"Support to the improvement of the capacity of the Inspectorate to the Supreme Judicial Council of Bulgaria"

COMPARATIVE OVERVIEW OF INTEGRITY CHECKS IN COUNCIL OF EUROPE STATE MEMBERS

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Foreword

This document is produced within the framework of the 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, funded by the Structural Reform Support Programme of the European Commission (SRSS).

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EXECUTIVE SUMMARY

This comparative analysis has been prepared by Council of Europe consultants Ms. Mjriana Visentin, Prof. Dr. Lorena Bachmaier and Ms. Ioana Cornescu under the auspices of the Project on "Support to the improvement of the capacity of the Inspectorate to the Supreme Judicial Council of Bulgaria" funded by the Structural Reform Support Service of the European Commission (SRSS) and the Council of Europe.

Since January 2017, the Inspectorate to the Supreme Judicial Council of Bulgaria (hereinafter "ISJC') has been granted new powers related to the verification of assets declaration, the existence of conflict of interests, as well as the power to carry out so called "integrity checks" to establish whether there was a violation of the principle of integrity, actions undermining the reputation of the judiciary and those related to violations of the independence of magistrates.

In order to address the goal of providing a more effective system of judicial accountability, while preserving the safeguards of judicial independence, the Bulgarian Inspectorate expressed its desire to have a comparative view of other judicial inspection systems with particular focus on France and Spain.

The analyses of the functioning of the French and Spanish judicial inspection systems carried out by the Council of Europe consultants were based on a desk research of relevant regulations and practices as well as the findings of two study visits to the Spanish Judicial Inspection service in Madrid and to the French General Inspection of Justice in Paris.

It has to be pointed out that, from the outset, the main area of interest for the ISJC was limited to powers of investigation by national judicial inspectorates and to ways of gathering evidence in cases of breaches of integrity by magistrates. However, it is important to clarify that both the Spanish and the French judicial systems present substantial institutional and legal differences from the Bulgarian system 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 complexity of the French system, particularly after reforms introduced in the past five years, made it difficult to limit the analysis to the General Inspection of Justice. Administrative inquiries, the equivalent of integrity checks, are carried out by the General Inspection of Justice in a limited number of cases while judicial integrity strategies essentially rely on prevention. Hence, references are wider and

essential information is given about other institutions and mechanisms which might be of interest to the ISJC in its endeavour to secure a greater compliance of the judicial system with recognised standards of integrity.

Similarly, in respect of Spain, the ISJC expressed particular interest in being informed on the so-called "virtual or on-line inspections that are carried out by the Spanish Judicial Inspection Service to carry out integrity checks". However, the fact is that the Spanish Judicial Inspection Service does not carry out integrity checks and no other body carries out "integrity checks" on judges in Spain; possible misconducts of judges are dealt with by way of disciplinary liability. For this reason, the report and the study visit were re-designed to include the Spanish judicial disciplinary system and its proceedings, which deal with disciplinary offences, and thus indirectly with "integrity checks".

The residual overview and comparative analyses cover relevant international standards, the functioning of a number of European Judicial Inspectorates as well as other mechanisms (such as vetting procedures, background checks, integrity testing and extraordinary re-evaluations) adopted for the verification of magistrates' integrity and independence. In Italy and Portugal, like in the Spanish and French Inspection systems, judicial inspections are mainly focused on assessing the functioning of judicial bodies rather than on detecting and investigating integrity breaches. On the other hand, ordinary inspections integrate the review of a number of integrity issues such as the proper use of resources.

A judicial system that has implemented forms of inspection akin to integrity checks is the Netherlands where integrity investigations are carried out by the courts and the Public Prosecution Service. The analysis provides a detailed overview of integrity investigations carried out by the Integrity Bureau of the Dutch Prosecution Service. Finally, specific forms of integrity checks have been introduced in a number of countries with acknowledged challenges to judicial integrity. In these cases, the key concern was balancing the depth of review with the respect for judicial independence.

To sum up, the choice of the best strategy to strengthen judicial integrity will depend on a systemic approach that integrates prevention and enforcement mechanisms but also on the acknowledgment and understanding of the concrete challenges to judicial integrity and independence faced within each national system.

The Council of Europe and the authors of this document wish to express their deepest gratitude to the Spanish Judicial Inspection Service and to the French

General Inspection of Justice for their hospitality and assistance in deepening the understanding of mechanisms to secure the integrity of magistrates within their legal systems. They also wish to thank Ms. Loes van den Brand, the Integrity Coordinator at the Dutch Public Prosecution Service, who provided clarifications on the functioning of integrity investigation in the Netherlands. Special thank you go to Ms. Annita Sorti, General Inspector of the Italian Judicial Inspectorate and to Ms. Ana Resende, Inspector Judge from the Judicial High Council of Portugal for the comments and explanations on the functioning of the Italian and Portuguese inspection systems.

INTRODUCTION

Forms of oversight mechanisms to secure the good functioning and integrity within the judiciary exist in all Council of Europe state members. These mechanisms include Judicial Inspections and other targeted review mechanisms. Inspectorates are usually specialized units working for the governance bodies of the judiciary. Inspections on courts and other judicial agencies are set up to check the functioning and efficiency of the judiciary but also to carry out inquiries into allegations of misconduct by judges and prosecutors[1]. Magistrates' integrity has also become the focus of targeted mechanisms such as the verification of asset declarations and conflict of interests, vetting and screening procedures, integrity testing or background checks.

Notably, the pursuit of judicial integrity in Europe has not exclusively followed the enforcement route but has integrated a broad and diverse range of measures. This has meant not only the adoption of a preventive approach to integrity but also the integration of prevention functions in the toolkit of supervisory bodies such as Judicial Inspectorates. In one of its evaluations of the integrity of judicial systems in the Council of Europe, the Group of States Against Corruption (GRECO), for example, encouraged the national Judicial inspectorate to play a more active role in promoting integrity by providing analyses on risk assessments, information and advice[2]. Indeed, national inspection services, on account of their privileged position as guardians of the integrity, prestige and independence of the judicial system, can play a proactive role in identifying measures to prevent and reduce the impact of corruption, undue influence and interference on the judiciary.

This comparative report thus provides a comprehensive overview of integrity mechanisms in the Council of Europe judicial systems ranging from prevention to risk assessments to integrity checks. Without losing focus on the need to strengthen the effectiveness on inspection systems, it highlights the need for a systemic approach to integrity, suggesting that Judicial Inspectorates expand and strengthen their function by engaging in prevention as much as enforcement.

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[1]The countries that have introduced judicial inspection services with competences over magistrates' misconduct can be classified into three main groups, depending on the authority to which the Inspection service report to. Italy and France have for example Inspection services that report to the Ministry of Justice. In Portugal and Spain the Judicial Inspection Service operate under the aegis of the Council of the Judiciary. Finally, a number of countries have inspection services within the courts and prosecution services. For example, in Germany and the Netherlands each court has established its own inspection service.

[2] IV Evaluation Round on RomaniaCorruption prevention in respect of members of parliament, judges and prosecutors, 22 January 2016, Para 114.

PART ONE

A systemic approach to judicial integrity

1.1 Integrity and prevention mechanisms

1. The term "integrity" in its application to members of the judiciary, may be defined as a holistic concept that refers to the ability of the judicial system or an individual member of the judiciary to resist corruption, while fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence. States can take a wide range of measures to minimize both the opportunity for and vulnerability to misconduct in the judiciary. They are measures that seek to establish or to strengthen the institutional integrity system of the judiciary even before the individual integrity (and accountability) of magistrates comes into consideration. These measures include the establishment of clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, disciplinary sanctions and dismissal of members of the judiciary. They also include measures to protect judges from any form of political influence in their decision-making.

2. Thus, while inspection services play an important role in the investigation and enforcement of integrity within the judiciary, a comprehensive analysis of national integrity systems and international standards highlight the existence of a systemic approach to judicial integrity. The appraisal of integrity of individual magistrates starts already at the selection stage, is enhanced by dedicated training and mentoring for candidates to the judicial function and is supported by a number of advisory mechanisms throughout magistrates' professional life. In the framework of the IV evaluation round, the Group of States Against Corruption (GRECO) has repeatedly stressed the need for state parties to strengthen judicial integrity through the **creation of advisory ethical bodies, the development of guidelines supporting the interpretation of codes of conduct, training through ethical dilemmas and confidential counselling**.

3. The Dutch prosecution service for example has adopted a holistic approach to judicial integrity through the adoption of a Framework Memorandum on integrity. This instrument contains the strategy for enhancing integrity within the prosecution service, as well as concrete targets, activities-both of preventive and repressive nature and allocations of roles to achieve this end. These initiatives included an increased focus on integrity in the framework of selection, professional evaluation and promotion. Other measures include the promotion of on-going discussions about integrity at the workplace. The Dutch Prosecution

Service's integrity policy, by raising awareness and enabling the open discussion of integrity dilemmas, has contributed to the development of an internal corrective mechanism that identifies behaviour entailing conflicts of interest and integrity risks. Even in cases where repressive action is adopted for integrity breaches, the widespread internal publication of sanctions (although in anonymised form) and the relevant misconduct have contributed to raising awareness and ensuring transparency of the integrity policy. Thus, prevention of corruption among judges and prosecutors relies to a large degree on mutual trust, openness and public scrutiny, and commended their efforts on integrity[3].

1.2 Integrity risk assessments in the judiciary

4. Consistently with the prevention approach to integrity, a number of countries have introduced **integrity risks assessments of the judiciary to** identify suitable policies that are targeted to the specific challenges to independence and integrity faced by judges and prosecutors at national level. Such assessments are based on the gathering of data on the institutional framework, legal provisions and their implementation as well as civil society's perception of the judiciary, in order to draw up recommendations on integrity (and trust) building measures. These assessments can be carried out through desk studies, questionnaires and interviews with relevant stakeholders[4].

5. In the Netherlands, for example, the Rijksrecherche carried out a strategic analysis of vulnerabilities that might increase the risk of bribery of civil servants in 2010. It concluded that while reports of allegations of bribery were not evenly distributed in the civil service, the overall picture was positive — corruption was not widespread.

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[3] Annex on Netherlands to the EU Anti-Corruption report (COM)2014 available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_netherlands_chapter_en.pdf

[4] Examples of Integrity risk assessments carried out by the Council of Europe include "Risk analysis of corruption within judiciary" implemented within the project "Strengthening the capacities or law enforcement and judiciary in the fight against corruption in Serbia", Corruption risk assessment of the Kosovo Judicial System, available at: https://rm.coe.int/peckii-4561-tp14-cra-judiciary/16808ae500
in the Netherlands an integrity risk assessment within the judiciary is available on the site of the Council of the Judiciary:
https://www.rechtspraak.nl/SiteCollectionDocuments/Systeemwaarborgen-voor-de-kernwaarden-van-de-rechtspraak.pdf

6. Similarly, based on a risk-based approach, a number of countries have adopted **guidelines for the identification of sensitive cases** and the corresponding enhanced supervision or preventive measures[5]. Sensitive cases can for example include cases having caused public commotion on a national scale, cases involving a well-known person or who occupies a special position in view of his profession. A number of measures have been envisaged in such situations to reduce pressures on magistrates, including optimising working conditions by reducing the workload of magistrates working on sensitive cases and adopting organisational measures[6] . In the Netherlands the Prosecution service has also worked on a **list of vulnerable positions** and processes within the prosecution service, that are at higher risk of integrity, with a view to clarifying the respective duties, powers and limits of the persons holding such positions or involved in such processes.

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[5] In Serbia the Guidance for Prosecutors on Identifying and dealing with undue influence has identified sensitive cases as follow:
- A large number of defendants and /or victims, and /or parties;
- The dangerousness of the suspect(s);
- The need to prevent risks of damage to property or persons, whether concerning judicial bodies, the parties to the trial or the media;
- The nature of the offense (this criterion is not in itself decisive, but must be appreciated in view of the circumstances surrounding the commission of the offense and the media impact it may have caused or is likely to cause; this criterion is indeed inseparable from that of the foreseeable or existing media coverage of the upcoming trial. This criterion can be detected as early as in the investigation phase or even earlier, if the media helped to make the case public);
- The predictable historical relevance of the decision, for example, due to the nature or the personality of the respondent or the victim (public figures in particular);
- A high degree of the media coverage;
- An expected, important and lasting upheaval in the ordinary activity of the prosecution offices;
- The foreseeable duration of the trial.

[6] The Serbian Guidance for Prosecutors on Identifying and dealing with undue influence recommends the following: These measures may have to do with the organisation of the trial or, to be more specific, that of the hearing, including the following: securing external facilities (gates, car parks, access roads) and the premises (access to the courtroom, courtroom occupation schedule, etc.) by providing electronic surveillance to monitor the prosecutor's office premises and the residence of the prosecutors involved; physical reception of litigants (circulation or reception of detainees, defendants, witnesses, victims); installation of sound or video equipment in the premises (the type, supply, maintenance, etc.); access of journalists (ID badges, communication equipment). The equipment is another element of reliability that judicial office holders must be able to count on, which also includes the material environment (a safe workroom, distance from the places of communication, physical and acoustic security, encrypted means of communication, protected personal computer, use of secure software, possibility of scanning files to avoid the risks associated with the multiplication of paper documents). Such protection should also include legal and physical protection of a prosecutor's life, health and property against any violence or attack. If necessary, the measures should also be available for the protection of his/her family members.

7. In Romania the Ministry of Justice and the specialised prosecutor's office for corruption have compiled **case studies on criminal activity involving the Romanian judiciary**, thus demonstrating the ability to compile and analyse information which can be used for the design of preventive policies. These findings highlighted areas where risks were present and where internal controls were insufficient.

8. In Italy ordinary inspections follow **a risk based approach** as they **focus on sectors where economic interests can pose higher risk to judges' integrity:** bankruptcy, execution of civil judgments, asset freezing and confiscation, disputes on assignment of positions that carry high financial value or implication or disputes involving expenditures for the state budget[7]. As mentioned below, a considerable number of reports on integrity breaches comes in fact from ordinary inspections on the functioning of the judiciary, so the ability to structure and organise them in a way that takes in consideration integrity risks can enhance the overall efficiency of the inspection in detecting integrity breaches.

1.3 Integrity, public perception and communication strategies

9. As existing integrity measurement indexes such as Transparency International's Corruption Perception Index and the Eurobarometer essentially rely on **public perception** , it is as important to understand the causes of (low) public trust in the judiciary: a negative perception may in fact be rooted in misperception (in which case communication strategy of the judiciary should be introduced or improved) or on concrete integrity challenges such as lack of transparency that should be addressed to enhance trust in the judiciary. A survey organised by the Croatian Ministry of Justice for example showed that the negative perception in the judiciary was manifested in a generally negative opinion on the functioning of the judicial system, a low absolute and relative trust in the judiciary (vis a vis tax and customs authorities, police and registry offices) and low level of expectations of a fair trial. According to the survey while a large percentage of respondents identified the main sources of judicial corruption in the length of proceedings (61%) a considerable percentage of them referred to political influence (56%) and bias (45%). Other causes of low trust were the lack of transparency, unethical behaviour of judicial office holders outside of office, poor availability of assets declaration and the way media reported on the judiciary[8].

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[7] https://www.giustizia.it/resources/cms/documents/anno_giudiziario_2017_ispettorato_generale.pdf

[8] A description of the survey is available at the website of the World Bank that funded the project: http://documents.worldbank.org/curated/en/725001497278193801/pdf/ICR00003984-06072017.pdf

10. Conversely surveys carried out in the Netherlands highlighted a high trust and positive perception in the judiciary[9]. Arguably the positive view of the Dutch judiciary also depends on a well-developed public communication strategy that has enhanced transparency and public understanding of the functioning of the judicial system.

1.4 Integrity and selection of candidates to judicial functions

11. The appraisal of integrity has become an integral part of the appraisal of future magistrates as it is the first stage at which unsuitable candidates can be filtered out. In the Czech Republic deficiencies in the recruitment process, such the absence of clear and uniform selection criteria, were considered as a major cause of widespread judicial misconduct as they led to the recruitment of persons lacking the necessary moral characteristics for the profession of judge. Following GRECO recommendations, the selection procedure has come to include a verification of personal qualifications done by specialized psychological centers approved by the Ministry of Justice.

12. In Austria the recruitment of ordinary judges includes a psychological test (conducted by psychologists) that is taken in consideration for selecting the most suitable candidates upon completion of a traineeship. The test aims at measuring candidates' intelligence but also capacity to concentrate. It is considered as a useful tool to promote professionalism and to weed out technically qualified professionals with weak moral character.

13. In the Netherlands, in the framework of its integrity policy, greater attention is paid during the selection process to the integrity of candidates. This assessment takes place particularly through interviews, during which qualities such as sensitivity, societal awareness and openness to criticism are tested. In the Prosecution service, human resource advisers have also received training on pre-employment screening where they learn more about testing the integrity of candidates and methods of screening and calculating integrity risks. The Prosecution Service Integrity Bureau also issued a guide on integrity during personnel interviews to be used for all staff interviews, especially for appraisal and promotion[10].

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[9] https://www.rechtspraak.nl/SiteCollectionDocuments/Reputaties-gewogen.pdf

[10] Such initiatives are part of a wider integrity-oriented policy that applies to the entire public sector. For example the government has published a toolkit for integrity testing of candidates to political parties and positions that includes a "toolkit" to assess integrity risks of candidates through questionnaires, disclosure agreements, guidelines on using online searches, and interviews which

14. Finally, in Moldova, the recruitment process has come to include a polygraph test[11]. The constitutional court has however reduced the impact of this test as it has held that the results of the polygraph test can be taken in consideration upon recruiting judges and prosecutors but cannot be disqualifying.[12] In addition a number of NGOs have considered such tool as questionable and stressed that integrity in the judiciary would be better ensured through effective monitoring of asset declarations.

2. Integrity checks: general principles

2.1 International standards

15. The key **international principles** concerning the implementation of oversight mechanisms in the judiciary can be found in a number of international instruments. Article 11 of the UNCAC stresses that "states should **take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary without prejudice to judicial independence**. Such measures may include rules with respect to the conduct of members of the judiciary". In its Opinion 10 (2007) "On a judiciary at service of society" the Consultative Council of European Judges (CCEJ) specified that High Judicial Councils "should promote efficiency and quality of justice so that human rights are respected. State members must set up necessary tools to evaluate the justice system, to report on the state of service and to improve the administration of justice".

16. In its Opinion No. 18(2015) the CCEJ added that, while an insight by external investigators can help to see shortcomings in a particular institution, such as the

include the discussion of integrity matters and ethical dilemmas. https://www.raadsleden.nl/sites/www.raadsleden.nl/files/documenten/handreiking_integriteitstoetsing_kandidaten_decentrale_politieke_partije.pdf; https://www.binnenlandsbestuur.nl/Uploads/2019/10/definitief-handreiking-integriteitstoetsing.pdf

[11]On the other hand, following an amicus curiae of the Venice Commission, the Constitutional Court declared unconstitutional a number of provisions that would allow the Anti-Corruption to carry out professional integrity testing to prevent corruption among judges as it would undermine the independence of the judiciary. Amicus Curiae Brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing, adopted by the Venice Commission at its 101st plenary session (Venice, 12-13 December 2014).

[12] RFE/RL Moldovan Court Demotes, But Doesn't Abolish, Polygraphs In Anticorruption Hiring https://www.rferl.org/a/moldova-polygraphs-anticorruption-hiring-demoted/29156927.html

judiciary, it is vital that the activities of inspectors should **never interfere with the development of judicial investigations and trials**. It is especially worrying if the executive gains insight into court files. The 2016 CoE Report "On challenges to independence of the judiciary" further stressed that the right of other powers of the state to be informed of or to investigate the system of justice should in all cases be exercised having regard to the limits imposed by judicial independence and (where provided for by law) by the secrecy of judicial investigations. Inspections should never concern individual cases, in particular cases that are pending trial.

17. These general principles have been further specified and interpreted by international monitoring and advisory bodies such as GRECO and the Venice Commission that have reviewed the compatibility of judicial integrity mechanisms with fundamental human rights and rule of law principles such as judicial independence, the principle of proportionality, the right to a fair trial and to respect for private life.

2.2 Strength of integrity mechanisms vis a vis extent of integrity within the judiciary: principle of proportionality

18. A key consideration in the assessment of integrity oversight mechanisms is that their nature and intensity **will depend to a large extent on the degree of integrity of the judiciary**: the lower the integrity (or perception thereof), the more justified intensive and wide integrity mechanisms may be. And vice versa.

19. The OECD specifically noted that in Scandinavian countries while controls of asset declaration are not carried out on a regular basis, they have an integrity based ethics management system which relies on encouragement of integral behavior (rather than on enforcement through punitive measures) and a well-established integrity culture.

20. In a number of cases GRECO has acknowledged that given the overall high degree of integrity and accountability of a national judiciary and the absence of any indication of corruption and undue influence on judicial decisions, there were no reasons to believe that the absence of a general declaration system for judges was detrimental to the prevention of corruption in the judiciary[13].

21. In reviewing the decision of the Ukrainian authorities to submit all sitting judges to a qualification assessment including vetting before granting them tenure, in order to ensure that judges have both the required professional capacity and

[13] GRECO IV Evaluation Round on Finland and the Netherlands (Para. 112)

integrity for their work, GRECO held that such process should be limited in time and carried out **swiftly, effectively and with the utmost care to avoid the risk of weakening judicial independence.**

22. Similarly the Venice Commission has relied on the principle of proportionality to assess forms of integrity verification in Moldova and Albania, where corruption and involvement of judges in organized crime, acknowledged by the authorities, were, to a certain extent, considered as justifying the adoption of particularly invasive mechanisms.

23. In its Opinion of 14 October 2019 on the Draft Law on the reform of the Supreme Court and Prosecution office of Moldova, the Venice Commission stated that it falls within the competence of the Moldovan authorities to decide whether or not the high level of corruption in the judiciary created sufficient basis for subjecting all sitting Supreme Court judges to extraordinary re-evaluation. However, it held that **vetting should not be the default remedy** and it should be considered only after other mechanisms such as evaluation of judges, disciplinary or criminal proceedings[14].

24. In its Interim Opinion on the Drafts Constitutional amendments on the judiciary of Albania[15] the Venice Commission held that, the necessity of the **vetting process** was explained by an **assumption that the level of corruption in the Albanian judiciary is extremely high** and the situation required urgent and radical measures. After having underlined that **such radical solution would be ill-advised in normal conditions**, since it creates enormous tension within the judiciary and in particular, creates a risk of the capture of the judiciary by the political force which controls the process, the Venice Commission considered that a drastic remedy may be seen as appropriate in the Albanian context, as long as it **remains an extraordinary and a strictly temporary measure**. The Interim Opinion formulated a number of recommendations, including in particular, that the composition of the body in charge of the vetting process (the Independent Qualification Commission) and status of its members should guarantee their genuine independence and impartiality and that judges should have the right to appeal to an independent body.

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[14] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)020-e

[15] CDL-AD(2015)045 Interim Opinion on the Draft Constitutional Amendments on the Judiciary of Albania (Adopted by the Venice Commission at its 105th Plenary Session, Venice, 18-19 December 2015), paras. 97-135 (CDL-REF(2015)038)

25. Outside the exceptional cases listed above, one should take in consideration that integrity breaches may range from behaviours that are unethical but nevertheless do not give rise to disciplinary accountability (on account of their scarce relevance or impact on the independence or prestige of the judiciary), to behaviour that overlaps with crimes regulated under national laws. In those cases where the gravity of an integrity breach is such that it **amounts to a criminally punishable conduct**, oversight bodies are usually required to refer the case to competent authorities for the opening of a criminal investigation. Only in that framework will it be possible to acquire the relevant evidence through a number of instruments, regulated by criminal procedural laws such as surveillance, searches and seizures and so on. This evidence can then be used in subsequent disciplinary proceedings. But the two processes should not be conflated and judicial inspections should not seek powers that are of the realm of criminal proceedings.

26. On the other hand, the Venice Commission has stated that certain types of integrity mechanisms, such as **integrity testing procedures have a clearly disciplinary objective and as they can trigger massive sanctions**, **they should assimilated to criminal proceedings as far as institutional protective guarantees** for the affected magistrate are concerned. In line with this principle a number of countries, such as Italy, apply criminal procedural law guarantees insofar as applicable[16].

2.3 Respect for the independence of the judiciary

27. As mentioned above, the independence of the judiciary remains the ultimate criteria and framework within which any oversight mechanism to secure judicial integrity must be appraised. Judicial independence serves as the guarantee of impartiality, and hence is a fundamental precondition for judicial integrity—the ability of the judiciary as an organization to resist corruption. It is a prerequisite to the rule of law, and fundamental to the principle of a fair trial.

28. First of all, a number of investigation mechanisms will be considered to violate the independence of the judiciary per se as they do not provide sufficient procedural safeguards or are disproportionate. This, for example, excludes the use of coercive powers and surveillance measures by judicial inspections.

[16] Venice Commission, Amicus Curiae brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing; CDL-AD(2014)039, 12-13 December 2014;Para 33.

29. Besides this, the appraisal of integrity mechanisms within the judiciary will also depend on the overall legal and institutional framework, such as the **effective independence of the authorities in charge of carrying out such verification mechanisms a**nd of those involved in deciding over disciplinary proceedings. It should be noted that there are several aspects to independence which include political independence, functional, operational as well as financial independence.

30. For example, the Venice Commission considered that the Moldovan 2014 Professional Integrity Testing Law which applied to any public official, including judges, could undermine judicial independence. The law, adopted to ensure professional integrity of public officials, in fact foresaw **the use of agent provocateurs** who, on the basis of justified risks of integrity, could contact a judge using a fake identity with a simulated situation and on the basis of pre-existing confidential professional integrity testing plans.

31. The Venice Commission stressed that the circumstance that international bodies, given the seriousness of corruption in Moldova, had made a call to fight corruption, did not mean that any legislative action in response would be in conformity with the principle of judicial independence. It concluded that laws relating to the assessment or evaluation of the professional duties of judges must be worded and applied with great care and the role of the executive or legislative branches of government in the process should be limited to the extent absolutely necessary. In particular it noted that the issue of the independence of the body in charge of organizing the integrity testing had been raised in a number of cases first when its director was appointed by Parliament, which undermined its neutrality and then when its appointment was made on recommendation of the Prime Minister. The Venice commission noted that in such setting "autonomy", rather than "independence" would be a better description of the body even if neither the parliament nor the executive could issue instructions. This setting required close scrutiny of its special investigation/examination competencies, as well as of the existence of control mechanisms.

32. With respect to a draft law authorising lifestyle monitoring by the Ukrainian National Agency on Corruption Prevention, GRECO noted that considered the specific circumstance of Ukraine they were necessary in the current situation but a careful balance should be struck between such strong supervision of judges and the independence of judges and the judiciary. It further considered that **the mere perception of the Agency being politically biased had a seriously chilling effect in recasting citizens' trust in the anticorruption machinery as a whole**. For the Agency to work effectively, it must be, and be seen to be, independent and free of any political interference both in law and, principally, in practice. GRECO

expressed concerns not only for this negative public perception, but also for the fact that the agency was not providing **full justification for its decisions**.

33. Similar assessments based on the need to guarantee the independence of the judiciary have also been made at national level. For example, the Czech Constitutional Court concluded that a 2014 Constitutional amendment introducing across-the board security clearance by the National Security Agency on current judges and candidates for the post of judges contradicted the implicit material core of the Constitution stemming from the principles of democracy, rule of law and the principle of power distribution linked to the independence of the judiciary.

2.4 Clarity of criteria for integrity oversight mechanisms

34. In the 2012 opinion[17], the OSCE/ODIHR held that one of the basic European and international requirements as to domestic laws governing the disciplinary liability of judges is, that "there be a clear definition of the acts or omissions which constitute disciplinary offences". Opinion no.3 of the CCJE also indicated that the **failings that may give rise to disciplinary sanctions should be defined in specific terms**.

35. In a number of occasions, the Venice Commission has critically assessed the lack of clarity of the definition of integrity, independence or prestige of the judiciary which violations were the basis for the opening of disciplinary proceedings. For example, in an opinion on the use of integrity testing in Moldova the Venice Commission noted that while the law defined professional integrity as *"the person's capacity to exercise their legal and professional obligations and duties honestly and impeccably, proving a high moral standard and maximum correctness, and to exercise their activity impartially and independently, without any abuse, respecting public interest, the supremacy of the Constitution and the law"*, determining the criteria against which a judge's professional obligations will be assessed need to be clearly and precisely defined.

36. A catalogue of disciplinary offences that includes imprecise concepts such as "conduct which disgraces the status of judge or undermines the authority of justice" and "compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court" as well as general references to a code

[17] Opinion JUD-MOL/217/212[LH] of 12 December 2012.

of ethics or ethical principles have been repeatedly criticized by the Venice Commission, as too vague[18].

37. Similarly the Venice Commission in its Interim opinion on the draft law on the reform of the Supreme Court and of the Prosecutor's office of Moldova, indicated that in order to avoid arbitrariness the **main criteria for the verification of candidates to judicial supreme positions, i.e. integrity, lifestyle, professional activity and personal qualities, should be set out clearly and exhaustively by the primary legislation and should not be left to regulations to be used by the evaluation body**. These criteria should be the same as those already in force concerning the disciplinary liability and performance evaluation of judges. Details can be regulated by secondary legislation.

38. In its Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova the Venice Commission noted that the draft law introduced additional requirements for candidates to prosecutorial positions, including subjective personality criteria such as personal integrity; a faultless reputation and, to a certain degree, observance of the rules and standards of professional ethics. The Venice Commission stressed that the Draft Law should specify how to determine whether or not the candidates meet those criteria[19].

39. In its evaluation of integrity in the judiciary in Albania, GRECO recommended that the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the **criteria for evaluating a judge's ethical conduct are objective and transparent**, with due regard to the principle of judicial independence. Similarly, GRECO recommended that the creation of a judicial inspection in the Czech Republic could be enhanced by a transparency of the disciplinary process by sharing outcomes both with the judiciary and the public and by defining disciplinary offences more precisely.

[18]See e.g. the Opinion of the Venice Commission CDL-AD(2015)007, paragraph 50, which contains further references.

[19]CDL-AD(2015)005, Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, §§102 and 103.

2.5 Procedural guarantees

40. In an amicus curiae on Moldova's integrity testing, the Venice Commission stressed that in cases where the overall objective of specific professional integrity testing procedures was essentially and explicitly a disciplinary one, and that the ensuing disciplinary proceedings can trigger massive sanctions including a judge's removal, such proceedings should be assimilated to criminal proceedings as far as institutional protective guarantees for the aggrieved party are concerned.[20]

41. Such mechanisms should respect **the presumption of innocence, the right to an effective and efficient defense, including the right to full disclosure of, and full access to the evidence and the examination of witnesses included; legal requirements for the use of undercover agents; the principle of foreseeability and of narrow interpretation of statutory offences** and so on.[21] The Venice Commission also stressed that the law should set out how and on what grounds integrity testers should determine which public entity they will be testing. The absence of any clear regulation in this respect may result in arbitrary decisions or may create the impression that such legal instruments are used unfairly to discipline certain courts or individual judges[22].

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[20] Venice Commission, Amicus Curiae brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing; CDL-AD(2014)039, 12-13 December 2014;Para 33.

[21]Similarly, in its opinion on the draft law on integrity checking of Ukraine the Venice Commission stressed that integrity checks are an exceptional tool helping to verify, and strengthen, the professional and moral integrity of public officials. They should never serve as a replacement for criminal investigations. Although the draft law applied to public officials and not magistrates, it is worth mentioning a number of criteria identified by the Venice Commission such as the requirement of prior reasonable grounds to suspect that the targeted person, or possibly the public institution, is involved in corruption or unethical behaviour or has committed acts of corruption or unethical behaviour before. The authorisation of the conducting of an integrity check should be specific enough and the person conducting the check should not engage in active entrapment. Discretionary powers of the person conducting the check and the coordinator to decide about the check and its frequency should be limited. In case where the checks might interfere with the fundamental human rights of the person subject to them, judicial pre-authorisation should be sought. The person who underwent the integrity check should have the right to challenge the decision, as well as the course and the result of the integrity check, in courts.

[22]Venice Commission, Amicus Curiae brief for the Constitutional Court of Moldova on certain provisions of the law on professional integrity testing; CDL-AD(2014)039, 12-13 December 2014.

42. In another amicus[23] curiae brief on the Draft law on the transitional re-evaluation of judges and prosecutors in Albania the Venice Commission noted that the draft law provided that the evaluated judge has a burden "to submit information that will remove the Committee's suspicion about integrity and lifestyle." The Venice Commission found **problematic to put exclusively on the judge the burden to prove his or her integrity in the absence of specific elements of suspicion**. A fair approach would be the requirement that the judge concerned present any information or evidence to rebut the primary evidence available in the case file which may raise questions about his/her integrity or lifestyle.

43. With regards to lifestyle monitoring performed by the Ukrainian Agency for the Prevention of Corruption, GRECO noted that public doubts had been expressed regarding its performance and potential for misuse as a means of political reprisal, in particular, for the lack of a clearly defined and publicly announced methodology for this particularly sensitive type of monitoring.

44. Subsequently the UNDP office in Ukraine has published an international practice review and recommendations for potential applications of lifestyle monitoring and the procedural guarantees that must assist such monitoring,[24] taking in consideration the limits posed by the respect for **the right to private life** and the circumstance that certain forms of monitoring can only be **justified in the presence of a reasonable suspicion of corruption related offences** such as signs of illicit enrichment[25].

2.6 Effectiveness of inspection mechanisms

45. While considerations for judicial independence set boundaries for verification mechanisms, corresponding considerations for efficiency have led to criticism

[23]Venice Commission Opinion 868/2016: Amicus Curiae Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law), adopted by the Venice Commission at its 109th Plenary Session (Venice, 9-10 December 2016); CDL-AD(2016)036-e

[24]https://www.ua.undp.org/content/dam/ukraine/docs/DG/Monitor_en_final.pdf.

[25]It should be noted that in Ukraine, such monitoring is carried out by the National agency for the prevention of corruption. According to Article 1 of the Ukrainian law on Prevention of Corruption, a corruption-related offence in the meaning of this law means an act that does not have signs of corruption but violates requirements, prohibitions and restrictions established by the Law on prevention of Corruption , for which the law establishes criminal, administrative, disciplinary and/or civil liability.

towards oversight mechanisms that were carried out in a superficial manner. In a number of occasions, the GRECO has criticized state members for the lack of proactive interaction and coordination among relevant authorities in charge of verifying asset declarations. GRECO noted that the monitoring bodies mostly checked the reported data superficially while there was no clear common goal of preventing conflicts of interest using such declarations.[26]

46. In Croatia the efficiency of mechanisms for verification of asset declaration has been recently enhanced through software for automate verification of reported data. An IT system allowing for automated cross checks and information exchange among different authorities (i.e. access to tax databases and real property registry of the Ministry of Justice; practice sharing with the Commission for the Prevention of Conflicts of Interest) is being put into place this year.

47. The existence of an automated verification software not only allows for better comparability across time of asset and income variations but could well facilitate early detection of potential anomalies and irregularities and can prevent spreading suspicions of bias attached to a manual verification of declarations of asset[27].

48. The Italian Judicial inspectorate has introduced data mining systems and remote informatics control of data to achieve consistency in inspections. Starting in 2016,

[26] In its IV evaluation round on Poland , GRECO for example noted that the judicial oversight bodies mainly checked that asset declarations forms had been filled correctly and compared them with previous declarations; tax offices also checked declarations against annual tax returns and other documents if necessary to find possible irregularities; the Central anti-corruption bureau would instead only intervene upon request if the first two bodies flagged suspicions of significant irregularities. GRECO concluded that it was crucial that the relevant authorities be given adequate resources as well as tools to act in a coordinated manner and to obtain relevant information. On the basis of the above considerations, the Ministry of Finance in March 2014 prepared a document entitled "The Rules on how to deal with property declarations of persons obliged to submit ones, subject to revenue office review" and disseminated it among fiscal authorities. The Rules are based on binding legislation and relate to asset declarations of parliamentarians, judges, prosecutors as well as other categories of officials concerned. They deal with the categories of persons obliged to submit asset declarations, the scope of information to be included in them, the submission of declarations, their analysis by revenue offices and procedural questions, as well as the storage of asset declarations and related documents. The Rules contain an explanation of relevant terminology and contain guidelines on the analysis of declarations by fiscal authorities, which explain the aim of different stages of the analysis and their scope, specify sources of information to be used (including specified data bases, data from territorial self-government authorities and information from banks) as well as documents and information to be taken into account for the comparison of data included therein and in the assets declarations. Finally, the Rules indicate the actions to be taken by fiscal authorities in cases of serious doubts as regards the legality of property revealed in the declarations.

[27] GRECO IV Evaluation round on Ukraine, para 39.

inspection reports have included all relevant information that can be of interest for inspection with exclusion of information that may pose threat to security and privacy of judges and other parties (that is placed in a separate part of the report).

49. In France the heavy fines of up to 45,000 euro incurred for violation of the provisions on asset declarations, are considered to be a strong incentive for magistrates' compliance with the asset declaration mechanism. Public access on decisions adopted in disciplinary proceedings and greater publicity given to severe cases of misconduct have also been considered as useful in improving the responsibility of judges before society and public confidence in the justice system[28].

50. Finally, the effectiveness of oversight mechanisms will also depend on the existence of effective reporting systems and protection for whistleblowers that cover, not only the protection of the identity of whistleblower but also remedies against retaliation. The latter will also need to rely on the identification of vulnerabilities to retaliation within the judicial system that go beyond traditional forms of protection such as security measures. In the judiciary for example retaliation can take place through performance evaluation systems when the relevant legal framework does not provide sufficient safeguards against misuse.

[28] GRECO IV Evaluation on Portugal.

PART TWO

Inspection Services and judicial integrity mechanisms in Council of Europe members

3. FRANCE

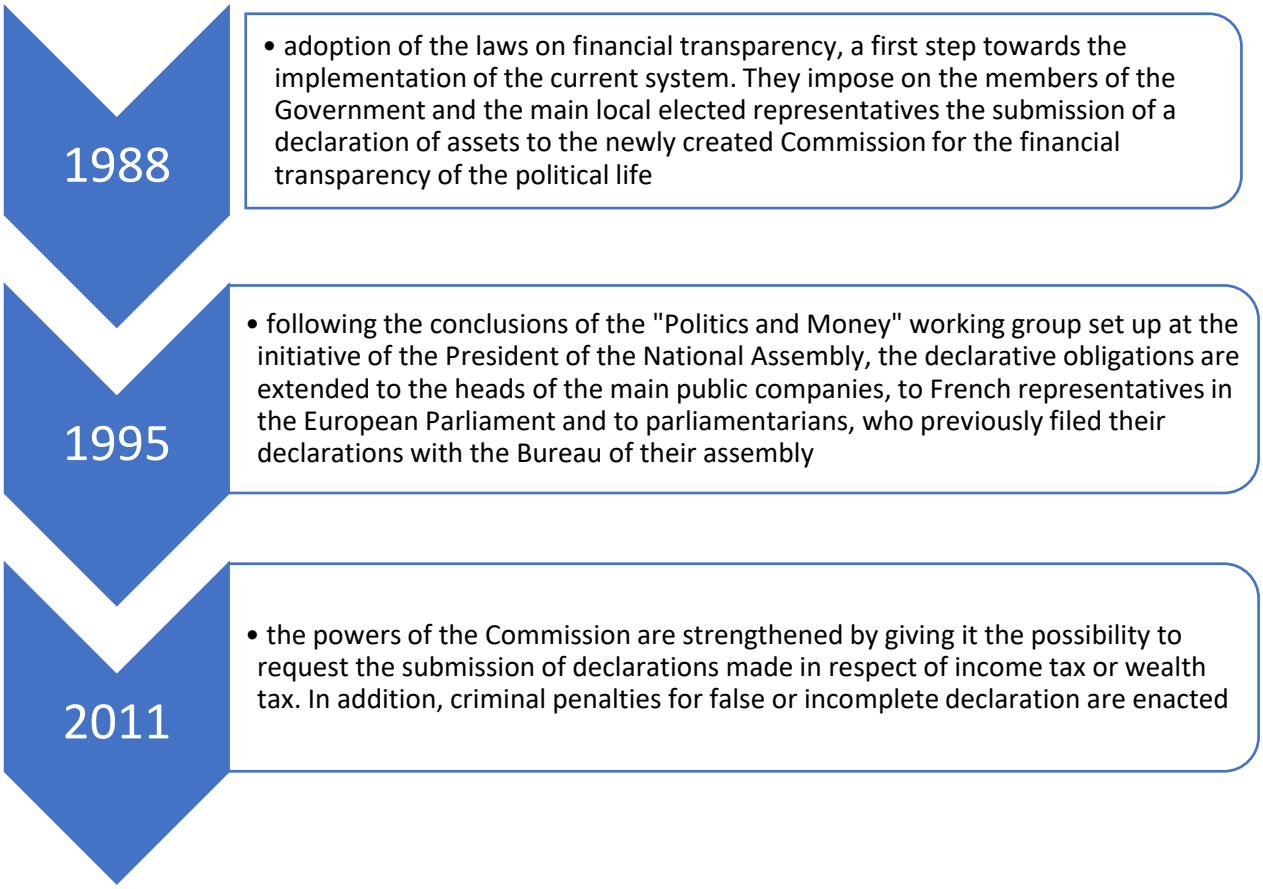
The French System- a complex establishment

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

51. The creation in 2013 of the **High Authority for the transparency of public life**[29] 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.

52. The benchmarks until 2013:

[29] For more information, visit https://www.hatvp.fr/la-haute-autorite/



53. **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.**

54. 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.

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

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

56. 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.

3.2.1 The conflict of interest

57. In its current reading, after the legislative changes brought in 2016[30], the law on the status of magistrates[31] states that magistrates ensure that situations of conflict of interest are prevented or stopped immediately.

58. 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*.

[30] 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)

[31] Law on the status of magistrates 58-1270.

59. 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.

3.2.2 The declaration of interests and the declaration of assets

The declaration of interests

60. 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.

61. 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.

62. 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** [32]. 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*).

63. 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*

[32] 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.

- *Voluntary positions likely to give rise to a conflict of interest*[33]
- *The elected positions held on the date of taking office.*

64. 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**.

65. 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.

66. 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.

67. **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.

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[33] 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?)

68. The submission of the declaration of interests gives rise to a **deontological interview** between the magistrate and the authority[34] 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*).

69. 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 provisions[35] 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.

70. 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 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.

71. 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 transmitted[36] 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.

72. 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 fine[37]. 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

[34] Presidents of courts and chief prosecutors, as explained previously.

[35] 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.

[36] Actually, certified copies of the documents.

[37] Independently from any possible disciplinary sanctioning.

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 information[38].

73. 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.

74. 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

75. 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).

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

77. The declaration **covers**:

- *Immovable and movable assets, including securities (superior to a threshold established by regulations)*
- *Life insurances*
- *Bank accounts, including savings accounts*
- *Vehicles (terrestrial, boasts, airplanes)*
- *Commercial property and clientele*
- *Immovable and movable assets, as well as bank accounts, abroad*
- *Passive debts (liabilities).*

78. As regards the **value of the assets**, the amendments brought to the legislation in 2016[39] indicate that they have to be evaluated at the date giving rise to the

[38] So far, there have been no recorded cases of failure to declare and for illegal disclosure of information.

[39] See footnote 4 above.

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 provided[40].

79. 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.

80. 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.

81. **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**.

82. **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.

83. More specifically for this type of declarations, **non-responding to injunctions by the High Authority or not communicating requested information and**

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

documents are also punishable under criminal law by one year imprisonment and 15 000 € fine.

84. 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**[41]. 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**.

3.2.3 The deontological interview

85. 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.

86. 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,

[41] For the decision of the Constitutional Council, see: https://www.conseil-constitutionnel.fr/decision/2016/2016732DC.htm

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.

87. **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**.

88. 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**.

89. 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 offer[42]. More specifically, in 2019 the School delivered a special module on the deontological interview[43], 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.

3.2.4 The Deontological Collegium

90. The Deontological Collegium of magistrates of the judiciary, was established by law[44] 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.

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[42] 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

[43] See catalogue for 2019, page 20, training session code ADMJD05.

[44] 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.

91. 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.

92. The secondary legislation[45] 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 law[46], 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 area[47].

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

94. 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 2019[48].

[45] 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.
[46] Law 58-1270 on the status of magistrates.
[47] Currently, a law professor, appointed upon proposal of the Court of Cassation (Supreme Court)
[48] The report can be found at: https://www.courdecassation.fr/IMG///CDMJ%20Rapport%202017-2018.pdf.

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

95. As pointed out in the last CSM activity report for the year 2018[49], 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 law[50], 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

96. 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.

97. 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.*

98. 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.

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[49] 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.

[50] Law 94-100 of 5 February 1994 on the Superior Council of Magistrates.

It is accompanied by a series of recommendations, as annex to the main document[51], built around thematical fiches with situations to which magistrates may be confronted and has at main aim not to give necessarily 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)

99. 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*[52]. 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**[53].

100. **Any magistrate** can contact the SAVD for any matter which is of personal deontological concern[54]. Since 2017, the SAVD has opened also towards the **magistrates-to-be**[55], during their initial training in the judicial school[56].

101. 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.

102. 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

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[51] The *Collection* and its annex are part of the last CSM activity report for 2018.

[52] 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.

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

[54] 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.

[55] In FR – *auditeurs de justice.*

[56] *Ecole Nationale de la Magistrature* (National School for Magistrates).

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**.

103. 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 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.

3.2.6 The disciplinary area

104. 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**.

105. 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.

106. 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.

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

108. 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.

109. 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.

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

111. **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*).

112. 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.

113. 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 ranking[57]
- 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.

[57] Within the grade or class, in the hierarchy.

114. 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**.

115. **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*[58]. 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.

116. 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.

117. 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 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**.

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[58] 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

118. **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.

119. 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, decisions[59]).

3.2.7 The role of the Conseil d'Etat in ensuring high respect of high deontological standards

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

121. In this context, it is worth mentioning that the Code of administrative justice has also been amended in 2016[60] with respect to provisions related to deontology, as well as to declarations of interest and deontological interviews.

122. As one consequence, the *Conseil d'Etat*[61] adopted in March 2017 a *Charter of deontology*[62], 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.

123. 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

[59] http://www.conseil-superieur-magistrature.fr/missions/discipline
[60] Law 2016-483 of 20 April 2016 on the deontology and rights and obligations of civil servants.
[61] English version of its website: https://www.conseil-etat.fr/en/
[62] 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.

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.

124. 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.

125. 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*.

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

126. The IGJ, as it exists now, was **established in 2017**[63] 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 1964[64]. 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.

127. 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

[63] 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.

[64] 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.

he/she presides). This programme is then submitted to the minister of justice for validation.

128. 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 available[65].

129. 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**[66]. 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 2018[67]. 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

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[65] See, for the two reports for 2017 and 2018, after the last wave of reorganisation in 2016: http://www.justice.gouv.fr/art_pix/igj_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 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.

[66] 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.

[67] 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.

(*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 services[68]; 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 jurisdictions[69].

130. 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.

131. 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.

132. 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**.

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[68] 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.

[69] 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

133. 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.

134. 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**[70], 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.

3.3.1 Appointment /selection

135. 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.

136. 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.

[70] 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.

3.3.2 Missions

137. The IGJ has in short **five areas for missions**: supervision (monitoring and control); **investigation**; evaluation and advice[71]; coordination; auditing. In addition, the minister of justice can entrust the IGJ with any mission of information, expertise and advice, as well as evaluation 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.

138. 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*).

139. 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 supervision[72]. 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 followed[73]. 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

[71] 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).

[72] 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.

[73] 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.

jurisdictions, the IGJ can **discover issues related to the observance of the deontological rules**[74].

140. 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 misfunctioning of a certain service (thus can target *several* persons, with suspicions of disciplinary offences). Such missions are also initiated upon the 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 recommendations[75].

141. 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**[76], based on the law on judicial organisation, which gives to the Inspectorate a global vision 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.

3.3.3 Main targets of missions

142. 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.

143. 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

[74] 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.

[75] 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).

[76] IGJ received 62 reports in 2017 and 44 reports in 2018.

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 Decision[77] 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.

3.3.4 The administrative investigations

144. 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 misfunctioning 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).

145. 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 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.

[77] Government Decision 2016-1675 of 5 December 2016 on the creation of the general inspection of justice.

3.3.5 Procedural steps and practice

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

147. 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.

148. 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.

149. **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 life[78]. The consideration behind this approach is that a magistrate's misbehaviour can negatively affect his working environment, including the work of his colleagues.

[78] For instance, the magistrate is suspected of domestic violence, as this is considered that such a behaviour 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.

150. **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.

151. **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 means[79]. The investigated magistrate is not present during witnesses interviewing.

152. Once all witnesses' statements are gathered[80] (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.

153. 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 to[81].

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[79] 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 here http://www.conseil-superieur-magistrature.fr/missions/discipline/s212 .

[80] 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.

[81] 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.

3.3.6 Scope of the investigation and balancing considerations

154. 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**.

155. As the scope of the administrative investigation can be very wide and can extend to the overall behaviour of a magistrate[82], there is a whole set of procedural steps before the MoJ takes the decision to request the initiation of an administrative investigation against a magistrate[83]. 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.

3.3.7 No coercive powers

156. 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**.

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[82] The French describe the administrative investigations as being a "large machinery".

[83] 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).

157. 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**[84].

3.3.8 Procedural guarantees

158. 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 by signed by each inspector.

159. 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.

160. 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.

161. 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.

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

[84] 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.

3.3.9 Methodological guidance

163. 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.

164. 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.

3.3.10 Inspection report

165. 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.

166. 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.

167. 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.

168. 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.

169. 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).

3.4 A dedicated Deontological Charter

170. 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.

171. Hence, the IGJ has adopted its own Deontological Charter, which refers to the general deontological principles that are permanent behavioural references for all members[85]. It is given to all newcomers, 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.

3.5 Relationship with criminal proceedings

172. In those cases where integrity breaches may amount to corruption offences or other criminal offences, the inspectors are required by law[86] to refer the case to the prosecution service for the opening of a criminal investigation.

173. The administrative investigation carried out by the IGJ and the criminal investigation are autonomous from each other[87]. 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.

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[85] Members of the IGJ remain subject to the deontological principles of their respective statutes.

[86] Criminal Procedure Code, article 40.

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

4. SPAIN

4.1 Brief introduction to the Spanish Judiciary

174. In order to understand the role of the Judicial Inspectorate and the Disciplinary Commission of judges of Spain, in preventing and dealing with so-called integrity checks, it might be useful to first explain some facts about the Spanish judiciary: only having a contextual picture about the reality in which this legal framework applies, is it possible to understand what is their role in ensuring the best judicial administration service. Judicial independence, integrity checks and prevention of corruption within the Spanish system can only be understood once the context of the Spanish judiciary is clear.

175. Following the Constitution of 1978 Spain is a democratic social State and the political model is a parliamentary monarchy where the people is sovereign. The main principles regarding the Judiciary in Spain are set out in Article 117 Spanish Constitution (SC). Its two first paragraphs state:

"1. Justice emanates from the people and is administered on behalf of the King by Judges and Magistrates of the Judiciary who shall be independent, irremovable, and liable and subject only to the rule of law.
2. Judges and Magistrates may only be dismissed, suspended, transferred or retired on the grounds, and subject to the guarantees provided by law."

176. Article 122 of the Constitution provides for the establishment of the General Council of Justice (GCJ), which consists of 20 members, plus the President of the Supreme Court, who is member *ex officio*. All members are appointed for a single mandate of five years. 12 of them shall be judges, elected by judges, although all of the members are appointed by Parliament with a qualified majority of votes of 3/5 of the MPs (10 by the Senate and 10 by the Congress of Deputies, following the procedure set out in the respective Regulations)[88]. The 12 judges shall be appointed out of a list of 36 candidates prepared by the different Judicial Associations. Any judge with the support of 25 other judges or with the support of any of the judicial associations, can present his/her candidature[89]. In practice, only those who have

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

[89] Articles 572-578 Organic Law on the Judiciary (LJ).

the support of the judicial associations are usually appointed by Parliament.[90] The other 8 members shall be appointed among lawyers and jurists of recognized experience who have at least 15 years professional experience.

177. Spanish population is approx. 46.7 million. According to the data provided by the GCJ[91] there are 5.419 judges in Spain, where a 53.9% are women (data for 2017). Apart from these career judges, every village where there is no first instance court, has a lay judge (Justice of the peace, *Juzgado de Paz*) appointed by the municipality for four years, who has jurisdiction for petty civil claims (up to 90 euros) and can also act in duties of judicial cooperation, such as judicial notifications. Spain has also a jury system, made of 9 jurors (laymen) and a presiding judge. Jury trial is competent only for very specific criminal offences, and thus the total number of jury trials annually is around 300 cases.

178. Judges enter the judiciary after having passed an objective and very competitive examination, based on their legal knowledge. The system guarantees a fair selection of candidates based on their merits and the performance in the examinations. The exams are public. Every Spanish citizen with a law degree can take part in this exam. This has been the traditional way to enter the judiciary. Since 1980 a side-entrance into the judiciary was introduced: one third of all judges may be appointed among lawyers or other legal professionals who have a certain number of years experience in the legal profession. They also undertake an exam, but their professional record makes already the major part of the total grading.

179. The profession of judge enjoys a high prestige in Spain and judges are not only independent in the laws, but also in practice. In general, they are viewed as highly qualified professionals that play a crucial role in ensuring the rule of law and their work is very much respected. Their income ranges from around 2.700 euro for a newly appointed judge, approx. 4.000 euros for a senior judge and around 6.000 euros for a Supreme Court Judge.

180. Trust in the judiciary is very high although the functioning of courts is not completely satisfactory, as there are certain courts suffering of delays, mainly related to very complex criminal investigations coupled with vacancies or sick leave of a judge. It will be seen that the inspection plays an essential role in detecting needs of the courts in order to prevent excessive length of proceedings

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

[91] See Official webpage of the Spanish General Council of Justice http://www.poderjudicial.es/cgpj/es

in practice, although their capacity to react lies only when the delays are caused by the judges, not due to other reasons or actors within the justice system.

4.2 The Judicial Inspection Service

Organization of the Inspection Service

181. The Judicial Inspection Service is a body within the structure of the GCJ, and acts under the powers of its Permanent Commission.[92] According to Article 560 of the Law on the Judiciary (LJ), the GCJ shall: "1.8. Exercise the high inspection of Courts, as well as the supervision and coordination of the ordinary inspection activity of the Presidents and Government Chambers of the Courts." This monitoring function shall be done by carrying out the actions and visits agreed by the GCJ, without prejudice to the competence of the governing bodies of the Courts and in coordination with them (Articles 560 and 615 LJ). Its functions are to supervise and control of the functioning of the services of the Administration of Justice. These functions are listed in detail under Article 615 JL:

182. "1. The Inspection Service shall carry out, under the dependency of the Permanent Commission, the functions of verification and control of the operation of the Justice Administration services referred to in section 1.8 of article 560 of this Organic Law, by carrying out the actions and visits that are agreed by the Council, all without prejudice to the competence of the governing bodies of the Courts and in coordination with them.

183. However, the inspection of the **Supreme Court** shall be carried out by the President of the said Court or, in case of delegation thereof, by the Vice President of the same.

184. The **Chief of the Inspection Service** shall be appointed and separated in the same manner as the Promoter of Disciplinary Action. The elected person will remain in a situation of special services and will be considered, during the time that he/she remains in office, as Judge of the Supreme Court."

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

185. The Head of the Judicial Inspection Service is appointed by the Plenary Session of the General Council of Justice and shall be either a Supreme Court Judge or another Judge with at least 25 years in the judicial career. While exercising the functions as head of the Inspection Service he/she shall have the category of Supreme Court Judge. His/her mandate will be the same as the Council that appointed him/her (5 years, but renewable for another 5 years). The Central Inspection Unit consists of the Head, a deputy (who shall be a judge) and a Judicial Registrar (*Letrado de la Administración de Justicia*)[93] and the relevant support staff.

186. The Inspection Service is organized in five inspection units, all of them made of one or several delegated inspectors and one or several Judicial Registrars. The units are divided by judicial branches, which are: civil, criminal, labour, and administrative courts unit. In addition, there is the central unit, the mixed unit that covers family courts, capacity of persons, minors and prison supervision. Apart from the units, depending from the Head of the Inspection Service there is the Judicial Statistics Office, a crucial unit for the fulfilment of the tasks of the Inspection Service.

187. As of 20 June 2019 the Spanish Judicial Inspection Service was staffed as follows: 56 persons, out of them: 6 Inspectors in the Civil Courts Unit; 6 Inspectors in the Criminal Courts Unit; 2 Inspectors in the Labour Courts Unit; 1 Inspector in the Administrative Courts Unit, and the rest within the Central Unit and the Mixed Unit. Inspectors will not serve more than 10 years in the Judicial Inspection Service, so that they do not become alien to the day-to day functions as a judge.

188. Inspectors shall be of a higher category within the judicial career than the court inspected. This is the reasons why the Judicial Inspection Service covers the Inspection of all courts, except the Supreme Court. The Supreme Court has its own inspection service.

4.3 Functions: virtual and on-site inspections

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

189. The ordinary sequence of the inspection functions is:

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

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

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

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

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

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

194. The main goal of these "virtual inspections" is to be able to act upon the early detection of a problematic situation, the needs of a relevant court, identify the causes for such situation, and provide support to overcome the problems detected. By way of the control and monitoring of a limited number of judicial bodies whose situation deviates from certain performance criteria, and on the basis of the risk assessment, the Inspection complies with the objective of preventing serious deficiencies, or avoid that those already detected continue or become even more serious.

195. Once a relevant deviation of the average compliance of the performance indicators is detected in a certain court, communication is established with the court to find out the possible motives, to confirm the existence of the problem, and to try to solve it. Upon those alerts, a physical inspection can be ordered. On-line or virtual inspections however do not allow accessing to the judicial files remotely. Such an access is at present not possible remotely, not only because the Inspection Service does not have the access codes to access the system of every court (data protection rules), but also because of the lack of interoperability between the different software used in the different Autonomous Communities.

196. At present, the statistical monitoring is complemented with an annual planning of on-site inspections of selected courts. Every 3 months, each inspection unit spends three weeks carrying out physical inspections of courts. These visits, which are always announced in advance to the relevant court to be inspected, can be 1) ordinary inspection, which is a comprehensive analysis of the functioning of the court; 2) abbreviated inspection, planned to check randomly courts that do not appear to present problems or have never been inspected; 3) precise inspection, to check compliance with a certain issue, e.g. to obtain information on the implementation of the e-justice programmes, or on the compliance with data protection rules; and 4) extraordinary inspection visit, triggered by an exceptional problem in a single court.

197. During the on-site inspection visits, inspectors can have access to all the files, to check, for example, whether the statistical data are recorded correctly or the software for classifying incoming cases is being used correctly. However, under no circumstances will the Inspection Service enter into checking the content of the

judicial decisions or judgments, which falls only under the jurisdiction of the judges.

198. The judge serving in the inspected court shall cooperate with the Inspectors in carrying out their inspection duties. In practice it has never occurred that a judge has not cooperated actively with the Inspection Service. This may also be explained by the fact that "hindering the inspection activities" is defined as a serious disciplinary offence under Article 418.17 LJ.

199. On-site inspections allow the inspectors to interview directly the persons working in the relevant court and also gather information from other actors, such as the lawyers, the local bar association, court representatives (*procuradores*), and court users, to identify the causes for the non-compliance of the performance indicators or the delays or overburden a certain court is suffering.

200. The on-site inspections lead to the elaboration of a report, taking stock of the existence of a problem, the causes for such problems and the needs of the court. It usually includes an assessment of court upon comparative elements with the court itself (background, significant changes, etc.); and also comparative elements with the overall situation of the judicial branch and the courts within the territory, identifying courts that show the more salient deviances from the general performance data.

201. Reports include also recommendations and proposals for action. These can be the establishment of a joint action plan elaborated together with the governing body of the relevant court, and other internal or external actions. These recommendations can be directed to external stakeholders, when the delays detected are due to cases that need to be addressed by external bodies, not the judge or staff working in the relevant court. These can be, for example: the need for more staff, the covering of vacancies, improvement of the IT equipment/personnel; the renovation of the premises; etc.

202. As a result of a virtual or an on-site inspection, the inspectors can identify infringements that could eventually constitute a disciplinary offence. In such a case, they would inform the Disciplinary Commission. In practice, however, the problems detected very seldom are caused by a negligent conduct of the judge, or a misconduct on their side. Most common problems of deviations (not proper functioning of a court in quantitative terms) can be traced back to the insufficient staff, vacancies not covered, sick leave of the non-judge staff, or extraordinary circumstances that have led to an increase of number of cases (as was the case with

the effects of the ECJ case law upon the lawfulness of certain general clauses included in the bank mortgages).

203. The assessment report can also include internal recommendations, directed to the members –judge and non-judge– of a court. Those recommendations can be, for example, to improve the system of case-register, to gain more efficiency in the case management or to improve the implementation of the data protection rules, etc.

204. Once the report has been elaborated, it is shared with the members of the court, so that they are able to make allegations to it, show their agreement or disagreement. In practice, on very few occasions there are significant disagreements, due to the fact, that the inspections are carried out in cooperation of the relevant court staff. In fact, it is often that the members of a court request the inspection to be carried out, precisely to get support in the functioning, and also the support of the Inspection Service to cover vacancies or to get support measures from other courts (by way of temporary transfers of judges or appointing substitute judges or elevating a claim to the Ministry of Justice for more budget for the court administration.

205. Finally, the tasks of the Inspection Service, once the report has been elaborated and the recommendations drafted, a follow up activity will take place. Monitoring compliance with those recommendations and aiding the court facing problems, to overcome those. Obviously when the problems are caused by a budgetary shortcut or insufficient personnel, it is not in the hands of the Inspection Service or the inspected court, to provide for the solution, but at least to determine which support measures should be adopted while the personnel situation is normalised.

206. Only very few problems detected in the functioning of a court related to the number of cases dealt with, pending cases and average length until final closing of the case are to be attributed to the judge. Reasons lie mainly in the court office, which in Spain is mainly the responsibility of the Judicial Registrar, and whose funding is mainly dependent of the Ministry of Justice. This explains why most of the inspections do not end up with opening a disciplinary action against the judge serving in the inspected court. Misconduct or disciplinary infringements of other civil servants serving in the judicial office, shall be communicated to the relevant inspection service. The same applies in the case, when during an inspection of the Judicial Inspection Service, problems with the conduct of a certain public prosecutor might have been identified. In such a case the inspectors will notify the public prosecution service.

4.4 Other functions

207. During inspections the inspectors may be also informed about unethical or inappropriate behaviour of judges, not related to the quantitative performance of the jurisdictional functions. In such cases, the inspection could report to the Disciplinary Commission. However, as was confirmed during the interview with the members of the Inspection Service in Madrid, this is extremely rare, and has hardly occurred in practice.

208. Finally, the Judicial Inspection Service has also other functions, which are: authorise a judge to carry out a compatible professional activity. Judges in Spain are subject to a very stringent system of incompatibilities, not being allowed to carry out any professional activity, except: teaching and research in the legal field; and artistic activities. Nevertheless, even for these last activities, being remunerated or not, they need to ask for authorisation. The Inspection Service can deny the authorisation in cases where the court, where the judge is serving, presents delays.

209. The Judicial Inspection Service is also competent to allow study visits or permits to cooperate in judicial cooperation programs upon request of individual judges.

210. To summarise: Spanish Judicial Inspection Service undertakes the monitoring of the functioning of courts, mainly from a quantitative perspective. Compliance with the performance indicators, detecting why those performance criteria are not achieved, identifying the reasons for those deviances and proposing recommendations to improve the efficiency and performance of the courts, is its main role. This is mainly based on the statistical information every court has to provide periodically. No integrity checks are carried out by the Judicial Inspection Service, but if they get information of possible disciplinary infringements, they shall report such conducts to the relevant disciplinary body.

4.5 Disciplinary proceedings and disciplinary offences

211. The corollary of judicial independence is the judge's accountability. Judges in Spain can incur into criminal and disciplinary liability. Pending a criminal procedure, the disciplinary proceedings may continue, but no decision will be taken until the criminal procedure is finalised. The facts established as proofed in the criminal procedure, are binding for the subsequent disciplinary proceedings. Disciplinary liability can be imposed after a criminal sanction only upon another legal ground (Article 415 LJ).

212. Disciplinary liability of judges is regulated in the Law on the Judiciary (Articles 414-427 LJ). After a short overview of the disciplinary offences the main features of the institutional framework and the disciplinary proceedings against judges will be explained. Conduct of judges against the principles of judicial integrity are typified as disciplinary offences. So, it can be affirmed that the prevention and sanction of inappropriate conducts of a judge, that do not entail criminal liability, takes place by way of the disciplinary liability system.

4.6 Disciplinary offences

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

214. The law provides for a very detailed list of conducts that entail disciplinary liability. We will mention here the conducts that are typified as very serious offences, and briefly mention the most relevant ones under the classification of serious and less serious offences.[94]

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

- *417.1: Intentional breach of the principle of loyalty to the Constitution.*
- (The law obliges judges to apply the Constitution, interpret every rule in conformity with the Constitution and to follow the rulings of the

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

Constitutional Court. Not doing this willingly would constitute this disciplinary offence.)

- *417.2: Affiliation to political parties, labour or trade unions or working for any of them.*
- *417.3: Causing continuous conflicts with the authorities within the judicial district for reasons not related to the judicial functions.*
- *417.4: Interfering with the judicial functions of other judges by giving instructions or exercising any pressure.*
- *417.5: Actions or omissions that have ended up in the establishment of civil liability in a final judgment.*
- *417.6: Exercising any of the activities which are incompatible with the judicial profession.*
- *417.7: Omitting information relevant in cases of appointments for vacancies and so causing the appointment against incompatibilities provided in the law.*
- *417.8: Knowingly not complying with the obligation to abstain in cases where there is a legal ground for self-recusal.*
- *417.9: Reiterated neglect or unjustified delays in initiating, proceedings or deciding cases or in the exercise of any other judicial functions.*

  (The practice on this disciplinary offence will be explained in detail, as it is one of the most often invoked grounds and where the case-law has tried to define exactly when a negligent conduct is present and what kind of delays may give rise to disciplinary sanctions.)
- *417.10: Abandonment of post or unjustified absence for more than 7 days.*
- *417.11: Willingly not telling the truth when applying for absence permits, compatibility declarations or economical allowances.*
- *417.12: Revealing data known in the exercise of the judicial function, when this causes some kind of damage.*
- *417.13: Abuse of the condition of judge in order to obtain any favourable treatment by authorities, public officials, or any professional.*
- *417.14: Inexcusable ignorance in the fulfilment of the judicial functions.*
- *417.15: Absolute lack of motivation of the judicial decisions that require it, if such lack of motivation has been found in a final judgment.*

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

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

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

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

4.7 Disciplinary liability and undue delays

218. As mentioned above, the "reiterated neglect or unjustified delays" in performing the judicial functions constitute a very serious offence or a serious offence (417.9 LJ). This is one of the most frequent grounds that has triggered disciplinary proceedings, and where the interaction between the disciplinary proceedings and the Inspection Service is especially close.

219. Delays are frequent in courts, but those delays will lead to a disciplinary liability of the judge only if certain circumstances are met. These circumstances are not clearly defined in the law, but have been set out in the case-law of the Spanish Supreme Court.[95] The criteria taken into account are following: 1) the delay has to be "unjustified". A delay caused by the excessive workload or the lack of personnel will not lead to disciplinary liability (but to a right to compensation by the State for malfunctioning of the justice system). However, even in courts that are overloaded, there may an "unjustified" delay, for example, for not dealing promptly with urgent cases. Thus, the excessive workload will not render all

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

delays as justified, and the judges have to be very attentive to deal swiftly with those which are specially urgent.

220. Other circumstances to be taken into account to find disciplinary liability for unjustified delays are: the general situation or the court, the importance of the delays, the consequences (damages) caused by the delays, and if it is a single situation or an extended, reiterated one. The reiteration of the delays will make a difference between the very serious and the serious disciplinary (Article 418.11 LJ) infringement. Finally, the subjective element is also of significance: the negligence or delay has to be the result of the willing or negligent attitude or behaviour of the judge, to comply with the principle of guilt.

221. As to the neglect in exercising the judicial obligations, this has to be the manifest infringement of a judicial obligation, without justification. It implies an omission in acting.

222. In practice if the Inspection Service, during their inspection activities detect such a behaviour, they should report to the Promoter of the Disciplinary Liability. And the other way round: when a report regarding to undue delays reaches the Disciplinary commission, they will request data on the functioning of the relevant court and statistics regarding the number of cases, pending cases and average duration of the proceedings. The data collected by the Inspection Service will allow also the Disciplinary Commission to identify a possible misconduct of the relevant judge.

4.8 Institutional structure of the disciplinary system of judges

223. The following bodies have competence on disciplinary proceedings and/or decisions: 1) President of Supreme Court, Supreme Autonomous Court and National Court; 2) Management Chamber of the courts (*Sala de Gobierno*); 3) The Promoter of the disciplinary proceedings; 4) The Disciplinary Commission; 5) The Plenary of the General Council of the Judiciary.

224. **Presidents of Supreme Court, National Court and Supreme Autonomous Court**: each of these courts have competence to impose a warning as a disciplinary sanction on the judges working in their courts (Article 421 LJ). The proceedings are very simple: short information of the institution of the proceedings, hearing to the relevant judge, and decision by the president, that can be appealed to the Disciplinary Commission (Article 604.3 LJ) and further to the administrative courts.

225. **Chambers of management of the Courts (*Salas de Gobierno*)**: The internal management of the Supreme Court, National Court and Supreme Autonomous Court is carried out by these governing bodies (Article 152 LJ). They are made of: the president of the court, the presidents of each of the chambers within such court, and an equal number of judges elected by all the judges working in these courts. The Chambers of management take all the other decisions that are necessary for the functioning of these courts and its management, as for example: decisions on composition of each chamber, completing the court in case of missing judges, decisions on the substitution of judges, elaboration of the reports requested by the HCJ, elaboration of the annual report of the relevant court and the statistics, requests for covering of vacancies, etc. Among those competences, they have also disciplinary powers to impose warnings and pecuniary fines for less serious infringements on the judges working in those courts. The proceedings are the same as described above.

226. **The Disciplinary Commission:** The Disciplinary Commission of the General Council of Justice takes the decision on serious disciplinary infringements and proposes to the Plenary the decisions on the very serious disciplinary infringements (Articles 603 and 604 LJ). The disciplinary commission is composed of 7 members of the GCJ, 4 coming from the ordinary judicial careers and the three others of judges appointed among lawyers with recognized competence. The disciplinary commission has to act with the total number of its 7 members, and the chair will be held by the judge with higher ranking within the judiciary of the ordinary judicial career. The decisions of the disciplinary commission can be appealed to the Plenary of the GCJ.

227. **The Plenary of the General Council of Justice:** Decides on the imposition of sanctions of very serious disciplinary offences. Elects the members of the GCJ who will be in the disciplinary commission and appoints the Promoter of the Disciplinary Action. All appointments are for 5 years, the same time of the mandate of the GCJ.

228. **The Promoter of the disciplinary proceedings**: The Promoter of the disciplinary proceedings was introduced into the Spanish system only recently by Law amending the Law the General Council of Justice was amended in 2013 (Organic Law 4/2013 of 28 June). Until then, the investigation of the complaints regarding disciplinary infringements was done by an "instructor", which was appointed by the disciplinary commission *ad hoc* for every case. The investigation was assigned to judges who continued performing their functions in their respective courts. They were thus not specialized in disciplinary proceedings/investigations and

they struggled to deal with the disciplinary complaints in individual cases besides their ordinary workload. The disciplinary commission was competent to decide on the initiation of the disciplinary proceedings.

229. This system was considered not to fulfil completely the adversarial model and the need for impartiality as the same body that took the final decision on disciplinary liability, was also the one deciding at the preliminary stage on its commencement. Furthermore, the appointment of the instructor did not fully comply with the guarantees of the "judge pre-established by the law", as it was an *ad hoc* appointment for each case. And finally, the instructors lacked specialized experience on these proceedings. All these grounds and the principles set out by the European Court of Human Rights, led to the amendment of the disciplinary proceedings against judges.

230. Since 2013, the Promoter will receive the complaints filed against judges, decide on the initiation or discontinuation of the disciplinary proceedings, gather all the information and evidence on the disciplinary liability of the "accused judge" (Article 605 LJ). The Promoter is appointed by the Plenary of the GCJ by an absolute majority vote and his/her mandate will last the same time of the GCJ that appointed him/her. The appointment shall lie either on a Judge of the Supreme Court or any other judge with more than 25 years in the judiciary (as the Head of the Inspection Service). Once appointed the Promoter of the Disciplinary Action will perform exclusively these functions. While in this post, he/she will have the category of Honorary Judge of the Supreme Court.

231. The Office of the Promoter of the Disciplinary Action is divided into three units, whose functioning is ruled subsidiarily by the rules on administrative bodies:

4.8.1 . The Unit for citizen's assistance (Unidad de atención ciudadana)

232. This unit receives all the complaints regarding the functioning of the courts. The aim of this unit is to seek improvement of the public service of the Administration of Justice. To that end, special attention has been given to make it very accessible to every citizen. Citizens can file complaints on-line, by registering a complaint at the GCJ or by introducing the complaint into a specific box that is provided in every court. There is a specific form, accessible on-line, but the use of such forms is not mandatory. In practice the most frequently used way is the on-line complaint.

233. Upon receipt of a complaint, the unit shall acknowledge receipt within 48 hours (if the complainant is identified). Time to respond to the complaint is a maximum of two months. The main goal is to address problems detected by citizens and to work in creating trust in the judiciary. Complaints related to the content of the judicial decisions are rejected. Those that refer to the conduct of a judge, are re-sent to the Disciplinary Commission.

234. This unit acts as the first entry for the complaints, and does the essential classification of the complaints, sending those that relate to judges to the Disciplinary Commission of the GCJ, and the rest to the relevant inspection or disciplinary bodies. The Unit for citizen's assistance is directed by a judge, who is appointed by the Plenary of the GCJ after open competition among judges. This unit is assisted by 3 other judges and around 10 administrative staff. This unit receives annually around 10.000 complaints (all of them enter into the electronic data base). Anonymous complaints if not manifestly ill-founded are also sent to the relevant body, to decide if further preliminary investigation should be carried out or not.

235. The two most frequent grounds expressed in the complaints are: excessive length of judicial proceedings 43%); and disrespectful treatment (around 13%). With regard to the excessive length of proceedings, almost none of the delays are attributable to the judge himself/herself. Regarding the complaint of disrespectful behaviour, most of the complaints were directed against the court staff (54%) and only few cases against the judges (7,83 %). Many of the complaints are filed by the lawyers acting in court, not satisfied with the way the judge was directing the hearing.

236. Around 1000 of the received complaints are sent for preliminary inquiries, because they relate to judges and might entail a possible disciplinary liability. The decisions rejecting the complaints are notified to the claimants who can appeal the non-admission to the Disciplinary Commission. For such cases the Disciplinary Commission does not meet in plenary, but through its permanent commission (three members). Annually around 200 citizens appeal the decision on rejecting the complaint against a judge, and according to the information gathered by the commission only two of those appeals were accepted.

237. Thus the information that reaches the Promoter of the Disciplinary Action regarding possible disciplinary offences of judges comes mainly though the complaints directly presented by the citizens (around 60 to 80%), by using the "post-box", the on-line access or sending it directly to the GCJ to the Unit for citizen's assistance. The rest of the disciplinary complaints comes either from the

presidents of the courts, the chambers of management, through the service of inspection of courts of the GCJ.

4.8.2 I. The Unit for preliminary inquiries:

238. This unit within the Office of the Promoter for Disciplinary Action carries out the preliminary investigation on the facts alleged in the complaints, and makes a preliminary assessment on those facts and the possible disciplinary liability. The Promoter has the power to question the judge against whom a complaint has been filed. Every court and judge has the obligation to cooperate with the investigation of the Promoter.[96] The law does not state which investigative actions can be carried out by the Promoter (it says "all necessary acts and evidence that are needed for the establishment of the facts", Article 424 LJ), but the information gathered confirms that he/she can: interrogate the investigated judge, interrogate witnesses, request statistics, request reports from the Inspection Service, request judicial decisions and request information from other public or private authorities. If after carrying out this preliminary inquiry it is confirmed that the facts do not constitute a disciplinary offence, the Promoter will close the proceedings. This decision can be appealed to the Permanent Commission of the HCJ. If this body accepts the appeal, the Promoter shall continue the proceedings.

4.8.3. The disciplinary proceedings Unit

239. Once the preliminary inquiry has gathered the relevant information and evidence, if there are indications of a disciplinary offence, the case will move forward to the unit within the Office of the Promoter dealing with the proceedings. An average of around 40 complaints proceed further with the disciplinary sanctioning procedure. Out of those, around half of them are closed at this stage, and the rest are transferred to the Disciplinary Commission with a proposal for sanctioning.

240. Proposal for dismissal is very rare, in recent years there was around 1 every year, decision that has to be taken by the Plenary of the GCJ.

241. As to the grounds for the sanctions finally imposed, the statistical information obtained from the Office of the Promoter, the majority were based on unjustified

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

delays (less serious, serious and very serious), and the rest were based on infringement of compatibilities, infringement of the obligation to abstain, inexcusable ignorance, abuses of authority, not complying the timetables of hearings, disrespectful behaviour, or unjustified absence (around 2 or 3 infringements each, but the figures may not be exact, as some proceedings are based on more than one ground). Statistics for 2018 show that 23 cases were sent to the Disciplinary Commission with proposal for sanctioning. Most cases dealt with the offence regulated under Article 419.3 LJ (delays in giving the judgment or judicial decision, 13 cases out of 23); 417.9 LJ (reiterated neglect or unjustified delays in initiating, proceedings or deciding cases or in the exercise of any other judicial functions, 11 of the 23 cases); and the infringement under Article 418.11 LJ (delays in hearings, 12 cases out of those 23). Most of the proceedings deal with several disciplinary offences jointly (delays are typified under several legal provisions. Other grounds where the Promoter of the Disciplinary Action has recommended to impose a disciplinary sanction are: 418.6 LJ (use of unnecessary, unwarranted, extravagant or clearly disrespectful or offensive expressions in the legal opinion of the judgment delivered), 419.2 LJ (disrespectful conduct) 417.2 LJ (membership in political parties or trade unions, or performing duties or services for them); or 417.14 LJ (non-excusable ignorance of the applicable law). One case dealt with the offence of "Unlawful interference by means of orders or pressure in any sense in the exercise of the judicial functions of any other Judge or Magistrate" (4174 LJ). The data of the Disciplinary Commission as to the numbers of disciplinary sanctions finally imposed has not been made available yet.

242. The proceedings will have to respect the general principles applicable to the administrative sanctioning procedure, and according to the European Court of Human Rights the safeguards provided under Article 6 ECHR under "criminal charge", following the *Engel criteria*, apply to these sanctioning proceedings as well. These encompass, the principle of legality, the principle of guilt, the principle of proportionality, and the fair trial rights.

243. This unit will formulate the "indictment", which shall contain the factual basis and the possible infringement committed, as well as the sanctions that would correspond according to the law. This "indictment" (*pliego de cargos*, containing the written charges) will be notified to the relevant judge (we will use the term "defendant" although it is not strictly a "defendant"). While the proceedings take place, the judge can also be provisionally suspended from his/her post, after having heard him/her and the public prosecutor. This precautionary measure can only be adopted if there are sufficient indications of a very serious disciplinary infringement (Article 424 LJ).

244. Once the defendant has received the indictment, he/she can file an answer within 8 days, making allegations, presenting evidence and/or requesting evidence to be practised (Article 425 LJ). Once the answer has been filed, after hearing the public prosecutor, the Promoter of the Disciplinary proceedings makes a proposal on the applicable sanction to the Disciplinary Commission or the Plenary of the GCJ (depending on the type of sanction). Within 8 days, the defendant can make allegations against the proposed decision. Once these 8 days have lapsed, the whole file is sent to the deciding body.

245. The Disciplinary Commission (or the Plenary) will take a motivated decision (Article 425.8 LJ). The deciding body can take into account facts and allegations not considered by the Promoter, but only for applying a lesser sanction. The decision will be notified to the defendant and also to the person who presented the complaint. Both can appeal this decision to the administrative courts through the ordinary judicial administrative proceedings. The sanctioning decision can be enforced once the administrative proceedings are ended, even if the judicial proceedings before the administrative jurisdiction are pending.

246. Throughout the whole disciplinary proceedings, the defendant can be assisted by lawyer if he/she wants to. The public prosecutor will be party to these proceedings.

247. The Disciplinary Commission will inform the Judicial Inspection Service of the outcome of the disciplinary proceedings.

4.9 Judicial Ethical standards and Code of Ethics

248. The principle that has traditionally governed in the field of judicial ethics has been that "if you pick judges who know how to behave, then all will be well. If you do not, no amount of ethical problems will help" (*Judicial Ethics in England*). However, this traditional approach needs to be complemented and even that affirmation is still valid, judicial standards of ethics are now defined as an essential component of public trust in the judiciary. For the last twenty years, there has been a strong movement towards adopting international standards, to promote public trust and underpin the legitimacy of the judicial power.

249. In the Spanish system, the departing stance is that the ethical behaviour of judges is presumed. Spanish judges do not undergo a previous background checking nor is it foreseen to carry out investigations of single judges. This is not done for recruiting, selection or evaluation of judges. Ethical standards are taken for granted, although misconducts, infringements and breach of the judicial ethical

standards are typified as disciplinary offences. Ethics and integrity is dealt with by way of establishing a very detailed list of conducts that should be avoided, because they entail disciplinary liability. Trust in the effective functioning of the disciplinary bodies is an essential element to the effectiveness of the system.

250. Despite this approach, by Order of the GCJ of 20 December 2016, a Code of Judicial Ethics was adopted.[97] As expressed in it, "the "Principles of Judicial Ethics" aim to collect the values and rules of conduct shared by the Spanish judiciary. They seek to guide the performance of the jurisdiction and promote collective dialogue and personal reflection on the challenges faced by those who exercise it, in a complex and changing legal and social framework. They also seek to strengthen citizens' confidence in justice by making explicit the behavioural models according to which judges commit themselves to fulfil their functions." They describe the highest standards every judge should seek to comply with.

5. ITALY

The Judicial Inspectorate of the Ministry of Justice

251. Under the Italian Constitution (Article 110), the Minister of Justice is responsible for the organization and running of the service necessary for the exercise of judicial functions (staff recruitment, administration, provision of buildings and operational structures etc.). The Minister of Justice is also responsible for initiating disciplinary actions against the magistrates (Article107, Constitution) and oversees the correct functioning of the justice system. To fulfil these duties, the Minister of Justice is entitled to exercise functions of inspection and to conduct administrative enquiries through its General Inspectorate.

252. The General Inspectorate was created in 1907. It is a department of the Ministry of Justice tasked with carrying out systematic monitoring of the performance and efficiency of judicial offices, as well as carrying out administrative inquiries into magistrates' conduct. The General Inspectorate is composed of 21 judge inspectors (President, Vice-President and 19 judges with a rank not lower than Appeal Court Judge), 36 Inspectors leaders and 56 inspectors-officials.

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

253. Although attached to the Ministry of Justice, it is considered autonomous. Italian magistrates consider that they are protected because, while the Judicial Inspectorate is attached to the Ministry of Justice, the body in charge of deciding over disciplinary matters is the High Judicial Council which is mainly composed by judges (2/3 of the members) and judicial review is foreseen before the Supreme Court, inspectors are magistrates, and the Constitution foresees the clear and solid rules that guarantee the judiciary's independence from the executive, as a historical reaction against Fascism. Above all, over the decades the High Judicial Council has issued several resolutions defining the boundaries of inspections and providing guidelines to magistrates to ensure that inspections do not encroach on judicial independence or the fair administration of justice.

5.1 Types of inspections

254. The General Inspectorate carries out four types of inspections (ordinary, extraordinary, targeted and administrative inquiries). Inspections are carried out by teams of inspectors. The team leader coordinates the work of the inspectors and ensures communication between the members of the team.

255. **Ordinary inspections** are scheduled every three years according to an annual work programme approved by the President of the Judicial Inspectorate. They aim at verifying whether judicial offices function in compliance with laws, regulations and instructions.

256. **Extraordinary inspections** are carried out in judicial offices where disfunctions have been identified. Or where reports on disfunctions have been submitted. The above inspection cannot target a specific magistrate and only statistical data can be collected in respect of the performance of magistrates.

257. **Targeted inspections** can be carried out to appraise the efficiency of a court or of a magistrate.

258. The overall purpose of these inspections is to identify disfunctions or problems in the functioning of judicial offices but also to identify possible solutions. Thus, the work of the inspection is considered to be a work where the element of cooperation and support in the identification of solutions is given priority over the establishment of liability within the judiciary. In fact, among other functions carried out by the General Inspectorate is the identification of good practices in the functioning of judicial offices and the development of recommendations to improve the efficiency of justice. Nevertheless, these inspections can uncover also

instances of misconduct and can lead to the opening of disciplinary proceedings by the Ministry of Justice.

5.2 Administrative inquiries

259. Finally, **administrative inquiries** are carried out in respect of single magistrates in cases of allegations of misconduct upon request of the Ministry of Justice. The power to initiate disciplinary proceedings is in fact granted by the Constitution to the Ministry of Justice (and to the Prosecutor General at the Cassation Court).

260. It should be noted that legislative Decree No.109 of 2006 introduced a more detailed regulation of disciplinary violations that are now listed in the law and classified into a number of violations in the performance of duties and disciplinary violations committed out of office. These enumeration of specific hypotheses of disciplinary misconduct reduced the risk of arbitrary interpretation attached the vague formulation of disciplinary violations.

261. The power to carry out administrative inquiries was introduced with law No 1311 of 12 August 1962. Their purpose is to collect evidence on allegations of misconduct which will allow the Ministry of Justice to decide whether to pursue disciplinary sanctions and the High Judicial Council to decide in disciplinary proceedings. It should be noted that the findings of the Inspection are not binding on the Ministry of Justice or the High Judicial Council.

262. The administrative inquiry is considered as a **pre-disciplinary stage** and is separated from the various stages of disciplinary proceedings such as the disciplinary investigation carried out by the Prosecutor General to the Cassation Court. In fact, the administrative inquiry's purpose is to establish whether there are grounds for seeking the opening of disciplinary proceedings by the Ministry of Justice. This circumstance explains why the inquiry is characterized by a degree of procedural and methodological flexibility (with the exception represented by the limits imposed by principle of independence of the judiciary).

263. The Judicial Inspectorate can also be seized by the High Judicial Council to carry out inquiries[98]. Its various commissions can in fact ask the Judicial Inspectorate to carry out inquiries that they deem useful or necessary for the performance of their functions.

[98] Art 8 of law dated 24 March 1985, n. 195.

264. According to the **activity report** of the General Inspectorate for the period 2014-2016 more than 50% of the proposals to open disciplinary proceedings are based on the results of ordinary and targeted inspection. This circumstance affects the nature of the disciplinary proceedings that in many cases concern delays in the administration of justice (as ordinary inspections tend to focus on the efficiency of justice).

265. However, the Judicial Inspectorate noted that there is an increasing number of disciplinary proceedings opened for violation of the rights of individuals and for actions undermining the prestige of the judiciary. On average the Judicial Inspectorate has proposed the opening of disciplinary proceedings against 80-100 magistrates per year. The High Judicial Council rules on an average of 130-150 disciplinary cases per year, 30-40 of which end with a finding of violations, 40-50 with a finding of no violation.

5.3 Power to start administrative enquiries

266. The Judicial Inspectorate has no power to initiate an administrative inquiry ex officio but must be seized by the Ministry of Justice. The Ministry of Justice receives allegations of misconduct by a plurality of sources which include the High Judicial Council, Judicial Councils established within Courts of Appeal, heads of judicial offices. The latter in turn can convey allegations of misconduct raised by judges and prosecutors.

267. Chiefs of office are subject to disciplinary liability for failure to report to the High Judicial Council or the Ministry of Justice allegations of judicial misconduct received by magistrates operating in their office or court. This provision secures that instances of misconduct such as interference in the judicial activity are reported. Rules on disciplinary liability also punish magistrates who fail to report having been subject to undue interference in their official duties.

268. The Ministry of Justice can also order the opening of administrative enquiries based on complaints by individuals, parliamentary inquiries, evidence available from reports of regular inspections. Inquiries (accertamenti ispettivi) can also be initiated on the basis of publications in the media. Anonymous complaints, however detailed are not enough per se to initiate disciplinary proceedings but the Ministry of Justice can dispose the acquisition of further evidence to decide whether there are grounds for the opening of an administrative inquiry.

269. The order of the Ministry of Justice authorizing the administrative inquiry is transmitted not only to the concerned magistrate but also to the chief of office and

the President of the Appeal Court (for inquiries into judges) or the Prosecutor General (in case of inquiries into prosecutors).

5.4 Scope of inquiries

270. Inquiries are carried out on the basis of specific terms of reference contained in the order of the Ministry of Justice. Inquiries concern a single magistrate, rather than a judicial office (court or prosecution office). The order of the Ministry of Justice determines the scope of the enquiry. If upon carrying out the administrative inquiry it becomes necessary to extend the inquiry to other magistrates or circumstances, the Judicial Inspectorate must seek an authorization from the Ministry of Justice.

271. The Chief Inspector can issue directives defining the goals and modalities of the administrative inquiry, however the inspectors who carry out the inquiry have a degree of autonomy which means that they can determine the concrete modalities of carrying out an administrative inquiry and cannot receive orders by the Chief Inspector. The directives not only concern the goals and modalities of the inquiry but also, in light of the specific circumstances of the case, the procedural guarantees necessary to respect the independence and due process rights of the affected magistrate. The Chief Inspector oversees ensuring that the administrative inquiry is carried out correctly and fairly.

5.5 Powers of the Judicial Inspectorate

272. The key methods of inquiry carried out by the Inspectors are the hearing of the affected magistrate, other magistrates as well as court staff and the gathering of documents. Over the years Judicial Inspectors have also heard other individuals such as the President of the Bar, police officers, journalists as well as the individuals who lodged complaints at the origin of the administrative inquiry.

273. The General Inspectorate has no power to summon magistrates, who are thus free to give statements and have the right to be assisted by a lawyer. While magistrates have a duty to cooperate with the Inspectorate, other individuals who are not part of the judiciary are free to ignore summons and can refuse to reply to the Inspectors' questions. On the other hand, employees of the Ministry of Justice, have a duty to cooperate with the inquiry.

5.6 Procedural guarantees in administrative inquiries

274. Inspectors are free to determine the methodology of the inquiry ("senza particolari formalita") however this freedom to determine how the inquiry is carried out cannot lead to an interference in the functioning and independence of the judiciary.

275. Over the years the High Judicial Council has issued a number of resolutions interpreting the boundaries of the General Inspectorate' inspections and administrative inquiries. While the High Judicial Council, in line with the principle of separation of powers cannot issue instructions or rules on the exercise of the powers and functions by the Judicial Inspectorate(as it is attached to the Ministry of Justice), it is competent to formulate principles, criteria and directives for magistrates who are target of administrative inquiries.

276. The High Judicial Council for example excluded that the General Inspectorate can review the merits and content of judicial decisions, judicial acts or prosecutors' investigative strategy. It stressed that inquiries should not interfere with the functioning and the independence of the judiciary.

277. The High Judicial Council has also stressed the difference between inspections, which nature is essentially exploratory- thus aimed and the identification of malfunctions in the judiciary- and administrative inquiries that are initiated and carried out on the basis of existing allegations of misconduct of a magistrate that must be established and ascertained. Thus, the latter must be based on the existence of a reasonable suspicion of misconduct.

278. The High Judicial Council has also established that the concerned magistrate has a right to receive a copy of the order authorizing the administrative inquiry. The order must indicate the identity of the inspectors, of the concerned magistrate, the object of the inquiry as well as of the acts and specific inquiries that the inspectors plan to carry out. Thus, the object of the administrative inquiry must be clear and refer to a specific hypothesis of misconduct on which basis the inquiry was authorized.

279. Besides having the right to be informed of the object and scope of the inquiry, they can request that the inspectorate seek an authorization by the Ministry of Justice in order to extend the scope of the inquiry to new facts and circumstances not mentioned in the order. Inspected magistrates and their chief of office have the right to verify that measure adopted by the Judicial Inspectors within the act of the administrative inquiry are adopted pursuant to the terms of reference in the order of the Ministry of Justice.

280. While magistrates are required to cooperate with the General inspectorate, they can legitimately refuse or delay the provision of information in order to protect the development of criminal investigations and security of individuals or if the request is not justified or motivated.

281. Magistrates can refuse cooperation if the scope of the inquiry is too vague and merely exploratory (fishing expedition) or if it concerns the merit of their decision making or concerns decisions that can only be reviewed through judicial review.

282. Similarly they can also refuse cooperation in case the scope of the inquiry is too specific to the point of interfering with the merits of decision making that can only be challenged through ordinary judicial mechanisms (this is particularly evident in the case of the choice of investigative strategy by prosecutors). This review by the magistrate of the scope of the inquiry must be particularly strong in the case of pending proceedings.

283. Magistrates and heads of office must inform the High Judicial Council if they deem that the inquiry interferes in the exercise of judicial functions or affects the independence of the judiciary. Magistrates also have exclusive competence over the decision to determine what information is confidential and cannot be disclosed to the inspectors as it may undermine ongoing proceedings or the security of individuals.

284. Pursuant to the principle of independence of judges and prosecutors, the High Judicial Council cannot review the merit of the decision of judges or prosecutor to refuse to disclose information to the Inspectors in order to secure the confidentiality of the investigation.

285. Nor can the Judicial Council express any opinion in case the affected magistrate considers that the conduct of Inspectors within the administrative inquiry effectively amounts to a crime (for example abuse of office) as such review is exclusive competence of the competent magistrate. The High Judicial Council also determined that, in deciding over disciplinary proceedings, it will declare inadmissible evidence gathered pursuant to acts and decisions of the Inspectorate that have interfered with the independence of the judiciary or were adopted in violation of the above mentioned provisions and principles.

286. Inspectors are also bound, in the performance of the inquiry, by fundamental principles of public administration such as transparency and proportionality. The violation of such principles is also considered as sufficient basis for suspending the duty of magistrates to cooperate with the administrative inquiry.

5.7 Report upon termination of the administrative inquiry

287. Upon completion of an inspection, the Inspector must ask for information from the competent head of office and seek clarifications from the magistrate under inquiry. The inspector then drafts a report which includes all the documents and evidence collected to ascertain the relevant facts.

288. The report indicates whether there are grounds to believe that a disciplinary offence took place or not. It also includes the submissions/comments made by the affected magistrate and by his chief of office and a short summary of the magistrate's professional profile including previous disciplinary proceedings. The drafting of the report is exclusive competence of the inspector that carried out the administrative inquiry and whose assessment cannot be influenced by the Chief Inspector.

289. The report is transferred to the Chief Inspector who then addresses the report to the Ministry of Justice alongside his/her proposals for the adoption (or not) of disciplinary measures. The Ministry of Justice has one year, from the receipt of the report, to decide whether to pursue disciplinary proceedings. The proposal included in the report and the appraisal are not binding on the Ministry of Justice or the High Judicial Council.

290. In case the Ministry of Justice, based on the report, decides to pursue disciplinary proceedings, the Prosecutor General at the Cassation Court notifies the concerned magistrate of the possibility to obtain a copy of the report of the General Inspection.

291. It should be noted that the Ministry of Justice has included the reports of the administrative inquiries carried out by the General Inspectorate in the framework of disciplinary proceedings in the list of documents that are excluded from the general right of access to administrative documents established by law No. 241 of 1990. However, this exception does not apply in case the access to the administrative enquiry is necessary to the requesting individual in order to protect or defend his legal interests, regardless of whether the administrative inquiry led to disciplinary proceedings against a magistrate. However, access to the report can be delayed of up to one year from the date when the Ministry of Justice has received a copy of the report. Thus, the right of access to information prevails over the interests of the public authorities.

5.8 Relationship with the High Judicial Council and other authorities

292. While the General Inspectorate can carry out an administrative inquiry upon request of the High Judicial Council, administrative inquiries remain separate from the inquiries carried out at subsequent stages by the High Judicial Council's disciplinary commission or by the Prosecutor General at the Court of Cassation. In fact, given the methodological freedom of administrative inquiries and the circumstance that they are carried out "without formalities" and, differently from the disciplinary investigations, in the absence of specific procedural guarantees, their probative value should be appraised accordingly[99]. The transcripts of the witness statements collected by the Judicial Inspectorate can be read in the hearings of the disciplinary proceedings before the High Judicial Council only after the oral examination of the individual who has provided such statements.

5.9 Relationship with criminal proceedings

293. If the administrative inquiry uncovers elements of a crime, judicial inspectors are obliged to refer the case to the competent authority. The decision to report a crime is exclusive competence of the Inspector carrying out the inquiry and drafting the report, without any interference in the assessment by the Chief Inspector.

294. The administrative inquiry can also be suspended pending a criminal investigation. The Inspectors can further consider evidence that was gathered during criminal proceedings including evidence from surveillance that the Inspector would otherwise be unable to gather.

5.10 Legislative Decree No 109 of 2006 and the disciplinary investigation carried out by the Prosecutor General to the Cassation Court

295. Following the adoption of Legislative decree 109 of 2006, it is established that the Ministry to Justice can pursue disciplinary proceedings against a magistrate by seeking the cooperation of the Prosecutor General at the Cassation Court to establish facts or gather evidence for example by ordering expert opinions. The legislator in fact considered that only the highest judicial authority could carry out a disciplinary investigation against magistrates.

296. These powers of inquiry are regulated, insofar as compatible, by the Code of Criminal Proceedings, that also provides corresponding guarantees to the inspected magistrate. However, even within this inquiry, the Prosecutor General at the Cassation Court has no coercive powers vis a vis the magistrate, witnesses

[99] Colaiocco S., DitoG. ,L'IspettoratoGeneralepressoilMinisterodellaGiustizia: funzioni, Natura, Attivita; in ArchivioPenale 2012, No. 1.

or experts. On the other hand, individuals who provide statements to the Prosecutor General at the Cassation Court are criminally liable in case of provision of false statements.

297. While the Prosecutor General at the Cassation Court can have access to confidential information, such as information gathered in pending investigations, he can order that such information is not disclosed and can suspend disciplinary proceedings for a period of up to one year in case a prosecutor indicates that the disclosure of such information (for example, to the Inspectorate) can undermine the effectiveness of a pending criminal investigation. Such request must be motivated.

298. The application of the guarantees of the Code of Criminal Proceedings also entails that the Prosecutor General at the Court of Cassation is obliged to seek evidence in favor of the magistrate under disciplinary investigation and to obtain the nullification of investigative measures adopted in violation of procedural guarantees and of the magistrate's defense rights. The magistrate has the right to legal assistance which can be performed by another magistrate, a lawyer or a technical expert.

299. While it is excluded that the Prosecutor General at the Cassation Court can order measures such as interception of communication, he can use such evidence insofar it was lawfully acquired in the framework of parallel criminal proceedings.

300. The disciplinary investigation must be opened within one year from receiving information about an alleged disciplinary violation and the affected magistrate must be informed of the opening of the disciplinary investigation and of the relevant allegations of disciplinary violation within thirty days. Investigative measures adopted without previous notification to the magistrate and his legal representative are null and void.

301. The statute of limitation for the disciplinary investigation is suspended in case a criminal investigation is opened on the same facts or if it is necessary to carry out a technical expert opinion on the magistrate.

302. A guarantee that has reduced the risk of an overflooding of disciplinary proceedings due to the large number of complaints by parties and other individuals against magistrates, is the power of the Prosecutor General to the Cassation Court to order the summary dismissal of complaints in case of "low relevance of the fact/minor nature of the violation" (scarsa rilevanza del fatto).

6. PORTUGAL

303. In Portugal the High Judicial Council can order inspections, investigations and inquiries regarding the judicial services in district courts and inspection services are to collect comprehensive information on the status, needs and deficiencies of those services so that remedial measures can be taken by the Council or by the Ministry of Justice.

304. The Portuguese Judicial Inspection assists the Supreme Judicial Council in carrying out inspections for the evaluation of judges and for disciplinary proceedings. The Supreme Judicial Council can also order that the Inspectorate carry out inquiries in cases where, following the submissions of complaints, it is necessary to carry out an inquiry to establish the facts of the case before disciplinary proceedings are initiated. Thus, the assessment of integrity and independence of a judge can take place in the framework of regular evaluations of judges, **inquiries** to establish the facts of the case following complaints and in disciplinary proceedings[100].

6.1 Types of inspections

305. Inspections are classified in ordinary and extraordinary inspections. **Ordinary inspections** are carried out on a regular basis and include a mandatory inspection on the **service and merit** of a judge as soon as one year from the effective performance of duties by a judge has passed.

306. **Extraordinary inspections** are carried out after two years from the entering into duty by a judge whose performance has been appraised as less than satisfactory ("bom"). Disciplinary responsibility can ensue an appraisal as "mediocre". Extraordinary inspection is requested by any judge, in a duly substantiated request, addressed to the vice-president of the Superior Council of the Judiciary within certain deadlines or can be ordered by the High Judicial Council for grave reasons and with a limited scope.

307. As mentioned above, inspections gather information not only the service but also on the **merit** of a judge: new regulations of the High Judicial Councils adopted in November 2016 have included in the criteria for the evaluation of judges

[100] https://dre.pt/home/-/dre/124220737/details/maximized; https://www.csm.org.pt/wp-content/uploads/2017/02/Novo-Regulamento-dos-Servi%C3%A7os-de-Inspe%C3%A7%C3%A3o-do-Conselho-Superior-da-Magistratura.pdf

"independence, exemption, dignity of conduct and civic suitability". Other criteria are "personal and professional prestige, serenity and reserve, assiduity and dedication, productivity and celerity in decision making, serenity and discretion in the performance of duties". Thus, the inspection for the evaluation of judges also includes an assessment of qualities that are relevant for an assessment of a judge's integrity and can trigger a disciplinary inspection.

308. Correspondingly, disciplinary violations include behaviors that by their nature or impact are incompatible with the principles of independence, impartiality and dignity necessary for the performance of judicial functions[101].

6.2 Appointment and status of Judicial Inspectors

309. Inspectors are appointed by the High Judicial Council from among appeal court judges, or, exceptionally, district court judges who have served for not less than 15 years and have a service evaluation of "very good" and who possess a number of acknowledged characteristics such as impartiality, sensibility, emotional intelligence, professionalism, motivation and are result driven.

310. The appointment is made by the plenary of the Supreme Judicial Council, with secret ballot by more than half of the attending members. The appointed is preceded by the publication of the vacancy on the website of the Supreme Judicial Council and by the submission of CVs and a motivation letter indicating the suitability to the position and the way in which the candidate intends to perform his duties if elected.

311. Their status is equal to the status of appeal judge. Inspections concerning the service and merit of judges must be entrusted only to an inspector of equal or superior category or seniority to the judge. If the inspection concerns a judge of the Supreme Court, another Judge of the Supreme Court or a retired judge is exceptionally appointed as extraordinary inspector. This measure has been introduced to guarantee judicial independence[102].

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[101] These mechanisms have however been considered as insufficient by GRECO who expressed preoccupation for the absence of a comprehensive assessment of the ethical dimension of a judge's comportment and the insufficient criteria underpinning evaluation, which relied on quantitative rather than qualitative indicators.

[102] https://www.csm.org.pt/wp-content/uploads/2017/02/Novo-Regulamento-dos-Serviços-de-Inspeção-do-Conselho-Superior-da-Magistratura.pdf

6.3 Principles of the work of the Inspectorate

312. The judicial inspectorate is bound by principles such as legality, equality, reasonableness and impartiality, respect for the competences and independence of judges which prevents them from reviewing the merits of court decisions.

313. The application of the principle of impartiality, entails that whenever, as a result of a classificatory inspection (aimed at the performance evaluation of a judge as "very good, good, sufficient or mediocre"), an investigation or disciplinary proceedings are instituted, the ensuing inspection is attributed to a judicial inspector other than the one who carried out the classificatory inspection. Conversely a judicial inspector who has carried out the investigation process, inquiry or disciplinary inspection cannot conduct a classificatory inspection of the judge's service that has been covered by any of these procedures.

6.4 Recusal

314. The recusal of a judicial inspector is raised in a reasoned request addressed to the vice-president of the Supreme Judicial Council, which decides, after hearing the interested parties and taking the steps taken by appropriate.

6.5 Sources used in the inspection

315. The inspectorate has the right to access electronic databases of the judicial system. The elements necessary for the inspection are requested directly by the Judicial Inspectorate to the relevant authorities or individuals.

316. Inspections are based, insofar as relevant, on the following means of knowledge: the professional file of the concerned judge; elements in the possession of the Superior Council of the Judiciary; the results of previous inspections, investigations, investigations or disciplinary proceedings, taking in consideration the performance of other judges in the same circumstances; information and any additional information concerning the time and place to which the inspection relates and which are held by the Supreme Judicial Council; other elements existing in the archives in the courts where the concerned judge has performed functions, including evaluation meetings, reports and minutes, electronic databases books and papers, to the extent necessary to secure an informed assessment on the merits of the concerned judge; recordings and minutes of proceedings presided by the judge. Memorandums, works, and other documents presented by the inspected; Clarifications provided by the inspected judge, recordings of the hearings with the inspected judge which may be carried out by

videoconference or by other means of distance communication; communications with other entities.

6.6 Inspection procedure

317. Inspectors are assisted by assistant inspectors. The inspection process of evaluation (classification) begins with the order of the judicial inspector opening the inspection.

318. The order fixes the time for the first interview with the inspected judge, which has to take place within the following 15 to 30 days and possibly on a date that is agreed by both parties. The date of commencement of the inspection is communicated to the Section for Judicial Inspections of the High Judiciary Council, the inspected judge, the presiding judge of the court involved and the court manager, in this case with indication of the probable date and place to ensure the necessary collaboration for the proper conduct of the inspection services.

319. Within 30 days of the final interview, the inspector shall draw up the inspection report, without prejudice for the possibility of the vice-chairman of the Supreme Judicial Council to extend its term. The inspectorate report shall be notified to the inspected person, who may respond within 10 days, gather information and request further inquiries he deems necessary.

320. If, during the inspection, the inspector uncovers any abnormal circumstances calling for urgent remedial action, he shall notify the Deputy President of the High Council of the Judiciary, in a summary report, with a proposal for the action to be taken, informing the inspected magistrate.

6.7 Suspension of the Inspection Process

321. When disciplinary or criminal proceedings are pending for facts occurring during the period under inspection for the appraisal of the judge and susceptible of having influence on the classification to be attributed to the judge, the Superior Council of the Judiciary, after hearing the inspected, may suspend the inspection process until the conclusion of the disciplinary process.

322. Disciplinary proceedings are autonomous from criminal proceedings, but when in the course of a disciplinary proceedings are uncovered elements of a crime, the responsible inspector gives immediate communication to the Supreme Judicial Council and to the Prosecution service.

6.8 Inspection Report

323. The report shall contain the assessments of the judge made by the inspector for each criteria of assessment. Such assessment must be supported by the relevant factual elements and evidence, especially justifying the unfavourable appraisal. The classification to be proposed to the Superior Council of the Judiciary results from the overall weighting of the various appraisal criteria number and expresses itself in accordance with the provisions of the Statute of Judicial Magistrates. As mentioned above this classificatory inspection can trigger disciplinary proceedings if the final appraisal is "mediocre".

324. The report can also, depending on the circumstances, include proposals to the High Judicial Council for the initiation of disciplinary proceedings.

PART THREE

Integrity checks in other European Countries

7. THE NETHERLANDS

Integrity investigations in the judiciary

7.1 Integrity investigations for judges

325. In the Netherlands inquiries into allegations of misconduct are carried out directly by courts and compliance with integrity standards is handled mainly through complaint procedures and a Protocol for the investigation of integrity violations. Pursuant to the law on the organization of the justice system, citizens have two separates complaint procedures: an internal and an external complaint procedure. Neither procedure can concern the substance of a case or a court decision.

326. The internal complaint procedure concerns cases in which a person has been mistreated by a judge or court staff and is dealt by the board of the court. External complaints procedures concern specifically the conduct of a judge and is submitted to the Prosecutor General at the Supreme Court who may ask the court to order an investigation into the judge's conduct. The Prosecutor General can also submit such a request ex officio. The external complaint procedure may be initiated only after the internal complaint has been rejected by the court where the judge work, and thus can operate as a form of appeal.

327. Each court adopts a procedure for handling the complaints that is approved by the Council of the Judiciary. There may be variations among the various procedures although initiatives have been undertaken by the Council of the Judiciary to make them less formal, more uniform and transparent. All filed complaints are published in anonymous form on the judiciary's website.

328. The Council for the Judiciary has also drafted a unified Protocol for the Investigation of integrity violations by judges. Reports that may give rise to suspicions of an integrity violation may come from different sources, such as police reports, notification of a preliminary judicial investigation, a report by the judge himself, performance evaluations, observations by a court manager or colleague, complaint by a citizen or media report.

329. Each court has established an integrity commission composed mainly of judges but also of court staff and sometimes human resource staff whose objective is to

promote integrity, provide advice to judges and court staff in case of integrity related dilemmas and bring coherence to the court's integrity policy. Integrity is also discussed in the framework of judges' appraisal and intervision, a form of peer review among judges who work within different sections of the same court. They follow each other's work in order to provide constructive criticism and suggestions on their behavior at the workplace. Intervision takes place on a yearly basis.

7.2 The Prosecution service: the Integrity Bureau

330. The prosecution service, which is separate from the judiciary, has created an **Integrity Bureau** in 2012 where **thirteen internal investigators** work. The investigators come from all sections of the Prosecution Service and investigate integrity violations alongside exercising their functions within the Prosecution Service. They receive both internal and external training. The prosecution service also appointed a national programme manager for integrity matters and an **integrity coordinator**.

331. The Integrity Bureau operates as a center for expertise for consultation, promotion and management of integrity issues within the prosecution service. Its focus is the implementation in practice of the Prosecution service's integrity policy and the timely reporting and uniform handling of integrity violations.

332. Furthermore, **Confidential Integrity officers** were trained and assigned to each organizational unit of the public prosecution service. These officers have an important task in advising about integrity at unit level and further enhancing the internal dialogue about integrity. They are also the persons to whom staff members may report possible breaches of integrity.

333. Finally, in order to better understand integrity challenges within the prosecution service, the Prosecution service is carrying out a **survey** among prosecutors to gain a deep understanding through a non-invasive procedure, of areas that need focus and reform.[103]

7.3 Integrity interview

334. Any suspicion concerning a conflict of interest leads to an interview with the concerned prosecutor's immediate superior. If this interview reveals an imminent or actual conflict of interest, the superior, possibly in cooperation with the

[103] https://www.om.nl/onderwerpen/integriteit/@97950/advies/

concerned prosecutor will determine a course of action for example by gradually terminating or abandoning the incompatible activities. If necessary, more severe measures may be adopted such as transferring a criminal case to another prosecutor or instigating disciplinary investigation.

7.4 Integrity violations

335. A violation of integrity is defined as "an action, or the omission thereof, inside and outside duty hours, in the course of which a violation has occurred with respect to the law, policy rules, circulars, behavioural guidelines/codes of conduct, or with respect to the proper duties and responsibilities of a good civil servant, or a behaviour that results in an offence". The holding of positions, activities or interests incompatible with the office of prosecutor, the performance of accessory activities that have not been declared or approved by the relevant authority, as well as disregard for the rules regarding the acceptance of gifts, are examples of behaviour giving rise to a suspicion of integrity violation and an integrity investigation.

336. Summaries of integrity violations identified upon integrity investigations are published, in anonymized form twice per year (see below). As mentioned below, this initiative does not only represent a form of public accountability but also of trust building with the public.

7.5 Integrity investigations

337. The different possibilities and procedures for reporting integrity violations, as well as the follow-up to be given, were initially regulated by Guidelines for Reporting Violations of Integrity and the Instructions on the Handling of Violations of Integrity adopted on 22 May 2012 by the Board of Procurators General, as part of the overall integrity policy within the prosecution service. As of 2017 the Prosecution Service has been using manuals for reporting and handling integrity violations that were adopted by the Ministry of Justice.[104]

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[104] Link to the Manual of the Ministry of Justice (Modelinstructie Handelwijze Integriteitsschendingen binnen het ministerie van Justitie en Veiligheid) available at: https://www.google.com/search?client=firefox-b-d&q=Modelinstructie+Handelwijze+Integriteitsschendingen+binnen+het+ministerie+van+Justitie+en+Veiligheid;

338. Integrity investigations may be instigated ex officio, at the request of the prosecutor's superior, following a report filed by a citizen or another employee of the prosecution service, or following information coming from another source, such as another disciplinary or criminal investigation. Most of the reports are the result of irregularities detected in the framework of regular checks, for example, the misuse of official resources.

339. Reports filed by employees of the Prosecution service may be addressed to the employee's superior or to the Confidential Integrity Officer established within the Prosecution service. Confidential Integrity Officers can advise on how to deal with a suspected breach of integrity or a wrongdoing and are competent to receive and forward reports to the integrity Bureau.

340. Prosecutors can discuss suspicions of integrity violations with the Confidential Integrity Officers in confidence. However, there is a limit to the Confidential Integrity Officers' ability to offer confidentiality in integrity matters. In certain cases, the Confidential Integrity Officers may not keep the information to themselves. In fact, some violations of integrity are so serious that Confidential Integrity Officers (as any public official) are obliged to report them to the competent authority although, insofar as it is possible, they can report the violation without revealing the identity of the prosecutor. The Confidential Integrity Officer has no testimonial privilege and, in the framework of judicial proceedings, may be requested by a judge to disclose the content of the conversations with the prosecutors who sought advice. For this reason, they are required to inform in advance the prosecutor who seeks confidential advice of the possibility that they may have to report the relevant allegations to the competent authorities.

341. Reports filed by citizens are channeled through the complaint procedure or through anonymous reporting to a whistleblowing hotline called "Contact Centre M" ("Meld Misdaad Anoniem" or "Meldpunt M"[105]). Thus, the Prosecution Service allows the opening of integrity investigations based on anonymous reporting. While a non-anonymous report can be given a certain weight of evidence, the probative value of an anonymous report is limited to start with and cannot form the sole basis for disciplinary proceedings. However, an anonymous

Link to the Model Guidelines of the Ministry of Justice for reporting integrity breaches is available at the following link: https://www.rijksoverheid.nl/documenten/rapporten/2018/01/16/tk-bijlage-4-model-handreiking-melding-integriteitsschendigen-en-misstanden-binnen-het-ministerie-van-venj

[105] https://www.meldmisdaadanoniem.nl/

report cannot be dismissed simply because it is an anonymous report. Therefore, an anonymous report of a serious breach of integrity with relevant detailed evidence must be dealt with, just like a non-anonymous report[106].

342. Should the Contact Centre M deem a report sufficiently substantiated, it will forward it to the office where the alleged facts are said to have taken place. Investigations will not be initiated if reports are insufficiently substantiated, are submitted belatedly or if they concern matters that do not amount to breach of integrity such as in case of labour disputes. The reports on integrity breaches must be made in good faith and according to procedural due diligence. This means that a reporter is required to have a reasonable suspicion that the facts in question are accurate. On the other hand, no formal requirements are imposed for the submission of a report that is therefore form-free.

7.6 Stages of integrity investigations

343. A report triggers an integrity investigation, which usually consists of several **phases: a (exploratory) preliminary inquiry, a disciplinary (fact finding) investigation**, and – if the authorities decide there are grounds for suspicion of dereliction of duty – a disciplinary process.

344. In case of integrity investigation triggered by an internal report, Integrity Investigators are required to send an **acknowledgment of receipt** to the official who has reported a suspected integrity violation. If the official has reported confidentially to the Confidential Integrity Officer, the competent authority will send an acknowledgment of receipt to the Confidential Integrity Officer who will then transmit it to the reporter.

345. Even if the identity of the reporter is known, those involved in handling a report must treat the reporter's identity confidentially. The Integrity Investigators inform the person or persons to whom the report relates, unless the investigative interest precludes this, or an interest of the reporter can be unnecessarily or disproportionately harmed by such disclosure.

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[106] In reality anonymous reports are not used that often as the willingness to report is mainly related to the existence of a safe working and reporting environment, the trust that managers will take reports seriously and the absence of retaliation or other negative consequences for the reporting individual. The number of reports is also associated with awareness on what ethical behavior is, what the rules are and by witnessing exemplary behavior by managers and hierarchical superiors.

346. Integrity Investigators shall immediately investigate the suspected breach of integrity, unless the suspicion is manifestly unfounded, or the report was submitted manifestly unreasonably late (for example when the violation took place in the distant past). If the investigation is not forthcoming, the reporter must be informed in writing as soon as possible. The person or persons to whom the report relates will also be notified of this if they have been informed of the report. If the identity of the reporter is confidential, only the Confidential Integrity Officer will be informed. The Confidential Integrity Officer will then forward the notification to the reporter.

347. The reporter must be informed in writing and within twelve weeks of receipt of the report about the findings of the investigation, the opinion of the investigators and the possible consequences. The prosecutor to whom the report relates must also be informed in writing and with a motivated decision, about the findings of the investigation. An exception applies if this could harm an investigation interest. This may be the case, for example, if an investigation is opened and it is necessary to prevent evidence from being destroyed. In case of complex investigations that require additional time, all parties involved will receive a notice of adjournment which states within which (reasonable) period the information will be provided.

348. The Prosecution Service is required to ensure that a reporter who has submitted a report in good faith and has properly reported a suspected integrity breach will not suffer any adverse consequence either during or after having submitted the report. The same also applies to the (former) Confidential Integrity Officer who may also risk retaliation because of his involvement in the submission of a report.

7.7 Relationship with criminal proceedings

349. In case a suspected integrity breach amounts to a crime, Integrity Investigators have a duty to report the case to the authority competent for the opening of a criminal investigation. Conversely, in several cases Integrity Investigations are triggered by the findings of criminal proceedings. Integrity Investigations and criminal proceedings follow separate but occasionally parallel paths.

350. The public prosecution service in charge of the criminal investigation can, under certain conditions and if there is an important public interest, provide information from the criminal file to the Integrity Investigators for the purpose of assessing the need to take a legal or disciplinary measure against a prosecutor suspected or convicted of a criminal offense insofar as the relevant conduct clearly raises doubts about his proper (professional) performance or integrity. A request to this effect

will be assessed on a case-by-case basis and may or may not be honored. It may also happen that no information can be provided for the time being, because no prosecution decision has yet been taken. In that case the Integrity Investigators can chose to either make an independent finding of facts or to wait for the completion of the criminal investigation or for the time when information from the criminal proceedings can be provided.

351. In some cases, disciplinary proceedings are completed before the end of criminal proceedings that may take a long time, in which case the disciplinary sanction will be applied before any criminal measure. A criminal conviction will be often the basis for the imposition of a disciplinary sanction. However, the fact that a prosecutor eventually was not convicted or that a criminal investigation was terminated does exclude the adoption of disciplinary sanctions in case the relevant conduct amounted to an integrity breach.

352. Similarly, disciplinary sanctions can be applied even if a prosecutor has been acquitted if for example for conduct that is not criminally relevant, such as bad manners.

7.8 Preliminary inquiry and disciplinary investigation stage

353. Once an integrity investigation is triggered, an exploratory (preliminary) inquiry takes place to explore and interpret the report on integrity breach and to analyze the facts already available. Afterwards, it may be decided to conduct a (disciplinary) fact-finding investigation and / or to refer the case for criminal investigation.

354. An exploratory (preliminary) inquiry can be carried out to exclude the possibility that the report is based on mere rumors. The aim of an exploratory (preliminary) inquiry is to gain insight into a situation, to place an allegation of misconduct in context and to make a follow-up decision on the basis thereof. The exploratory (preliminary) inquiry is therefore limited in terms of investigative resources and investigative powers. If there are sufficient grounds, a disciplinary (fact finding) investigation is commenced.

355. Integrity Investigations are subject to procedural guarantees established for administrative proceedings:

- the actions of the competent authority must comply with the general

principles of good administration, including the duty to act impartially and to gather facts in a careful manner;

• the choice of investigative measures must comply with the requirements of proportionality;

• the investigation method (s) must comply with internal and external (privacy) rules and regulations;

• investigators must refrain from unfair actions, such as physical pressure and deception;

• the affected individual has the right to comment on the case.

356. Integrity Investigators can gather witness statements, collect documents and inspect state property such as telephones and computers. Given the administrative nature of the integrity investigation, measures such as house searches, seizures and secret surveillance are not allowed. If witnesses refuse to appear, integrity investigators will take a note of the refusal to testify.

357. As Integrity Investigators do not have coercive powers, they cannot compel prosecutors to hand over documents. However, they can obtain digital copies insofar as these documents are accessible.

358. While the investigated prosecutor has a duty to cooperate with the disciplinary investigation, if the alleged breach also amounts to a criminal offence he is not required to provide answers to questions which might put him at a disadvantage or burden him in parallel criminal proceedings.

359. Integrity Investigators are required to record all facts objectively, without giving a personal opinion or judgment. In fact, it is the task of the competent disciplinary authority to assess whether the alleged acts of reproach can be qualified as disciplinary violation. Depending on the nature of this measure, the competent authority to impose this sanction is the chief district prosecutor, the Board of Procurators General – by a majority vote – or the Crown.

360. At the end of this process, during which the person concerned is allowed to submit observations, objections and has a right to legal representation, the disciplinary authority decide whether a disciplinary sanction is justified. Sometimes however an integrity violation is addressed by other measures such as a warning or a team

discussion. It is also possible to transfer an employee to another department of the Prosecution Service, if appropriate.

361. Although there is no formal feedback mechanism, feedback from the affected prosecutor is always asked and received whenever the Integrity Bureau handles a case. The Bureau regularly carries out informal talks with the Association of Prosecutors and the Work Council and seeks their advice.

362. A breach of integrity and the investigation and settlement thereof may cause unrest within the relevant organizational unit. The chief of office must be aware that aftercare is always necessary. This could include a team discussion on the integrity breach and the circumstances surrounding it.

7.9 Rehabilitation

363. If an integrity investigation has established that a prosecutor was victim of an unjustified accusation, the person concerned has the right to public reparation of his honor and good reputation. When it has been established that there was a wrongful accusation, the Integrity Bureau decides to rehabilitate the prosecutor. The right to rehabilitation may also arise after an unjustified report or accusation that has only been object of a preliminary (exploratory) inquiry but where the content of the report or accusation has become publicly known.

364. It is also possible that the reporter of a (suspected) integrity violation is unwantedly discredited by the investigation. For example, because the competent authority does not take the reporter seriously. If the investigation subsequently shows that the report was justified, the reporter is entitled to rehabilitation.

365. The form and manner in which (communication about) this rehabilitation will be implemented will be agreed in close consultation with the person concerned. For example, documents are removed from the prosecutor's file and a rehabilitation statement is added to his file.

7.10 Awareness raising and support role of the Integrity Bureau in integrity investigations

366. To support the integrity policy within the Prosecution Service, the Integrity Bureau disseminates manuals, codes of behaviour, conducts training sessions and seeks to raise awareness on integrity among prosecutors. In addition to its role in enhancing awareness of integrity within the prosecution service, the Integrity

Bureau also has a central position in the supervisory and enforcement mechanism. It receives and centralises information regarding all (suspected) violations of integrity and monitors the follow-up given, to ensure its uniformity at national level. It also analyses all cases of integrity violations and advises the Prosecution Service of vulnerable areas.

367. At the request of the competent authority, the Integrity Bureau may also provide support and advice on the handling of an integrity violation and perform an investigation into a (suspected) violation. In 2016 the Prosecution Service created an Advisory Committee.The committee's task is to advise the competent authority (local chief officers or heads of service) on which disciplinary measure can be imposed on a prosecutor in the event of an integrity incident. This initiative is considered as crucial to secure consistency in the application of sanctions for integrity breaches.

7.11 The Fokkens inquiry

In 2018 after an internal inquiry had been inconclusive, the Board of Prosecutor Generals created an independent inquiry commission ("the Fokkens Commission"[107]) led by the former attorney general to the Supreme Court in order to investigate allegations of misconduct and disfunction within the organisation. The inquiry was prompted by several press reports denouncing instances of conflict of interest and misuse of resources by the former prosecutor general. According to the press articles, the former prosecutor general had been involved in inappropriate relationship with another prosecutor and had allegedly influenced the tender procedure for the purchase of software to the benefit of a relative. Press reports also contained several allegations of a climate of fear within certain departments and offices of the Prosecution Service.

Besides carrying out more than 120 exploratory and formal interviews with witnesses, the Fokkens Commission also focused on the extent to which information could be obtained on the basis of documents in the Prosecution Service archives, such as information about expenses and claim declarations, the tender for the supply of software and the like.

In response to questions from the organization on how to contact the Commission, the Commission opened a Hotline for individuals who wanted to get in touch with the

[107] A link to the report of the Fokken Commission is available at the following link: https://www.rijksoverheid.nl/documenten/rapporten/2019/04/25/bijlage-2-rapport-van-de-onderzoekscommissie-openbaar-ministerie

Commission. While reports made were treated confidentially, anonymous reporting was not allowed and did not take place. In total the Commission received fifty reports. Some of these reports were referred to the Integrity Bureau and led to the opening of integrity investigations and the adoption of disciplinary sanctions.

The Inquiry concluded that there were strong indicators of integrity violations that had been initially dismissed as "rumors or gossip" and thus not investigated. It also found that the discontent expressed by members of the Prosecution Office raised integrity issues insofar as they concerned lack of transparency in appointment procedures or discrimination in the application of disciplinary sanctions between prosecutors and non-judicial staff. A number of integrity issues that had emerged from the inquiry were the result of the lack of clarity of relevant standards and expectations. The circumstance that the relevant facts has been reported in the press first was interpreted as an indicator that the Prosecution Service internal mechanisms and procedure for reporting integrity breaches were not sufficient.

7.12 Publication of accountability reports

368. Every year the Integrity Bureau publishes an annual accountability report for the attention of the public containing, among others, the number of integrity violations and the way they were settled. A semi-annual report, in anonymous form, about the type of integrity violations and the sanctions imposed, is also prepared and made available throughout the prosecution service.

369. Communication about violations also form part of the Prosecution Service's integrity policy, along the lines of Communication Guidelines in the event of Violations of Integrity, adopted on 22 May 2012 by the Board of Procurators General. The guidelines do not provide strict rules applicable to all situations. They rather form a catalogue of good practices and advice. This document takes account of the fact that the consequences of violations of integrity can be considerable, both for the operation of the prosecution service and for its image in the public. It aims at showing that such violations trigger an immediate and adequate reaction from the Prosecution service. The document encourages open communication about integrity-related incidents, as a way of discouraging the circulation of unfounded rumours in the public and because of its potential internal learning effect. Another key guideline is that when the integrity investigation involves a high-profile individual it will be necessary to inform the press as soon as possible. In a number of cases, integrity investigations were object of press releases. The reporting policy also takes privacy concerns into account and explains when and how to communicate internally and externally, both during the

investigation stage and after completion of the investigation. The key messages of the Guidelines is the need to find a balance between protecting the right to privacy (especially since the adoption of the EU General Data Protection Regulation 2106/679) and the duty to be as open and transparent as possible in communication within the Prosecution Service and with the press and the public at large.

370. A review of the bi-annual report shows that there is an average of 30-40 cases per year. The purpose of this publication is both to show accountability and transparency and to provide members of the prosecution service and of the public information on which conduct is considered as an integrity breach. The majority of cases were handled through an internal investigation while a number were handled through an external investigation. Some cases also led to charges filled with the prosecution service and ensuing criminal cases.

371. Findings of integrity breaches cover a wide range of behavior such as: domestic abuse, unwanted intimacy and inappropriate sexual behaviour including sexual intimidating behaviour towards colleagues or third parties; abuse of authority; forgetting documents in a parked car, forgetting documents on a house search in a public toilet (the documents were found and returned by a citizen); using the car service repeatedly for personal purposes; use of the official parking pass for private use; using of service fuel for own car; use of the Prosecution service information database for private purposes; the use of official email account to post on an internet forum; consulting a criminal file where a family member appeared; pushing a colleague out of a room during a discussion; taking a leave from work on health grounds and carrying out voluntary manual work for a charity during the same period; arriving late at work without notification; using one's title in a fight in private setting; withholding information thus undermining good cooperation with colleagues; sending messages to third parties containing information on a criminal case; talking about a driver in derogatory terms in a public place; having an aggressive attitude and using intimidating language towards colleagues[108], failure to communicate about drug related offences by a family member of which the prosecutor had knowledge; bullying[109].

372. Interestingly, a large number of integrity breaches are committed by interns and trainees, which indicates that the early stage of employment within the

[108] Biannual reports of findings of integrity breaches are available here: https://www.om.nl/@106663/overzicht-jan-juni/ ; https://www.om.nl/@105415/jaaroverzicht-2018/; https://www.om.nl/@102349/jaaroverzicht-2017/ ; https://www.om.nl/@98818/jaaroverzicht-2016/

[109] In this later case, the integrity investigation established that it was in fact a case of poor communication and to solve the situation two cooperation sessions were organized within the team under external supervision.

prosecution service is key both to weed out unsuitable candidates and to provide a learning experience from the very outset that will secure the integrity institution in the long term.

7.13 A systemic approach to integrity

373. Arguably integrity within the Prosecution Service is the result of a systemic approach that starts at the recruitment stage. The requirements to be admitted as a trainee are extremely selective. Many applicants fail to pass the deep delving interviews, assessment and checks that require a clean sheet.

374. The Dutch government has in fact introduced the obligation to submit a Certificate of Good Behavior for candidates to positions, including prosecutors, that require a high degree of integrity[110]. The Certificate is issued by the Dutch Minister of Legal Protection and confirms that the applicant has not been convicted for any crime or offense relevant to the performance of his duties.

375. A screening authority, "JUSTIS"[111], consults the Criminal Record System which contains data relating to criminal offences and their outcomes, ranging from custodial sentences to payment in lieu of prosecution or the dropping of charges. JUSTIS may also consult police files[112] and ask the Prosecution Service and the probation service for further information. Offences are not included in the examined records if they are settled with a fine or punishment order of less than 100 euro, with the exception of offences such as public drunkenness, driving uninsured, driving without a license or causing road hazards or possessing drugs. The information also includes whether an applicant was designated as a suspect in criminal proceedings (except for cases where the case was terminated as the individual had been wrongly designated as suspect or was acquitted)[113]. All such

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[110] A copy of the application form is available in English at the following link: https://www.justis.nl/binaries/Aanvraagformulier%20VOG%20NP%20(Engels)%20Januari%202017_tcm34-84796.pdf

[111] https://www.justis.nl/

[112] Following a number of scandals involving public officials, in December 2019, the Ministry of Legal Defence submitted a draft bill to the Parliament which would authorise the refusal of a Certificate of Good Behaviour for positions within the Prosecution Service and other law enforcement agencies on the sole basis of information from Police records regardless of the adoption of a judicial measures. The letter of the Ministry for Legal Defence to the Parliament is available at the following link: https://www.rijksoverheid.nl/documenten/kamerstukken/2019/12/05/tk-wetsvoorstel-vog-politiegegevens-en-besluit-themaverwerking-ambtelijke-omkoping-en-mensenhandel; The Draft Bill is available here:

[113] https://www.justid.nl/organisatie/JDS/registratie.aspx

information is studied and evaluated as a whole. In the case of candidate Prosecutors the screening procedure covers the previous ten years[114].

376. Besides this integrity is a substantial part of the training of prosecutors. The Integrity Bureau organizes regular training sessions and prevention programs. Finally, as mentioned above, integrity is a key object of discussion in performance appraisal conversations held between prosecutors and their management.

377. There are also prevention measures of a technical nature such as the introduction of a compliant financial system, regulations for public procurement as well as special rules for hiring consultants. These mechanisms are under the responsibility of the Audit service.

8. **ALBANIA**

8.1 Integrity checks within vetting procedures for judges

378. Starting in 2014 Albania has engaged in a wide judicial reform aimed at strengthening guarantees of independence, impartiality, professionalism and integrity within the judicial system. These reforms have included the creation of a High Justice Inspectorate and a large exercise of vetting judges with a view to fighting corruption within the judiciary. The re-evaluation process is being carried out on the basis of three criteria: asset assessment based on asset declarations, background checks on possible contacts with persons involved in organized crime and professional competences assessment with an evaluation of ethical and professional conduct, including breaches of professional ethics and delaying the judicial process. The procedure does not apply to Constitutional Court and Supreme Court judges.

379. The vetting proceedings are carried out through backgrounds assessment on involvement of judges with organized crime and through hearings by an Independent Qualification Commission. The appointment to the Independent Qualification Commission has been object of scrutiny/monitoring by the international community and the relevant legislation has been submitted for

[114] The rules for the screening procedures are available at the following link: https://www.rijksoverheid.nl/documenten/rapporten/2019/12/05/tk-wetsvoorstel-en-mvt-vog-politiegegevens-nader-rapport https://www.justis.nl/binaries/stcrt-2017-68620%20Beleidsregels%202018_tcm34-296654.pdf; the risks profiles in which connection screening is carried out are described in this brochure: https://www.justis.nl/binaries/19411446_Screeningsprofielen_VOG%20NP_def_tcm34-371057.pdf

assessment to the Venice Commission The procedure is transparent through regular publication of the process and the decisions adopted.

380. The background assessment covers the criminal tendencies of a judge, his connections to organized crime, a general evaluation of the risks that the judge may come to be under the influence of organized crime as well as his involvement or attempts to become involved in organized crime. The vetting will also consider whether the alleged membership is well known, publicized or documented.

381. The procedure includes requiring judges to reply to a questionnaire which includes the following questions:

- have you ever been involved in activities connected to organized crime?
- are you aware of any family member has been involved in activities connected to organized crime?
- did you or a member of your family have inappropriate contact with organized crime? This includes one single meeting, telecommunication or any type of willful contact?
- did you have inappropriate contact with organized criminals in the exercise of your duties?
- did you or members of your family accept or exchange favors?
- have you been denied entry in the European Union within the past 10 years?

382. Judges, besides answering the questionnaire must also grant consent to the collection of data for background verification. If the data collected show that the information provided was incomplete or false, a judge will be dismissed.

383. The evidence considered for the vetting includes pictures or witness statements proving that a judge had meetings with members of organized criminal groups, that the judge or his family had a non-casual communication, exchange of money or favors with criminals.

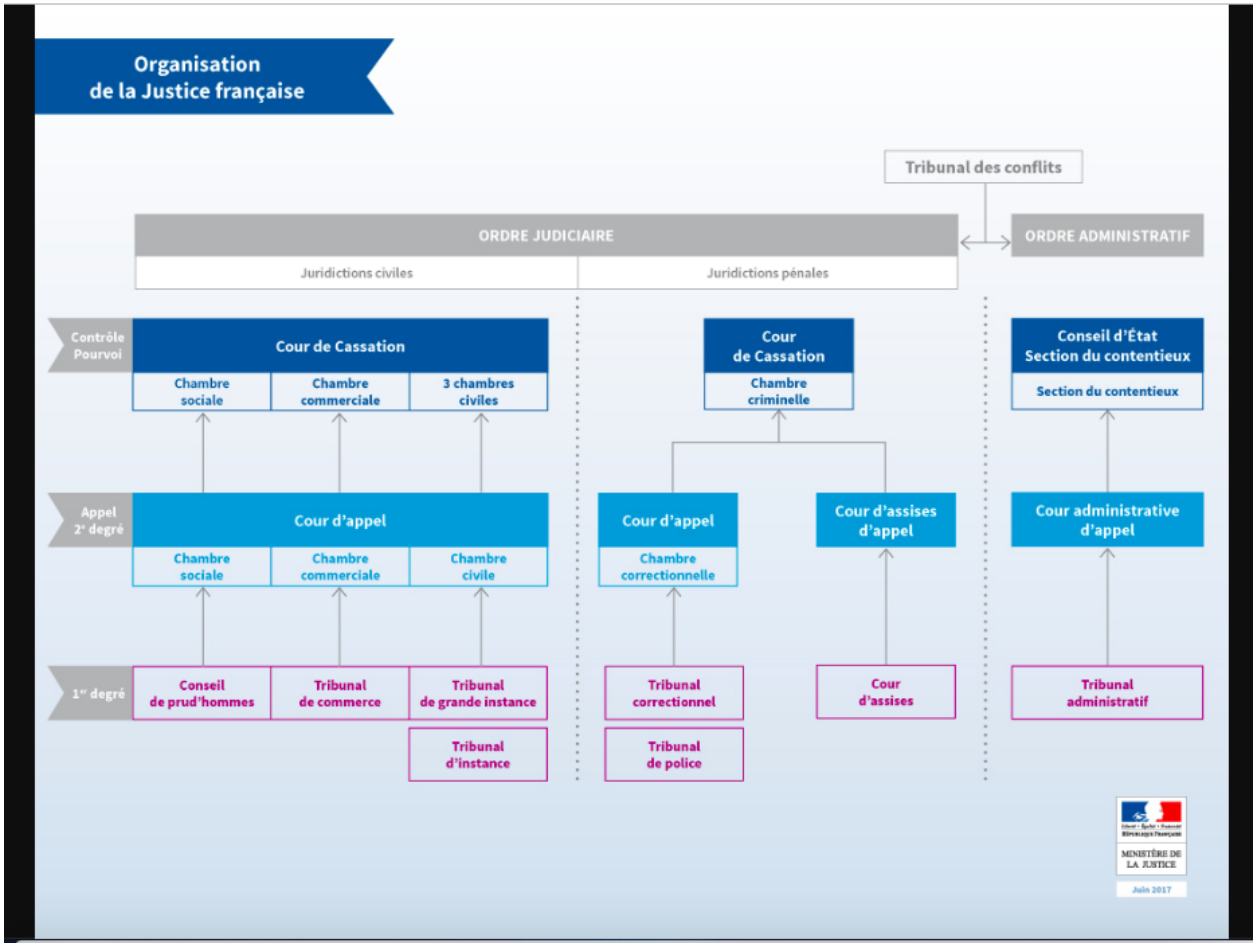
384. Mitigating circumstances are the fact that the judge was plausibly unaware that the relevant individual was involved in organized crime or that it was a rare family contact; that the judge had been open about the existence of such contact and has distanced himself from the individual (however in this case attention should be paid to the timing and the motivation for distancing himself); that the judge was aware the person was involved in organized crime but not that he would attend such meeting or the judge was tricked into attending; that the contacts took place more than five years before.

385. If a judge has provided a false or inaccurate declaration in respect of having met a member of an organized criminal group, mitigating circumstances are that the judge acknowledge having had a contract with such an individual and the inaccuracy concerned the time/ place of the meeting; another mitigating circumstance is when the relevant contact took place in a context when there was a large number of persons attending the meeting.

386. As of 2018, 736 denunciations were examined or communicated. As a result of such procedure 140 files in respect of judges were examined and 88 judges were either dismissed or resigned as the procedure highlighted contacts with organized crime.

ANNEXES

I. Organisational chart of the justice system in France



II. 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 listées 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

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	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	✓	hatvp.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	✓	hatvp.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	✓	hatvp.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 100 000 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 des présidents d'EPCI sans 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	✓	hatvp.fr	✓	✗	✓ Uniquement les présidents	✗

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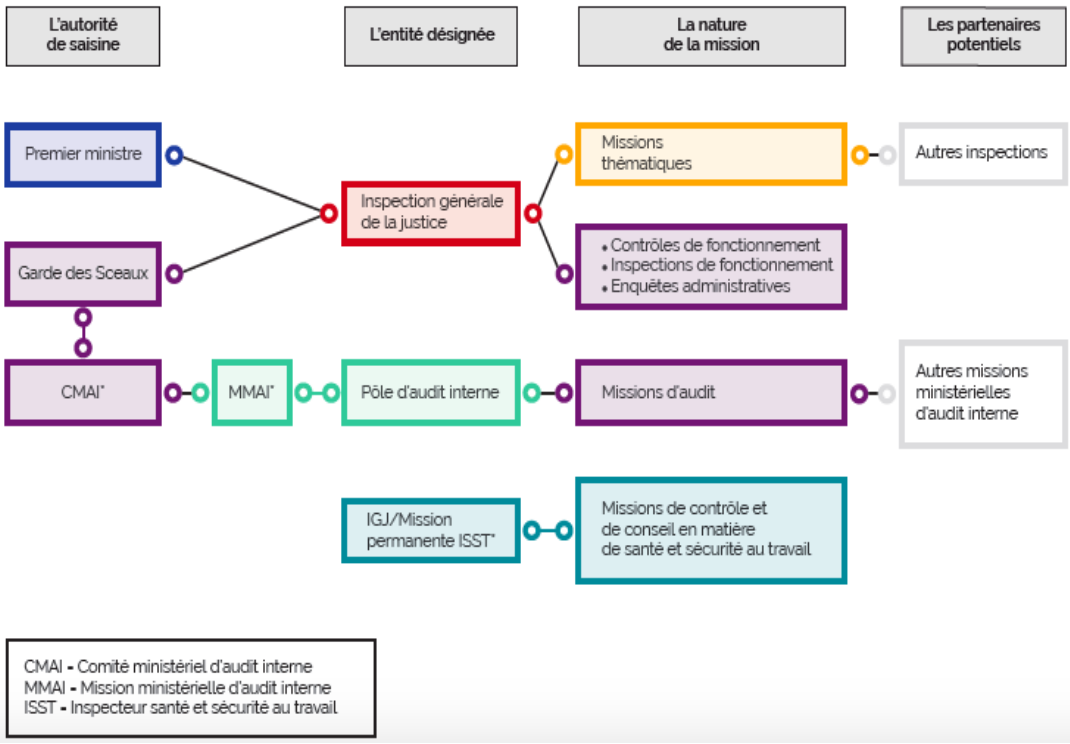
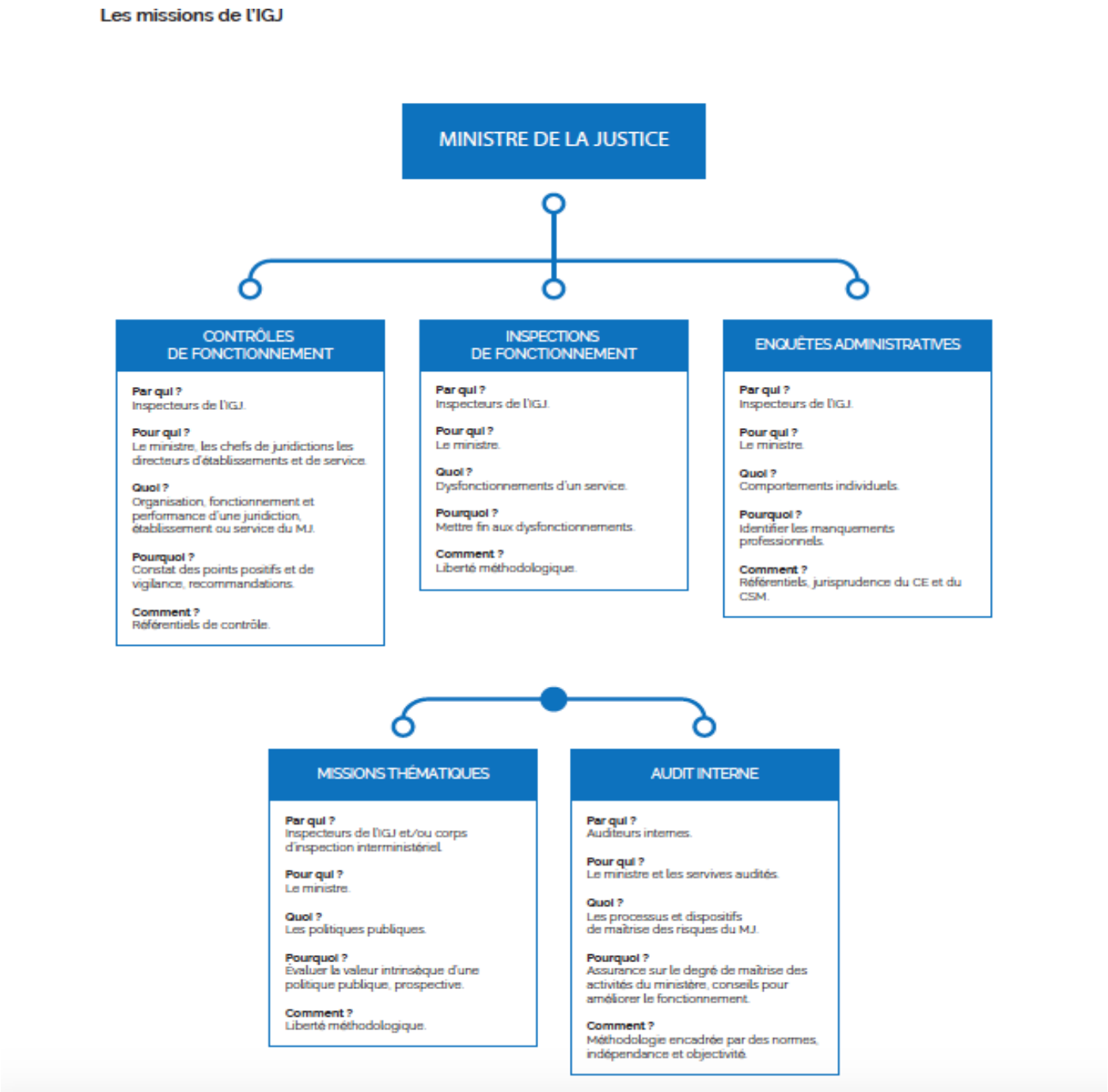
III. The missions of the IGJ and its institutional partners

Les missions de l'IGJ

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



IV. Organigramme of the IGJ at 31.12.2018

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