons** whose assistance is provided in **full and strict confidentiality**²⁷.

Any magistrate can contact the SAVD for any matter which is of personal deontological concern²⁸. Since 2017, the SAVD has opened also towards the **magistrates-to-be**²⁹, during their initial training in the judicial school³⁰.

It **operates without formalism**, as it can be contacted on the phone (via a dedicated line) and through email or regular post. It operates permanently, it is very reactive and is essentially based on an interactive dialogue. SAVD members are under a strict obligation of respecting the confidentiality, and thus no written communication is addressed to the magistrate who has contacted the Service. The SAVD does not deliver any formal or official opinion.

The three years of existence of the SAVD showed that it answers to a strong need of dialogue on the side of the magistrates, which sometimes is not satisfied in their jurisdictions. It provides support for sometimes sensitive decisions they have to take, and it might be difficult for them to open up to the hierarchy or their personal environment at work. In its activity report for 2018, the CSM concluded that **the number of requests addressed to the SAVD so far shows that the French magistrates are truly concerned with the deontological matters and have a genuine wish to have a commendable behaviour.**

As for the **relation with the Deontological Collegium**, it has to be noted that there is no conflict or overlap of competencies. The SAVD is not intervening in the areas related to the declarations of interest (where the law clearly stipulates that the Collegium has to issue opinions), and is also refraining from giving advice or assisting when there are too general questions raised and thus their resolution would involve an answer that would have a too broad scope. The two institutions appear thus to be complementary, as they respond to different expectations given their very

²⁶ The Service is regularly informing the CSM about the topics that are of concern to magistrates, with due respect to the anonymisation of personal data

²⁷ The current members can be found at: <http://www.conseil-superieur-magistrature.fr/service-daide-et-de-veille-deontologique-du-csm>

²⁸ This means that the concerned magistrate can ask questions only for him/her and not for/on behalf of a colleague. The same is valid for the hierarchy.

²⁹ In FR – *auditeurs de justice*

³⁰ *Ecole Nationale de la Magistrature* (National School for Magistrates)

different ways of operating. In addition, informal exchanges started taking place, the first one was held in October 2018 and allowed for a convergence of their respective analyses.

2.2.6. The disciplinary area

The **disciplinary power** is exercised, with regard to judges by the **CSM** and with respect to prosecutors, civil servants in the central administration of the MoJ and magistrates exercising the functions Inspector General, head of the IGJ, inspector general of justice and inspector of justice by the **minister of justice**.

The **minister of justice refers the case to the CSM**, with the facts justifying disciplinary proceedings. The role of the structures set by law to initiate investigations, amongst which the minister of justice, appears to be essential, since it conditions any action to be taken by the CSM, which cannot start any proceeding *ex-officio* and has no own inspection service at its disposal.

There is a **statutory limitation** of three years for cases that can be filed with the CSM, either by the minister of justice or by presidents of courts, who cannot refer cases beyond a period of three years from the day they had an effective knowledge of reality, nature and the magnitude of the facts they consider to be disciplinary offences. In cases of criminal investigations against a magistrate, this period is suspended until final decision in the criminal file.

The CSM can also receive **complaints from heads of courts and litigants**.

In cases considered urgent, the CSM can take the decision to **prohibit** the judge being the subject of an administrative or criminal investigation the **exercise of his/her functions until final decision** on disciplinary proceedings. The law details the conditions under which such decision is taken, its duration, and consequences.

As for the prosecutors, any decision on their disciplinary sanctioning cannot be taken without consultation of the CSM. When the minister of justice intends to apply a more severe sanction than the one proposed by the CSM, he refers his reasoned decision to the CSM.

The complaint filed with the CSM is firstly examined by an admission commission, whose president can reject the complaints manifestly ill-founded or inadmissible.

As a rule, the hearing of the disciplinary committee of the CSM analysing the case is public and its reasoned decision is also made public. The decisions rendered by the CSM in disciplinary proceedings can be appealed before the High Administrative Court (*Conseil d'Etat*).

When a magistrate has been subject to disciplinary proceedings, which have been concluded by a decision of non-sanctioning, he/she can request the withdrawal of the documents relating to these proceedings from the personal file.

Whereas the law does not make a list of **disciplinary offences**, but defines them as **any failure** by a magistrate to the **duties of his status, honour, tact or dignity** constitutes a **disciplinary offence**, the **sanctions** are varied and precisely identified:

- Reprimand with mention on file

- Relocation to another position/office
- Removal of certain functions (attributions)
- Prohibition to be appointed as a single judge for a maximum period of five years
- Lowering of ranking³¹
- Temporary exclusion from office for a maximum period of one year, with total or partial deprivation of payment
- Demotion
- Automatic retirement or the approval of cease of functions when the magistrate is not entitled to a retirement pension
- Dismissal.

Despite the fact the legislator chose not to make a list of actions that can constitute disciplinary offences, there are **two situations which are expressly referred to as problematic and thus leading to legal action against magistrate**.

One of the breaches is the *serious and deliberate violation by a magistrate of a rule of procedure constituting an essential guarantee of the rights of the parties, established by a court decision that has become final*³². For magistrates prosecutors and for those working in the central administration of the MoJ, as well as for a magistrate exercising the functions of Inspector General, Head of the IGJ, of inspector general of justice or inspector of justice, the breach is assessed with due consideration given to the obligations arising from their hierarchical subordination. A **second** situation is related to a *final decision by a national or international jurisdiction finding a violation by the State of the functioning of the justice system*. Such judgments are communicated by the minister of justice to the heads of jurisdiction concerned by the respective decisions and the magistrates concerned are also informed. Such situations are a **possible trigger for disciplinary proceedings** to be initiated by the minister of justice and the heads of jurisdictions.

A mechanism that is worth mention relates to the competency given by law to the Inspector General, head of the IGJ, the first presidents of courts, the prosecutors general and the directors or heads of departments within the central administration to give a **warning** to the magistrates placed under their respective authority. This mechanism is **apart from any disciplinary action or proceeding** and appears to belong to the so-called pre-disciplinary area. Such warning is also filed in the personal file of the magistrates and in fact represents a strong message which has a consequence on the career of the concerned person. It is kept in the personal file for a duration of five years. The warning is **automatically deleted** from the personal file if no new warning or disciplinary action occurred during this period.

The magistrate against whom it is intended to issue a warning is invited to a **preliminary meeting**. Based on such invitation, the magistrate is entitled to the **communication of his/her**

³¹ Within the grade or class, in the hierarchy

³² However, it seems that disciplinary sanctions have never been applied under this ground. For an interesting and complex case against a prosecutor, involving several other grounds for disciplinary sanctioning (e.g. complaints related to: pressures exerted on the inspection services; collecting personal data in a fraudulent way; public declarations in the media breaching the obligation of reserve of magistrates), but which was finalised with a no-sanctioning decision by the CSM, see: <http://www.conseil-superieur-magistrature.fr/missions/discipline/p075>

file and the documentary evidence for the initiation of the procedure. He/she is informed of his right to be **assisted by the person of his/her choice**.

No warning may be issued after a period of two years from the day on which those entrusted by the law with the power of giving the warning had knowledge of the nature and the extent of the facts that might justify such a measure. In the case of criminal proceedings against the magistrate, this period is interrupted until the final decision. After this period and except in the case where disciplinary proceedings have been initiated against the magistrate before the expiry of this period, the facts in question may no longer be invoked as part of a warning procedure.

As the CSM pointed out in its last activity report for 2018, the system allowing to investigate magistrates for disciplinary offences is transparent and effective. Every year number of magistrates are investigated and sanctioned. The **audiences are public**, the relevant data is put on internet (statistics, decisions³³).

2.2.7. The role of the *Conseil d'Etat* in ensuring high respect of high deontological standards

In the administrative justice field, same concerns for ensuring high deontological standards can be noted.

In this context, it is worth mentioning that the Code of administrative justice has also been amended in 2016³⁴ with respect to provisions related to deontology, as well as to declarations of interest and deontological interviews.

As one consequence, the *Conseil d'Etat*³⁵ adopted in March 2017 a *Charter of deontology*³⁶, which beyond the known values for magistrates contains also headings related to best practices. One year later, in March 2018, the *Charter* has been amended to introduce new detailed provisions related to participation of administrative magistrates on social media networks, as well as more generally to their public positions and speeches.

Also, a Deontological Collegium for the administrative justice has been established by the legislative changes brought to the Code of administrative justice in 2016. It is tasked with assist the members of the administrative jurisdictions in clarifying the application of the principles and best practices of the *Charter*. The accent is also placed on prevention.

Among the persons who can file a request to the Collegium, it has to be noted that there is also the **head of the inspection mission** of the administrative jurisdictions.

³³ <http://www.conseil-superieur-magistrature.fr/missions/discipline>

³⁴ Law 2016-483 of 20 April 2016 on the deontology and rights and obligations of civil servants

³⁵ English version of its website: <https://www.conseil-etat.fr/en/>

³⁶ To note however that a first Charter had been already adopted in 2011, before the wave of reforms in 2016. The new one adopted in 2017 was derived from the major legislative changes, as well as from the evolutions registered in the recent years.

The Collegium can also issue **recommendations**, including on its own motion, this being a difference to be noted with the homologue institution for the judicial magistrates. The **opinions** that the Collegium issues are made **public**, with data anonymisation, when it considers that the subject matter and the solution are of general interest. These opinions are brought together in a Collection which is published on the Conseil d'Etat website. They are also annexed to the annual reports of the *Conseil d'Etat*.

2.2.8. The General Inspection of Justice (IGJ) and their administrative investigations

The IGJ, as it exists now, was **established in 2017**³⁷ and has regrouped the former separate inspections of judicial and penitentiary services and for judicial protection of the youth. Until 2017, there have been recorded five waves of reforms, since the original creation of a permanent inspection mission in 1964³⁸. The last reform from two years ago widened the intervention areas of the IGJ (Annex 5 is providing a diagram with the missions of the IGJ and the interconnections with other institutions and Annex 6 the organigramme at the end of 2018). The new IGJ has evolved a lot since its initial creation. It is now regrouping the former separate inspections of judicial and penitentiary services and for judicial protection of the youth and is counting now 110 inspectors who are appointed by the General Inspector.

The Inspector General drafts an annual work programme of the missions, upon consultation with the general secretary of the MoJ and the directors of central administrative services (in the framework of a programming committee which he/she presides). This programme is then submitted to the minister of justice for validation.

While the IGJ is attached to the MoJ, it **enjoys a large autonomy**, as it does not receive instructions from the minister in discharging its duties. Once a matter has been referred to it, the IGJ is free to choose its own working method and enjoys complete independence to draw up its findings and conclusions. It publishes yearly reports where it gives account of its activities that are publicly available³⁹.

³⁷ The founding text are the Government Decision 2016-1675 of 5 December 2016 on the creation of the general inspection of justice and the Decision of the minister of justice of 5 December 2016 on the modalities of organisation of the general inspection of justice and its missions

³⁸ While the inspection has been established through a decree from 1958 related to the judicial organisation, it was in 1964 that a permanent inspection mission was created through a decree on the organisation of the Ministry of Justice and the minister was assisted by a general inspector of the judicial services

³⁹ See, for the two reports for 2017 and 2018, after the last wave of reorganisation in 2016:

http://www.justice.gouv.fr/art_pix/igi_rapport_activite_2017.pdf;

http://www.justice.gouv.fr/art_pix/IGJ_Rapport_Activite_2018.pdf

In the absence of public documents related to the integrality of its work, the annual reports are the documents that lists all the missions carried out and give an exhaustive vision of the very diverse activities the IGJ is doing. However, it has to be noted that thematic reports are also published, see for instance: <http://www.justice.gouv.fr/publications-10047/rapports-thematiques-10049/>. These missions focus on specific themes. For example, one was dedicated to violence against women and was based on the analysis of 80 cases decided by Assize Courts. The report published aimed at recommending how to treat these cases to prevent and address adequately cases of violence against women. Other example of thematic reports is the one referring to violence on children that was drafted in cooperation with the Ministry of Social Affairs and the Ministry of Education. In some cases, thematical missions can be entrusted from the Prime Minister, as it was the case in 2018

The **position of the judicial inspection in the institutional landscape in France has been for some years subject of discussion at CoE level, notably in GRECO evaluation reports**⁴⁰. Since 2013, when GRECO inserted in the fourth evaluation round one recommendation asking that not only disciplinary authority over judges, but also any prior administrative procedure be concentrated in the hands of a section of the CSM having jurisdiction over judges, this subject came into discussion continuously in the following compliance reports, in 2016 and 2018⁴¹. On the French side, such substantive reform is still not envisaged, but different other steps have been taken, such as opening up progressively the possibility of referring matters to the CSM also by appeal court presidents and litigants (previously it was only the minister of justice). Also, the CSM has noted that the system of warnings, in terms of ensuring a graduated approach in dealing with judges faced with ethical issues is very useful. The French authority have stressed that the progressive introduction of the other mechanisms related to deontology (*as presented previously*) had a very important role towards opening the judiciary to the society. The French thus consider that the system presents all the guarantees such as to preserve the independence of the judicial authority, and the legal changes brought in 2016 are reinforcing such guarantees (e.g. in terms of appointment of magistrates members of the inspection services⁴²; the independence in conducting missions and producing and signing the inspection reports; on the substance, the inspections are never looking into the adjudicative activity). Finally, it is also worth mentioning the decision of the High Administrative Court (*Conseil d'Etat*) from March 2018, which validated the principle of an inspection service placed at MoJ level (specifically attached to the minister of justice), in charge with evaluating and controlling the activities of the jurisdictions⁴³.

The IGJ has **no institutional links with other institutions or powers**, e.g. with the Parliament (it does not report to it) or with the CSM, although with the latter it interacts in the context of disciplinary proceedings. However, for this last aspect, it has to be noted that the **IGJ has no competence in making assessments or proposals regarding opening disciplinary proceedings**. In addition, it needs to be noted that the CSM can carry out inquiries itself or decide based on the reports of the IGJ administrative investigations. Nevertheless, the CSM does not blindly rely on the findings in the IGJ inspection reports as it carries out its own oral hearings, considered essential for a thorough assessment of the circumstances of the case and as procedural guarantees for magistrates.

related to non-accompanied minors (in the context of the migrants' flow) – this however was a joint mission with other relevant services from the public administration

⁴⁰ Corruption prevention in respect of members of parliament, judges and prosecutors - Greco Eval IV Rep (2013) 3E, published on 24 January 2014; Greco RC4(2016)2, published on 3 June 2016; GrecoRC4(2018)7, published on 18 September 2018

⁴¹ It has to be noted also that France is not the only country having this institutional setup. Similar situations are, for instance, in UK and Italy

⁴² It is worth mentioning the practice established by the CSM since 2012 to hear the magistrates proposed by the MoJ to hold the functions of deputy Inspector General, similar to the hearing held when there is a proposal for appointment of a general prosecutor or a prosecutor. It became a practice also that the minister of justice is not going beyond a negative opinion of the CSM.

⁴³ The decision can be found at: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-decision-du-23-mars-2018-syndicat-force-ouvriere-magistrats-et-autres>

The setup of the new IGJ has been accompanied by the drafting of a **strategic document for 2018-2020**. This document gives the broad orientations for the three years it covers (positioning, stakes, strategic objectives). It has been validated by the minister of justice in April 2018.

One of the objectives for the work for 2018 related to investment in the field of **prevention** of breaches to deontological obligations. In line with the recent changes imposing more transparency and accountability in the entire public service, including justice, the IGJ is **in the process of creating its own Deontological Collegium**.

The IGJ is chaired by the Inspector General and a committee composed of twelve inspectors representing all the various departments of the IGJ reviews reports and issues recommendations with the purpose of ensuring coherence of the work of various missions and the respect of deontological rules. Missions are not bound by the recommendations/opinion of the committee and can decide to maintain their approach if they disagree with the findings.

Within the organisational chart of the IGJ, **one department is dealing with the administrative investigations and deontology**. Its main mission is to contribute to the reflection on the methodology for the administrative investigations, and to this purpose it drafts and updates **methodological guides**⁴⁴, with due account of the general principles of law, the caselaw of the *Conseil d'Etat* and CSM. It supports the administrative investigations, identifies issues and proposes answers/solutions. It also can draft internal memos on topical subjects, upon request by head of the IGJ or on its own motion.

Appointment /selection

The magistrates exercising the functions of Inspector General, Head of the IGJ, and Inspector General of Justice are appointed by decree of the President of the Republic, after opinion of the CSM.

The system of recruitment to the IGJ is currently undergoing reforms to steer the selection procedure towards professionalism and a participative model whereby inspectors can prepare a report on the candidate. According to this model the Inspector General proposes candidates, but his/her proposal is based on the opinions of the inspectors which has been cross reviewed. This new mechanism is considered to ensure equality and professionalism of the appointees.

Missions

The IGJ has in short **five areas for missions**: supervision (monitoring and control); **investigation**; evaluation and advice⁴⁵; coordination; auditing. In addition, the minister of justice can entrust the IGJ with any mission of information, expertise and advice, as well as evaluation

⁴⁴ For instance, the methodological guide on conducting administrative investigations aiming at collecting information about behaviours is listing all diligences and modalities of operating of inspectors during such investigations. This methodology aimed at finding a balance between requirements deriving from the legal nature of an administrative investigation and the needed guarantees inspired from disciplinary proceedings.

⁴⁵ This refers to thematical missions – see above footnote 36 and support/assistance missions – which include forms of technical assistance to inquiries carried out by the Parliament. Examples of the latter missions: development of the Plan for the justice sector covering 2019-2022; implementation of the reform aiming at creating the function of the judge for liberty and detention (in force since 1st September 2017); territorial organisation of justice (2018).

of public policies and international cooperation. The IGJ can also receive from the Prime Minister missions of the kind mentioned. The minister of justice can also authorise the IGJ to carry on missions upon requests received from other ministries, administrative and financial jurisdictions, international jurisdictions, foreign States, international organisations and the European Union.

This is a complex setup (Annex 7 is presenting the system of the missions in a schematic vision), of which, for the purpose of the present analysis, only the **mission related to investigation is treated in detail** (see below).

However, it is worth mentioning the mandate related to the checks with the objective to assess the **organisation, functioning and performance of the jurisdictions**, as well as of the departments in charge with the judicial protection of the youth and the penitentiary administration. These are so-called **checks of the functioning** (*contrôle de fonctionnement*) and fall under the first area above, i.e. the supervision⁴⁶. They are foreseen within yearly inspection plans and are carried out on the basis of questionnaires and internal methodological guides (reference documents) that ensure that controls (checks) are consistent across the territory of the country. These reference documents (*référentiels*) are quite detailed and they are regularly updated. These missions can last up to six months. Inspectors initially send requests for documents and then meet presidents of jurisdictions after which they draft reports and make recommendations. A follow up procedure is foreseen to check whether the recommendations have been followed⁴⁷. It has to be mentioned that **also through such missions**, which essentially covers checks with the objective to assess the organisation, functioning and performance of the jurisdictions, the IGJ can **discover issues related to the observance of the deontological rules**⁴⁸.

Similarly, in the context of the overall mandate of the IGJ, relevant for the present report, the missions so-called of **inspections of functioning** (*inspections de fonctionnement*) are important to be referred to. These are triggered by identified malfunctioning of a certain service (thus can target *several* persons, with suspicions of disciplinary offences). Such missions are also initiated upon minister's of justice request and has as purpose to identify the causes, to determine if blameworthy behaviours have been registered on the side of magistrates or civil servants and formulate recommendations⁴⁹.

Under the coordination area, it is to be noted that the IGJ plays the role of **coordinator of the inspections run by the presidents of courts** and thus **IGJ receives reports submitted by them**⁵⁰, based on the law on judicial organisation, which gives to the Inspectorate a global vision

⁴⁶ In 2018, for instance, 4 such missions have been conducted in selected courts. Moreover, in 2018, for the first time a horizontal mission was organised across all sectors – judicial, penitentiary and judicial protection of the youth, to address two major themes: handling juvenile delinquency and executions of criminal sanctions.

⁴⁷ At 3, 6 or 9 months. In 2017, for instance, 10 follow-up such missions have been carried on, out of which 4 were for courts. In 2018, out of the total of 12 follow-up missions, 2 were in courts.

⁴⁸ For instance, the IGJ activity report for 2017, showed, *inter alia*, among the chosen judicial jurisdictions to be monitored that the deontological rules, even if known, are often applied in an heterogenous way and there are various interpretations among magistrates related to the conflict of interest.

⁴⁹ To be noted that in 2017, for instance, none of this type of missions have targeted courts, but only the penitentiary system. In 2018, only one court was concerned (commercial court).

⁵⁰ IGJ received 62 reports in 2017 and 44 reports in 2018

of the entire control system in the judiciary. As such, it gathers a high amount of data. The IGJ sends to the courts its views and analysis, based on the reports it receives. It also prepared a synthesis of findings.

Main targets of missions

As far as the judicial system is concerned, the focus of action of the IGJ's missions tends to be on more on higher level (e.g. tribunals and courts of appeal - the *grosses structures*). One of the reasons is avoiding duplications as courts of appeals have a system of internal control and inspections themselves that can be applied to lower courts. In addition, the principle of proportionality effectively determines that minor or lower issues are handled at other levels, that do not require the activation of the machinery of the IGJ.

It is interesting to point at the fact that the decision of the High Administrative Court (*Conseil d'Etat*) from 2018, previously referred to, has also left out of the scope of the inspection missions of the IGJ the Supreme (Cassation) Court. While the *Conseil d'Etat* considered that the normative texts instituting the new IGJ do not affect neither the judicial independence nor the right to a fair trial for the first and second instances, it however annulled partially article 2 of the Government Decision⁵¹ in the sense that the Supreme Court cannot be also included in the scope of the inspections, unless more safeguards are foreseen. The *Conseil d'Etat* noted in its decision that extending the inspection's powers over the Supreme Court represented an innovation, which needed to be analysed. Hence, it was considered that, due to the very special competence this court has as a cassation court, placed at the very top of the judicial system, and also to the constitutional roles entrusted to its first president as well as to the prosecutor general at the same level, notably at the top of the CSM, in charge of assisting the president of the country and guarantor of the judicial authority, the Decision could not include the Supreme Court in the scope of the inspections without foreseeing supplementary guarantees related particularly to the conditions under which inspections and investigations are carried on when targeting such a jurisdiction or one of its members.

The administrative investigations

The **administrative investigations** aim at collecting information concerning individual behaviour of a magistrate or a civil servant likely to be labelled as disciplinary offence or a malfunctioning of a service (which can thus target several persons, with suspicions of having committed disciplinary offences). The main objective of such investigation is to allow the minister of justice to evaluate the possibility of initiating disciplinary proceedings and submit requests to the relevant authorities (e.g. CSM for judges).

The IGJ has **no autonomous power to decide which inspections to carry out nor can it be directly seized by parties to proceedings or individuals**. Litigants can however lodge complaints against magistrates directly before the CSM (*see also above the heading on disciplinary area*). The IGJ initiates administrative investigations upon request of the minister of

⁵¹ Government Decision 2016-1675 of 5 December 2016 on the creation of the general inspection of justice

justice. The minister can decide to request the opening of an administrative investigation after being seized with a complaint (e.g., by court presidents, by the MoJ Department for Judicial services, litigants). The most typical situation leading to the request for opening an administrative investigation is upon complaints received from court presidents. There have been however cases where magistrates' associations have raised integrity issues before the minister. The IGJ is then further seized in case it is necessary to carry out an investigation, otherwise complaints can be handled/decided directly by the CSM.

✓ Procedural steps and practice

Once the administrative investigation is launched, a **team of usually three or four** inspectors is appointed.

The first step is asking **access to the personal file** (*dossier administratif*) of the inspected magistrate (which is usually online). The inspectors **inform by telephone the president** of the respective court that an investigation has been opened. The **inspected magistrate is then informed** of the opening of an investigation upon the minister's decision and at the same time a request for information on the health and other conditions of the magistrate is made, which may affect the investigation and must be taken in consideration. This communication is treated with the outmost care as the opening of an administrative investigation in itself already brings dishonour to the judge and carries risks of future sanctioning. The inspectors also take care to organise phone interviews in such a way to **avoid too much proximity to the president of court**, who is usually the authority who has initiated the process. Thus, it is essential to show impartiality towards both the author having triggered the investigation and the inspected magistrate.

A **formal notification** of the opening of the investigation is then sent to the inspected magistrate, containing the "letter de mission" and evidentiary proofs. The magistrate is invited to the IGJ Headquarters for an interview and is informed of his/her rights.

The first individual to be heard by the team of inspectors is usually the president of court (who, as already said above, usually is also the authority having requested the investigation). The IGJ inspectors will **hear all persons of relevance**, including all the colleagues who worked with the inspected magistrate and the court personnel, as well as lawyers, gendarmes and any individual who is part of the magistrate's professional environment. Exceptionally, the inspectors are looking also into the magistrate's private life, insofar as actions may have affected his professional life⁵². The consideration behind this approach is that a magistrate's misbehaviour can negatively affect his working environment, including the work of his colleagues.

Interviews are always conducted by two inspectors as it is believed that this approach fosters objectivity by cross checking what they understood from each interview. **Minutes** are made after all the interviews.

⁵² For instance, the magistrate is suspected of domestic violence, as this is considered that such a behavior can bring dishonour on the judiciary; or, the magistrate has an addiction problem – e.g. drinking, that could affect the capacity of properly discharging duties; or, aggressive or rude behaviour towards colleagues and court staff

Witness statements are the main type of evidence gathered by the inspectors, although the investigated magistrate and the heard persons can submit documentary evidence as well. **Witnesses can decide to keep certain statements off the record.** In these cases, the inspectors cannot include such statements in the inspection report, but as a practice the inspectors cannot ignore what has been said and they note of the information while keeping it confidential and further seek for other evidence available through other official means⁵³. The investigated magistrate is not present during witnesses interviewing.

Once all witnesses' statements are gathered⁵⁴ (on average the inspectors carry out 50 interviews), the inspected magistrate is summoned and is heard on all the merits of the accusations or charges brought against him/her. The magistrate will be informed on anything that has been said about him/her by the individuals interviewed. He/she will receive all the documents and evidence in the case file, upon signature, through which also he/she commits to keep the documents confidential. However, he is allowed, if he/she so chooses, to share these with his/her lawyer. The hearing of the magistrate usually lasts three days. The reading out of the written records of the witnesses' statements can take up to one hour each.

As there is a presumption that anything that is in the magistrate's office is related to his professional duties, inspectors can also ask to be shown for example what websites/documents has the magistrate had access to⁵⁵.

✓ Scope of the investigation and balancing considerations

The **legal regime** of the administrative investigations is little defined and is more based on **general principles** deriving from the administrative jurisprudence for the administrative investigations irrespective of their field. Hence, pursuant to the principle laid down by the *Conseil d'Etat* in the disciplinary area, the IGJ is not limited in its investigations by the facts and grievance contained in the initial complaint, but can analyse the overall behaviour of the concerned person. If new relevant facts are discovered within the investigation, the **IGJ can extend its initial scope** to other facts (within the time limit of the previous three years). However, inspectors are **precluded from reviewing the merits of magistrates' decisions**.

As the scope of the administrative investigation can be very wide and can extend to the overall behaviour of a magistrate⁵⁶, there is a whole set of procedural steps before the MoJ takes the

⁵³ For instance, in one case, concerning the exchange of inappropriate messages between two magistrates during a court hearing in a criminal case, which have been further shared on Tweeter and appeared in the media, the IGJ carried out an inspection to establish who were the authors of the tweets. The IGJ was not able to identify some of the accounts, so it appears that the IGJ was simply able to review openly available accounts and cross check whether the messages had been exchanged at the time of the hearing. The relevant disciplinary decisions of the CSM quoting the results of the IGJ inquiry can be found here: <http://www.conseil-superieur-magistrature.fr/missions/discipline/p077> and <http://www.conseil-superieur-magistrature.fr/missions/discipline/s212>

⁵⁴ To note that now all what is said is recorded in full, as opposed to former practice when only a summary of the statements was recorded on file. The scheme of interrogation is the same for all persons interviewed.

⁵⁵ As stated by the French Inspectorate representative during the working visit to Sofia in July 2018, evidence is gathered in accordance with the provisions of the Administrative Procedure Code.

⁵⁶ The French describe the administrative investigations as being a "large machinery"

decision to request the initiation of an administrative investigation against a magistrate⁵⁷. One key consideration is the principle of proportionality: wide ranging administrative investigations can be dangerous, unfairly destabilising for a magistrate and can undermine his independence. Therefore, an important guarantee is that the **IGJ only deals with serious cases**. Arguably, both this consideration and the one affirming that there is an overall high degree of integrity of French magistrates explain why on average no more than four or five administrative investigations are carried out each year. The IGJ administrative investigation is thus a fairly exceptional action.

✓ No coercive powers

Inspectors have **no coercive powers**, which means that they cannot compel inspected magistrates or witnesses. On the other hand, the French practice shows that usually there are no issues with the cooperation with the inspection, as the IGJ relies on its moral and institutional authority. Besides this, the refusal to cooperate with the IGJ can be interpreted as an indicator of bad faith. In the face of very little power, the IGJ gathers a wide amount evidence. **It is considered that the absence of coercive powers is connected to the potential destabilising effect and threat to magistrates' independence that would derive from the exercise of such power, even if this would be used exclusively for the purpose of collecting evidence.**

For the French inspectors, it is a belief that it is of paramount importance to **avoid that administrative investigations can be used selectively as a way to exert control or put pressure on a magistrate**⁵⁸.

✓ Procedural guarantees

The work of the IGJ is organised on the basis of so called “major principles”, such as methodological freedom, as provided by the founding normative act of the IGJ; the respect of reinforced deontological rules and collective work, meaning that while there is an inspector who is responsible for each mission, there is no priority among the members of the inspection team and the inspection report will be signed by each inspector.

The investigations on the personal or professional behaviour of a magistrate can be conducted only by general inspectors or by inspectors having the function of a magistrate, of whom at least one has to be of the same grade as the magistrate under investigation.

A number of guarantees are offered to the person under investigation, which are inspired from any standard disciplinary procedure, such as: making available all the info in the case file; allowing time for preparing the defence; allowing for the provision by the concerned person of any document relevant for the investigation; right to assistance (lawyer/representative of a trade-union/ magistrate/MoJ employee); provision of copy of the minutes of hearing.

⁵⁷ From a statistical point of view, from the annual reports for 2017 and 2018, it can be seen that there is in reality a low number of such investigations: 6 in 2017 (out of which only 3 magistrates, the other 3 were civil servants) and 3 in 2018 (out of which only 2 magistrates, the third was a civil servant)

⁵⁸ Since “nobody is perfect” it can be imagined that if investigations would be easily opened and carried on, it would not be difficult to “always find something” against a magistrate, and this would deviate from the main aim of the procedure, to address only the very serious cases

These guarantees have been recently strengthened after the CSM criticised an administrative investigation where the inspectors did not consider all the evidence submitted by the inspected magistrate.

Statutory limitations are of three years. Therefore, the administrative investigations cannot extend to facts and events that took place beyond the previous three years.

✓ Methodological guidance

Besides the previously mentioned procedural guarantees, there are no written procedures for carrying out the administrative investigations, as the work of the IGJ is based on “methodological freedom”. According to their governing law, the missions

The IGJ had adopted internal methodological guides, but they are not published and remain for internal use only. The guide for administrative investigations, currently detailed in a document of about one hundred pages in length, include relevant legal framework and case law, typical violations, how to draft and structure the inspection report and its annexes and how to draft the minutes. The guide is regularly updated (the last time in September 2017) also on the basis of the evolution of the relevant case law. The guide of magistrates’ deontological obligations is used, among other sources, as an interpretative document although it does not have binding force.

✓ Inspection report

The report closing the investigations presents the facts and their analysis, describes the breaches and qualifies them legally (if they represent a disciplinary offence) and attach all the relevant evidence. The inspectors analyse all the complaints lodged against a magistrate and focus on the specific behaviour that can negatively affect the image of the judiciary. The report is signed by all the inspectors who are part of the team conducting the administrative investigation.

It is important to note that the **inspectors do not expose views in their report on the appropriateness of initiating disciplinary proceedings** by the competent authority.

The report is communicated to the minister of justice. The practice has shown that in certain cases, for example when there is still ambiguity/lack of clarity, the minister may want to have sufficient time during which he/she will decide whether to initiate actions for disciplinary procedures before the competent authorities.

The inspected magistrate is only informed that the report has been communicated to the minister and of the conclusions of the report. The report can also be communicated to the CSM in case it is called for a decision in disciplinary proceedings. Once the report is transmitted, the IGJ role is considered to be concluded.

The report closing the administrative investigations is not included in the personal file of the inspected magistrate. However, the magistrate can seek access to the report by lodging a request to the Commission for access to administrative documents (CADA). In case a magistrate has been cleared, he/she can ask for the IGJ report to be included in his file, although there may be consideration for still refraining from seeking such inclusion (as such information can be double edged and not necessarily be completely favourable towards a magistrate).

A dedicated Deontological Charter

The legal framework creating the IGJ has provided that the inspectors conduct their investigations in accordance with the deontological obligations specific to them and vested the head of the IGJ with the competency of watching the respect of these rules.

Hence, the IGJ has adopted its own Deontological Charter, which refers to the general deontological principles that are permanent behavioural references for all members⁵⁹. It is given to all new comers, at entry in the service. The analysis of the principles and the recommendations for proper application are part of a guide for the usage of the IGJ employees.

Relationship with criminal proceedings

In those cases where integrity breaches may amount to corruption offences or other criminal offences, the inspectors are required by law⁶⁰ to refer the case to the prosecution service for the opening of a criminal investigation.

The administrative investigation carried out by the IGJ and the criminal investigation are autonomous from each other⁶¹. The inspectors cannot obtain access to the criminal case file, although the inspected magistrate can produce evidence from the criminal investigation case file that he disposes of for the purpose of defending himself in the administrative proceedings.

⁵⁹ Members of the IGJ remain subject to the deontological principles of their respective statutes

⁶⁰ Criminal Procedure Code, article 40

⁶¹ For example, a criminal investigation and an administrative investigation can be carried out on the same alleged facts of domestic violence

3. CONCLUDING REMARKS AND FOOD FOR THOUGHTS

The analysis of the French system, while having in mind the Bulgarian system, showed that there are number of major differences between the two countries' judicial inspection services. It also needs to be pointed out that their entire respective judicial systems contain important differences.

However, for the purpose of the benefit this report is expected to bring to the Bulgarian Inspectorate, such systemic and administrative differences are not playing a major role. This is because the ultimate goal is the same: the will to achieve a highly ethical, fair and transparent justice system, with accountable to society magistrates.

From this point of view, what is common to both countries are the renewed efforts in the recent years towards achieving such goal. Leaving aside the systemic and administrative differences, there is one major difference that needs to be referred to and needs to be debated upon further. This is related to **the different paradigm in which the two systems are functioning and evolve.**

It is obvious from the analysis that the French system has moved from the standard repression to a highly preventive mechanism, whereas the Bulgarian system evolves towards increased repression.

The key measures taken in the past years in France were all around building trust and high conscience towards the need of a behaviour in line with all known – and shared in Europe – standards of deontology of magistrates. It has to be reminded here that when at higher country level there were decisions taken and legislation passed aiming at increasing transparency in public life, one of the reasons clearly put forward related to the awareness that known and “standard” repressive mechanisms for crimes such as bribery, corruption, illegal pursuit of interests or favoritism, although dissuasive, were not much applied and the fight against breaches of public integrity remained limited, in that they intervened only *a posteriori*.

Some of the French measures, newly introduced, and that have been explained in this paper, can be considered a very good inspirational source of action for the Bulgarian judicial system. The deontological interview, the Deontological Collegium, the CSM's Service for deontological aid and watch are the examples. **Whereas in Bulgaria there seems to be a tendency of increasing the investigative powers of the inspectors**, and thus the accent seems to be placed on investigation, **in France there has been registered in the past few years a clear tendency of encouraging voluntary compliance in the first place**, whereas investigation and sanctioning come only later, as a second stage of action.

From this perspective, it is worth reminding **GRECO's position** presented in the Fourth Round Evaluation⁶² of Bulgaria (2015) and, further, in the last compliance report from July 2017, assessing the implementation of each individual recommendation contained in the Evaluation Report and establishing an overall appraisal of the level of the country's compliance with these recommendations. Among these recommendations, **GRECO advocated for guidance and**

⁶² *Corruption prevention in respect of members of parliament, judges and prosecutors*

counselling on judicial ethics be made available to all judges and prosecutors. It notes in 2017 that the Bulgarian authorities, in their Situation Report on measures taken to implement the recommendations, did not provide information regarding the availability of such guidance and counselling.

We believe that this is an avenue that definitely need to be explored, and the French experience has shown that it can produce good results in quite a short laps of time. This is all the more advisable and justified if one looks at the statistical data provided by the Bulgarian inspectorates, both regarding their own conducted cases and regarding the disciplinary proceedings and practices (at the level of the Supreme Judicial Council and further at the level of the Supreme Administrative Court). In brief, the statistics show a low number of magistrates having been investigated and even less sanctioned for various breaches (of which only partly for matters related to ethics and integrity).

For instance, from October 2012 to April 2016, there have been a total of 138 disciplinary proceedings, of which 23 only have been initiated based on proposals from the Inspectorate. Furthermore, after all stages of proceedings, sanctions have been applied in 60 cases; appeals have been lodged in 43 of these cases and in the end only 22 sanctions have been finally confirmed by the court. Also illustrative is that by looking at the statistics of the Inspectorate, for 2017, 2018 and the first half of 2019, there is an average of less than 30% of cases where an order is given to start the inspection, from the total of the cases received. Moreover, from this percentage a very low number of cases end with proposals for disciplinary proceedings to be initiated by the Supreme Judicial Council. Finally, it should not be forgotten that many cases have been opened in relation to maladministration and procedural delays, and not to integrity issues.

The fact that the Bulgarian Inspectorate has been faced with investigating some so-called emblematic cases do not provide enough justification to increase the repression side rather than building also a system supportive of magistrates and genuinely encouraging them to abide by the deontological rules. Personal and institutional judicial and prosecutorial integrity must be embraced and demonstrated through actions and behaviour. Judges and prosecutors should not fear accountability *per se*; they should be taught this, and be provided continuous assistance and advice, prior to any “threat” of sanctioning. Therefore, the weight should be shifted first and foremost to awareness and continuous assistance, as attaining the desired level of integrity is certainly mainly a matter of prevention that takes place at various stages.

To conclude, France and Bulgaria have completely different paradigms in which they approach the matter of ensuring compliance with integrity standards. In France, it is now considered that upstream the breach there is a need to have in place actions for preventing deontological problems and dealing with challenges. A big weight is placed on reflection, what is called the “deontological questioning”, which seems to be one of the reflexes that are sought to be created in each professional.

Since the change of paradigm, in case it would be embraced, would require a lot of efforts, it would be advisable to find a framework for assistance in this respect. As an example, a new project could be designed and implemented, possibly with EU and CoE assistance.

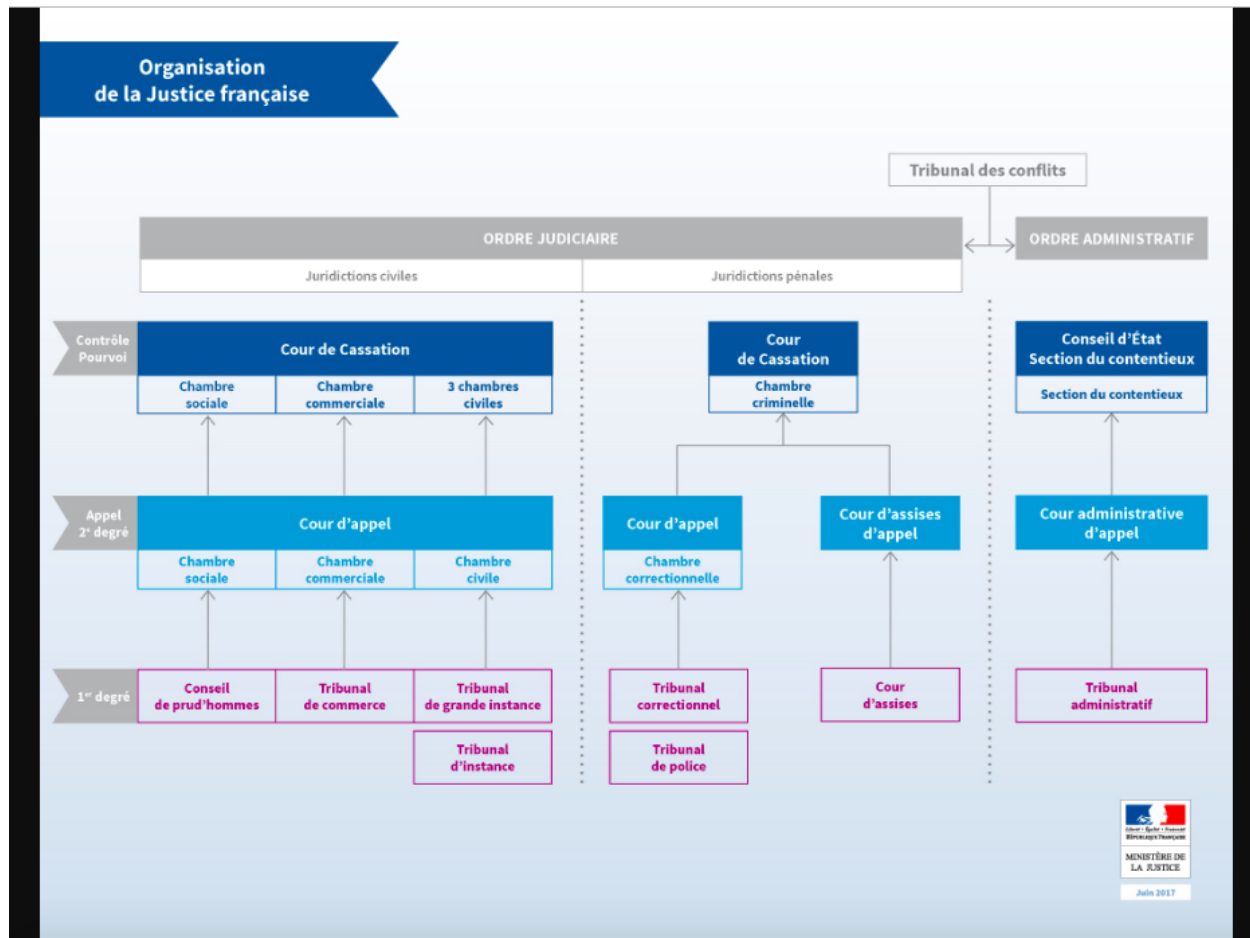
ANNEX 1

Agenda of meeting of the three Working Groups,
Sofia, 01 October 2019

ANNEX 2

Programme of study visit to France
23-24 October 2019

Organisational chart of the justice system in France



List of persons from public sector under the duty to report to the High Authority for transparency in the public life

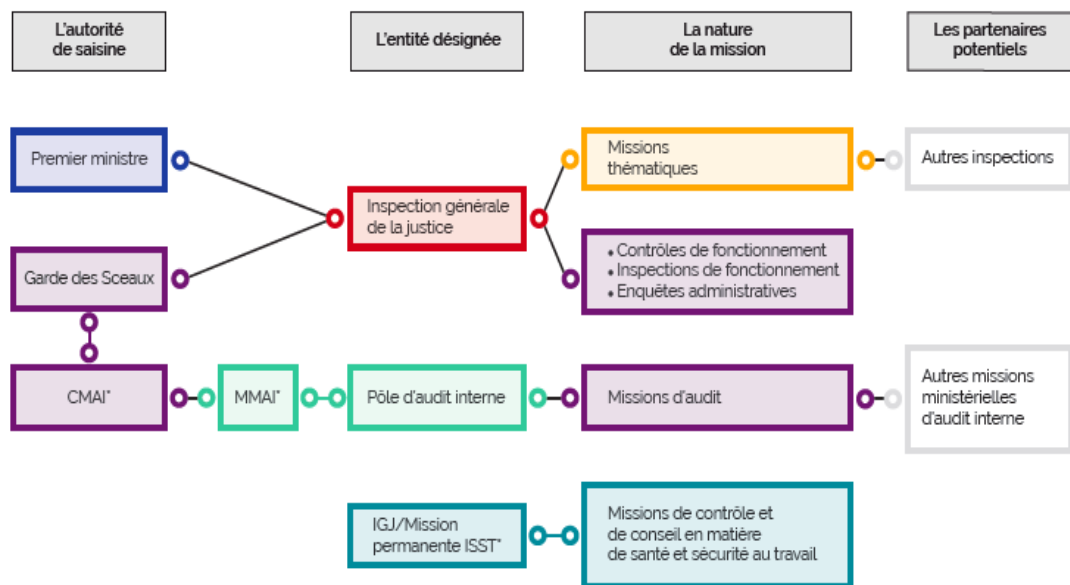
Tableau récapitulatif des responsables publics soumis au contrôle de la Haute Autorité au titre de leurs obligations déclaratives						
NB : ce tableau exhaustif récapitule les obligations déclaratives auxquelles sont soumis les responsables publics relevant du champ de compétence de la Haute Autorité. Il n'inclut pas les obligations et contrôles relevant d'autres autorités.						
	Déclarations d'intérêts		Déclarations de situation patrimoniale		Contrôle de la reconversion professionnelle dans le secteur privé à l'issue des fonctions ou mandats publics	Contrôle de la gestion sans droit de regard des instruments financiers
	Contrôle	Publication	Contrôle	Publication		
Membres du Gouvernement	✓	hatvp.fr	✓	hatvp.fr	✓	✓
Députés et sénateurs	✓	hatvp.fr	✓	En préfecture	✗	✗
Membres de l'organe chargé de la déontologie parlementaire dans chaque assemblée	✓	✗	✓	✗	✗	✗
Les représentants français au Parlement européen	✓	hatvp.fr	✓	En préfecture à compter du renouvellement du Parlement européen en 2019	✗	✗
Les membres du Conseil supérieur de la magistrature (CSM)	✗	✗	✓	✗	✗	✗
Les membres des cabinets ministériels, les collaborateurs du Président de la République, du Président de l'Assemblée nationale et du Président du Sénat	✓	✗	✓	✗	✗	✗
Les membres du collège de la Haute Autorité pour la transparence de la vie publique	✓	hatvp.fr	✓	hatvp.fr	✓	✗
Les membres des collèges et, le cas échéant, les membres des commissions investies de pouvoirs de sanction, ainsi que les directeurs généraux et secrétaires généraux et leurs adjoints, des autorités administratives et publiques indépendantes et des organismes listés à l'article 11 de la loi n°2013-907 du 11 octobre 2013	✓	✗	✓	✗	✓	✓ Uniquement pour les présidents et membres des AAI ou API intervenant dans le domaine économique listés dans le décret n°2014-747 du 1er juillet 2014
Les personnes occupant un emploi à la décision du Gouvernement pour lequel elles ont été désignées en conseil des ministres	✓	✗	✓	✗	✗	✓ Uniquement pour les fonctionnaires ou agents occupant certains emplois civils listés dans le décret n°2017-547 du 13 avril 2017

	Déclarations d'intérêts		Déclarations de situation patrimoniale		Contrôle de la reconversion professionnelle dans le secteur privé à l'issue des fonctions ou mandats publics	Contrôle de la gestion sans droit de regard des instruments financiers
	Contrôle	Publication	Contrôle	Publication		
Les présidents de conseil régional et les conseillers régionaux titulaires d'une délégation de signature ou de fonction	✓	hotvp.fr	✓	✗	✓ Uniquement les présidents	✗
Les directeurs, directeurs adjoints et chefs de cabinets des présidents de conseil régional	✓	✗	✓	✗	✗	✗
Les présidents de conseil départemental et les conseillers départementaux titulaires d'une délégation de signature ou de fonction	✓	hotvp.fr	✓	✗	✓ Uniquement les présidents	✗
Les directeurs, directeurs adjoints et chefs de cabinets des présidents de conseil départemental	✓	✗	✓	✗	✗	✗
Les maires de communes de plus de 20 000 habitants et les adjoints aux maires de communes de plus de 100 000 habitants titulaires d'une délégation de signature ou de fonction	✓	hotvp.fr	✓	✗	✓ Uniquement les maires	✗
Les directeurs, directeurs adjoints et chefs de cabinets des maires des communes de plus de 20 000 habitants	✓	✗	✓	✗	✗	✗
Les présidents d'établissements publics de coopération intercommunale (EPCI) à fiscalité propre dont la population excède 20 000 habitants ou dont le montant des recettes de fonctionnement dépasse cinq millions d'euros, les présidents d'EPCI sans fiscalité propre dont le montant des recettes de fonctionnement dépasse cinq millions d'euros et les vice-présidents des EPCI à fiscalité propre dont la population excède 10 000 habitants lorsqu'ils sont titulaires d'une délégation de signature ou de fonction	✓	✗	✓	✗	✓ Uniquement les présidents	✗
Les directeurs, directeurs adjoints et chefs de cabinet des présidents d'établissements publics de coopération intercommunale (EPCI) à fiscalité propre dont la population excède 20 000 habitants ou dont le montant des recettes de fonctionnement dépasse cinq millions d'euros et les vice-présidents des EPCI à fiscalité propre dont le montant des recettes de fonctionnement dépasse cinq millions d'euros	✓	✗	✓	✗	✗	✗
Les présidents de l'assemblée et du conseil exécutif de Corse et les conseillers exécutifs titulaires d'une délégation de signature ou de fonction	✓	hotvp.fr	✓	✗	✓ Uniquement les présidents	✗

The missions of the IGJ and its institutional partners

Les missions de l'IGJ

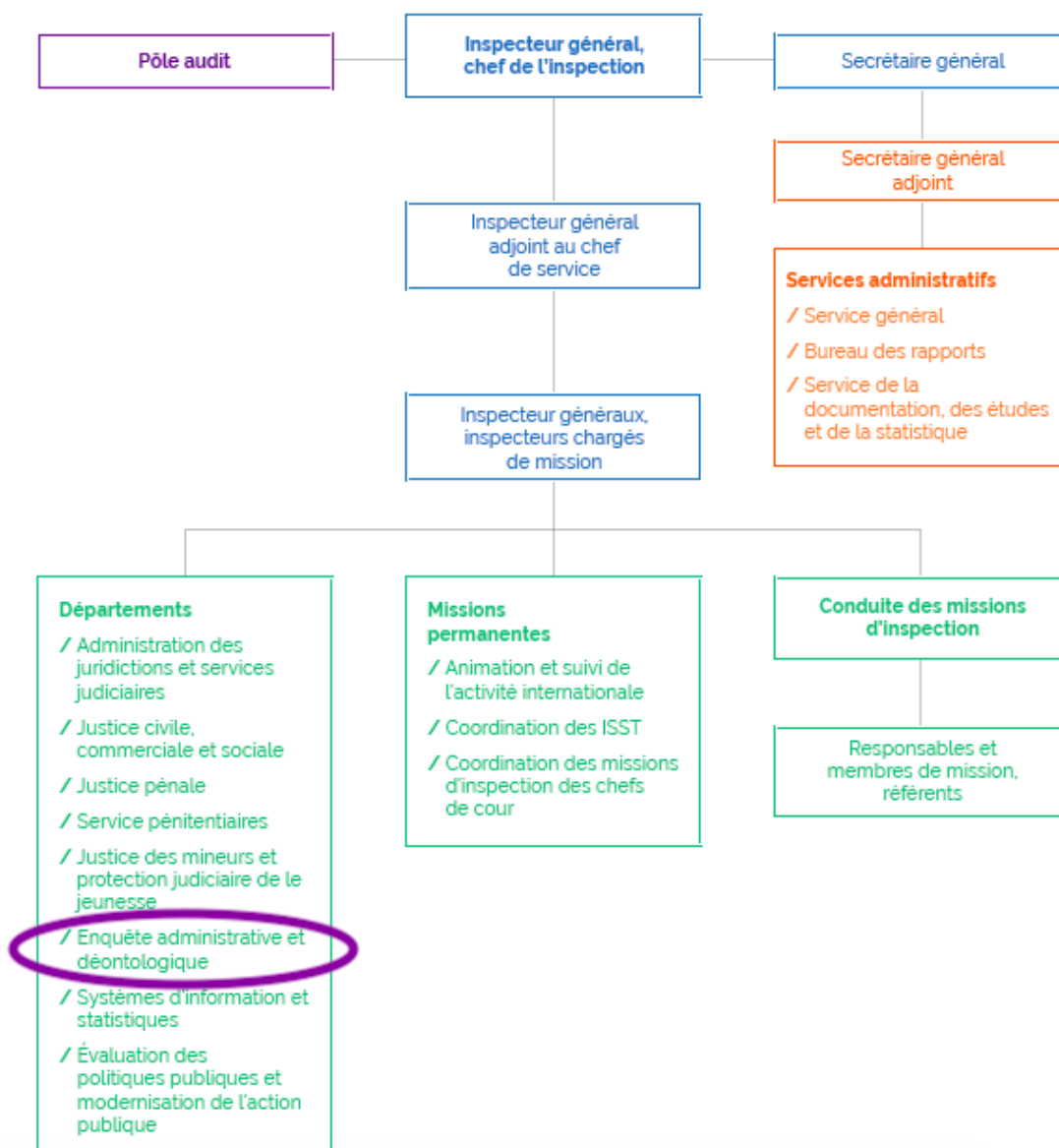
Les autorités de saisine et partenaires de l'inspection générale de la Justice



CMAI - Comité ministériel d'audit interne
 MMAI - Mission ministérielle d'audit interne
 ISST - Inspecteur santé et sécurité au travail

Organigramme of the IGJ at 31.12.2018

LES RESSOURCES HUMAINES AU 31 DÉCEMBRE 2018



The missions of the IGJ (as presented in their annual report for 2017)

Les missions de l'IGJ

