



Support for Strengthening the Capacity of the Inspectorate to the Supreme Judicial Council of the Republic of Bulgaria

**BEST PRACTICES OF COUNCIL OF EUROPE MEMBER
STATES IN THE AREA OF INTEGRITY CHECKS, IDENTIFIED
BY THE ISJC AND PROPOSALS FOR NORMATIVE
AMENDMENTS AND ORGANISATIONAL CHANGES**

Produced by Working Group 1

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INTRODUCTION

The Inspectorate to the Supreme Judicial Council (ISJC), with the active cooperation of the Council of Europe (CoE) implemented the Project Support for Strengthening the Capacity to the Inspectorate of the Supreme Judicial Council of the Republic of Bulgaria, funded by the European Union (EU). The purpose of this Project was, by means of identifying the best practices of other Member States of the European Union and of the Council of Europe, to support the strengthening of the administrative capacity of the ISJC when carrying out integrity checks of judges, prosecutors and investigating magistrates.

Three working groups were set up to implement the Project, entrusted with different tasks. This report, written by Working Group No. 1, contains a summarised result of the Group's work, together with the analysis of the Inspectorate's activities in connection to the integrity checks instituted under Chapter Nine, Section Ib of the Judiciary System Act (JSA), which was already presented. The report is structured in two parts – Part One, which presents the best practices and models for judicial inspections in EU and CoE Member States, identified by the ISJC based on comparative materials and an analysis of the institutions carrying out integrity checks of judges, prosecutors and investigating magistrates in these states. Part Two contains proposals for normative amendments and organisational changes, which could

be undertaken to improve the activities of the Inspectorate in the discharge of its powers.

PART ONE

BEST PRACTICES IN THE AREA OF INTEGRITY CHECKS IDENTIFIED BY THE ISJC

Two official visits to France and Spain, a seminar and a round table in Bulgaria took place in the framework of Project implementation. At the two latter events, inspectors from France, Italy and Portugal presented reports on the work of the judicial inspectorates of these states in the area of integrity-related control of magistrates and prevention of breaches before a wide audience of magistrates, inspectors and experts from the ISJC. The international experts put together analytical reports on the activities of the inspection services in France and Spain and integrity checks in the Member States of the Council of Europe.

The Working Group examined and discussed the reports presented by the Council of Europe experts, describing the powers and activities of inspection services in the different Member States. In addition to sharing the best practices identified by us as participants in the Project in view of enhancing the capacity of the ISJC, herein we were also guided by the opinions contained in the reports on these practices, expressed by internationally recognised experts such as the Group of States

against Corruption of the Council of Europe (GRECO). At the outset, we should underline that some of the identified best practices are not specific for the Bulgarian Inspectorate in the discharge of its powers, but when presenting them, they were compared to our activities.

Moreover, we would finally wish to point out that when carrying out integrity checks, the judicial inspectorates existing in the Member States have different powers – ranging from assessment of the functioning of justice, to administrative investigations of breaches of official duties and ethical rules by judges and prosecutors. In all of these states however, the guiding principle is respect for independence of the judiciary.

First of all, we would like to indicate the best practices identified in the **Kingdom of the Netherlands**.

The experience of this country has gained a number of positive assessments from GRECO in view of its approach towards observing the ethics rules in the judicial system. In accordance with the ethical conduct policy of the Netherlands, already in the process of **initial selection** of judges, special attention is devoted to the moral qualities of the candidates. In particular, this assessment is carried out based on interviews where the qualities of the candidate are evaluated. The JSA contains similar provisions, introducing a mandatory requirement for magistrates to possess the necessary moral and professional qualities corresponding to

the Code of Ethics for Behaviour of Bulgarian Magistrates (Article 162, item 3). In order to be admitted to the competitions, the candidates for junior judges, junior prosecutors and junior investigators, and for initial appointment, must present a completed questionnaire based on a template prepared by the respective college of the SJC, concerning the moral qualities they possess. The Professional Ethics Commissions of the colleges of the Supreme Judicial Council shall examine, collect the necessary information and deliver an opinion on the moral qualities of the candidates in the competitions for a position in the judicial authorities, which shall be provided to the relevant college of the Supreme Judicial Council. In addition, an interview on questions related to the respective branches of law, as well as matters related to the Code of Ethics for Behaviour of Bulgarian Magistrates according to a list published in advance, shall be conducted with the candidates that have reached the oral examination stage. Finally, the relevant college of the Supreme Judicial Council shall adopt a decision on approval of the candidates, checking whether the ranked candidates fulfill the eligibility requirements for the announced position in the judicial authority and shall consider the opinion of the Professional Ethics Commission.

The Prosecutor's Office of the Netherlands has employed quite an interesting approach, applying a framework memorandum for

integrity combined with a strategy for strengthening integrity in the framework of the institution, formulation of specific goals, balanced use of repressive and preventive measures. There is a focus on integrity in the selection, appraisal and career development of magistrates. The holding of **workplace discussions on ethical matters** is encouraged. Internal corrective measures are developed in view of identifying models of behavior that could qualify as conflict of interests, for example by raising the awareness and providing an opportunity for open discussions on ethics-related topics. This largely helps to achieve prevention among judges and prosecutors, based on mutual trust, openness and public supervision. In turn, GRECO gives this is a positive example for excellent results in the efforts to impose and observe rules on ethics.

The approach employed by the Netherlands **to define a breach of rules on ethics in the law** is a very good one. This is “any act of commission or omission during or outside of working hours, constituting a breach of a legal provision, rules related to performing an activity, official instructions, guidelines for conduct/codes of ethics or failure to perform official duties, including conduct constituting a criminal offence“. Examples of acts that could raise doubts of breach of rules of ethics could include engaging in activities or actions that are incompatible with the position of the magistrate or performing additional

activities that have not been declared or approved by the relevant authority. The Bulgarian legislator could benefit from this experience, to the extent that the Judicial System Act states in a very general manner that breaches of the Code of Ethics for Behaviour of Bulgarian Magistrates damaging the prestige of the judicial shall constitute breaches of disciplinary provisions.

Finally, it is worth noting that in the Netherlands, the good reputation of the judiciary is determined also **by the well-developed public communication strategy**, which enhances the transparency and public awareness of the judiciary. Firstly, all incoming alerts of breaches of ethics rules **are published** anonymously on the website of the Judicial Council. Additionally, twice a year, also anonymously, summaries of the breaches of ethics rules ascertained in the framework of the investigations are published. This initiative is not only a form of accountability before the public, but also aims at building public trust. In comparison, we should point out that in Bulgaria, the Communication Strategy of the Judiciary has been implemented for five years now. The ISJC participates in the implementation of this strategy actively – by publishing every annual programme on its website, the activity reports on the work of the body, updating a bulletin on the results of the checks, cooperating actively with the media and striving to constantly improve communication with non-governmental organisations, professional and branch

organisations and civil society. In the future, as a step towards raising the publicity in the discharge of the Inspectorate's powers, the bulletin on the activities of the body could also include information on incoming alerts and ascertained breaches of the rules on ethics – anonymous, of course, and after entry into effect of the judicial instruments that establish the breaches.

The next Member State of the Council of Europe that provides examples of good practices is **Italy**. Information on these good practices is contained in the report of the Project expert Ms. Vizentin and in the presentation delivered by Ms. Anita Sorti, Inspector General of Italy in December 2019 when the activities of their judicial inspectorate were presented at a round table in Sofia. The rules on disciplinary liability are very interesting. The current legislation foresees rules on the conduct of magistrates, on the one hand, and procedural rules on disciplinary liability, on the other. The rules on conduct contain the general obligations of magistrates, the actions they should refrain from when performing their official duties and outside of their office. In case of an alert alleging failure to perform official duties or observe rules on ethics by a specific magistrate, the Inspectorate in Italy has the authority to carry out an administrative investigation prior to the disciplinary procedure. The rules on this investigation are laid down in the law and the breaches of discipline are categorised in

groups depending on whether there is a breach or failure to perform official duties by the magistrate or a breach of rules, which are not related to his justice functions. The listing of specific cases of acts of commission or omission constituting disciplinary breaches minimises the risk of random interpretation that could arise if the breaches of discipline are defined more generally.

In the course of the administrative investigation, the relevant magistrate against whom an alert has been filed, may be questioned, as well as his colleagues or other persons, including court officers, and documents may be gathered. The administrative investigation is closed with a report containing an opinion on the existence or absence of a breach of discipline. By comparison, the integrity checks carried out by the ISJC pursuant to Chapter Nine, Section Ib of the Judiciary System Act, are also closed with a reasoned report. The report contains the specific opinion of the inspectors concerning the absence or existence of sufficient data of a conflict of interest, accordingly of acts of omission or commission that are inconsistent with the principles of integrity, that damage the prestige of the judiciary or are related to impairment of the independence of judges, prosecutors and investigating magistrates.

One may assume that there is some similarity between the administrative investigation in Italy and the checks that the ISJC

has the authority to perform in case of alerts alleging breaches of integrity and in case of breach of official duties.

We came across good practices and solutions also in the system of **Portugal**, presented in December 2019 by Ms. Ana Resende, Inspector Judge at the Portuguese Judicial High Council.

The Judicial High Council performs checks in the course of assessment of magistrates and when a report is filed to establish facts prior to institution of disciplinary proceedings. The purpose of the checks is to gather information not only concerning the work, but also the moral qualities of the magistrates. The assessment criteria include qualities such as independence, dignity in conduct, personal and professional reputation, serenity and reserve, diligence, productivity, moderation and discreteness in the discharge of official duties. This means that the assessment also encompasses an evaluation of the merits, which are of significant importance for the integrity of magistrates and the absence of which could trigger a disciplinary check.

Models of conduct, which due to their essence or impact are incompatible with the principles of independence, impartiality and dignity required for the discharge of the official duties of the magistrate, shall also be considered breaches of discipline.

The checks of the work and the qualities of the magistrates may be assigned only to an inspector of an equal or higher ranking

than the magistrate who is being checked. This measure has been introduced as a guarantee for judicial independence.

One of the most important powers of the ISJC is **to check the property declarations** submitted by magistrates. In this connection, we should note the good experience of Croatia in exercising this power. In Croatia, the effectiveness of the mechanism for checking the property declarations is guaranteed by the use of software for automatic checking of the data contained in the declarations. In the past 2019, an information system was introduced for automated crosschecks of the data declared before the different bodies and the data contained in the declarations. This means that the system allows access to the different databases, before which the information contained in the property declarations is declared (e.g. tax services, property register etc.). By comparison, in Article 175e of the JSA, the legislator provided for direct access to the electronic databases and other arrays maintained by the state and municipal bodies, the judicial bodies and other institutions, before which the respective data must be registered, declared or certified. The Inspectorate is currently the beneficiary of a Project “Provision of software and methodological support and administrative capacity building of the ISJC for the prevention of corruption in the judiciary in Bulgaria”, financed under Contract No. BGSFOP001-3.001-0016-

C01/17.07.2016 in the framework of Operational Programme “Good Governance”, co-financed by the European Social Fund (ESF). The objective of the Project is to develop and introduce an electronic public register of declarations concerning circumstances related to prevention and establishment of a conflict of interests and property declarations. The introduction of the register will make it possible for judges, prosecutors and investigating magistrates to submit declarations on property and interests on a completely electronic basis, by using a modern software product. Moreover, with the introduction of the new software product, the check of the declarations for property and interests of judges, prosecutors and investigators will be carried out by receiving data through automated machine exchange between the register of declarations and the automated information systems and/or electronic registers of the bodies, before which the declared data must be registered, certified or declared.

Good practices were also identified during the official visit of inspectors and experts from the ISJC **to Spain.**

Twice per year, the Spanish inspection service performs “virtual checks” (revisions) of all courts by comparing the statistical data on the time-limits and the case proceedings. These checks of the statistical information make it possible to ascertain the possible deviations from the average values for effectiveness of the

judicial body. Their main purpose is to undertake steps in case of early detection of a problem situation, to ascertain the reasons for this situation, to identify the needs of the respective court and to provide support to overcome the identified problems.

Such an activity is also carried out by the ISJC, by the Analytical Unit. Even though these are not specific inspections and are not identified as such, the result of them is similar to the result sought by the Spanish inspection. The Bulgarian Inspectorate rather carries out an analysis of the incoming information on the activities of the judicial bodies related to institution, proceedings on cases and closing of cases and case-files. The goal is to identify the judicial bodies, which the Inspectorate will include in its annual programme. In the course of this analysis, the focus is narrowed down to the judicial bodies with a greater relative share of pending cases at the end of the year, delays in drafting the judicial instruments and a greater share of repealed judicial instruments compared to the average values of bodies from the same level.

The on-line check (also referred to as “the virtual check”) in Spain may lead to **on-site checks**. Both in Bulgaria and in Spain, the report on the results of the check may also include recommendations concerning the work organisation – for example for improvement of the system for registering of the cases, raising the effectiveness of case management etc.

Moreover, Spain has a **very detailed legislative framework, regulating which behaviour of a magistrate constitutes a breach of discipline, whereby the breaches are listed gradually according to their gravity and are quite specific.** In Article 307 (3) of the Bulgarian JSA, only four types of breaches are provided and for a specific conduct of the magistrate to constitute a breach of discipline, it must be analysed in view of the existing provisions. To some extent, this could create conditions for different assessments of the bodies involved in the disciplinary process for magistrates. In this sense, perhaps an amendment to the breaches of discipline regulated in the JSA could be discussed and following the example of the legislative framework in Spain, they could be identified more clearly.

Moreover, **the Spanish legislator has laid down specifically that failure to cooperate with the inspection team shall constitute a breach of discipline.** Even though Article 58 (4) and Article 59 of the JSA regulate the duty of the administrative heads to cooperate in the checks, to provide information concerning the fulfilment of the recommendations and the steps they have undertaken as a follow-up to each incoming alert, the JSA does not contain a provision stating explicitly that this conduct constitutes a breach of discipline. Such an idea was presented by the ISJC to the MoJ more than a year ago, but it was not met with understanding during the discussions on the provisions of the

draft act amending the JSA. Even though the reason behind the proposal had to do with the conduct of the administrative head of a large court in the past, it is not unfounded, to the extent that the introduction of such an obligation would have a strong disciplining and preventive effect.

Next, **in Spain, unlike in Bulgaria, evidence of the breach is not gathered twice.** It is gathered only by the SJC Department that is referred to as the “Initiator of the Disciplinary Proceedings”, which carries out the disciplinary investigation and proposes a specific sanction to the sanctioning body. According to the Bulgarian regulatory framework, the ISJC gathers evidence, based on which it submits a proposal to institute disciplinary proceedings and then the SJC disciplinary panel gathers evidence once again, in order to assess whether a breach has occurred. This situation should be discussed within the legal community in view of easing the procedure.

As an example of a best practice in Spain, we should point out that proceedings before the Initiator of disciplinary proceedings cannot continue for more than 1 year. Unlike Spain, in Bulgaria disciplinary proceedings are instituted up to 6 months as of the moment when the breach of discipline is found, but there is no imperative time limit regulating when it must be closed. The established maximum length of the complete disciplinary proceedings in the Spanish system can serve for improving the

Bulgarian regulatory framework, both in view of the disciplinary liability of magistrates for breaches in their official duties and in case of breaches established during the integrity checks.

The Approach of France

The most typical element of the system of integrity checks of this CoE Member State is that significant emphasis is placed on prevention in the identification and countering of breaches of the rules on ethical conduct and integrity. The application of the preventive approach deserves praise and is considered to have a significant impact on raising public awareness in the judicial system. The issue of possible establishment of the system of deontological prevention in Bulgaria will be examined separately in the second part of this report.

Concerning the powers of the judicial inspectorate in France, we should mention that the body inspects the activities of the separate courts, as well as administrative investigations. Their objective is to gather information on the conduct of a specific magistrate, which could qualify as a breach of discipline or as failure to discharge official duties. The administrative investigation procedure starts with an official notification to the inspected magistrate and includes meetings with him and with his administrative head.

It is a very interesting and positive practice that in the course of administrative investigations of non-ethical behavior of

magistrates, **witness testimony may be gathered directly**, i.e. witnesses can be heard. In the course of the integrity checks under Chapter Nine, Section Ib of the JSA, in addition to the testimony of the inspected magistrate, written testimony of relevant persons may be gathered. In order to ensure the effective gathering of data concerning the lack or existence of a breach damaging the integrity of the magistrate and in order to strengthen the right of the Inspectorate to request assistance from the persons in the proceedings under Chapter Nine, Section Ib of the JSA, new Paragraphs (4) and (5) were added to Article 175o concerning an obligation of citizens to provide requested data and documents in the course of integrity checks, and if necessary, at the discretion of the inspecting team – to appear in person at the ISJC to provide oral testimony. This will make it possible to gather also oral evidence, like in France.

Moreover, the Judicial Inspectorate in France conducts administrative investigations in line with the Ethical Duties Charter (**The Deontological Charter**), which contains the principles of conduct that the inspectors must observe during the inspections. In Bulgaria, the Code of Ethics for Behaviour of Bulgarian Magistrates lays down the rules of conduct, which not only magistrates, but also SJC members and inspectors must observe. The idea of adoption of a common Deontological Charter of Inspectors participating in RESIJ is a very good one.

Another good practice that deserves praise is the Office for Deontological Assistance and Oversight established in France, which is foreseen as a mechanism offering practical support for magistrates. Any magistrate may contact the Office concerning a personal problem related to ethics. This practice could be discussed and possibly find application in the activities of the Professional Ethics Commissions of the SJC.

In addition, the National School for the Judiciary in France, the homologue of the Bulgarian National Institute of Justice (NIJ) organises training of acting magistrates on ethics-related topics as part of the annual training curricula. A proposal to include training on ethics-related topics (deontological prevention) by ISJC inspectors and/or members of the Professional Ethics Commissions of the judicial bodies in the curricula of the NIJ should be considered.

Regarding the duties to declare interests – in France magistrates submit **declarations concerning interests** before their administrative heads. These declarations are not published in view of protecting the magistrates, without prejudice however, to their duty not to allow a conflict of interests. Discussions on matters related to ethics are held based on these declarations with a view to preventing potential conflicts of interest and in order to prompt the magistrate to terminate such a conflict, if applicable. Furthermore, in the course of the discussion, the magistrate might

be reminded of the importance of observing the ethics-related rules, established in the law and described in detail in a Collection of ethics-related (deontological) duties of magistrates, adopted by the French judicial council. The introduction of such legislative amendments in the Bulgarian JSA should be considered.

Despite of the systematic and administrative differences that appear when comparing the ISJC and the judicial inspectorates in several CoE Member States, with the functioning of which the Bulgarian experts became familiar, the presented best practices are aimed at contributing to the strengthening of the judiciary, which should work in a just and transparent manner, should be guided by high moral principles and standards and should employ magistrates who are accountable before the public for their conduct. Thus, based on the examples of best practices indicated today, we may proceed with

PART TWO

PROPOSALS FOR NORMATIVE AMENDMENTS AND ORGANISATIONAL CHANGES

This part of the report focuses on the possibility to substantiate normative amendments – in the law and in secondary instruments, as well as proposals to improve the work organisation of the Inspectorate.

Provisionally, the proposals may be systemised as follows:

- **Proposals concerning the integrity checks** (integrity, independence, conflict of interests and damaging of the prestige of the judiciary) **and proposals related to breaches of discipline** in general;

- **Establishment of a system for deontological prevention;**

- **Proposals related to the property and interest declarations;**

- **Proposals related to the status of the Inspectorates and of the inspectors in the judicial system.**

1. The first set of proposals concerns the integrity checks (integrity, independence, conflict of interest and damaging of the prestige of the judiciary, which are regulated in Chapter Nine, Section Ib of the JSA) **and breaches of discipline.**

This is a central topic of the Project, the achievements of which we are discussing today. However, it is intricately connected also to the amendments with respect to disciplinary liability of magistrates as a whole, where such liability is for failure to perform the official duties of judges, prosecutors and investigating magistrates. That is why these proposals have been put together – provisionally – in one set and should also be discussed simultaneously in the future.

The main element that could be amended in the Bulgarian legislation **is to specifically list standardised (by type) breaches, which could result in disciplinary liability.** This means **to make a general list of all relevant breaches of discipline:**

- **breaches related to direct official activities involving the hearing of cases** (currently specified in Article 307 (3) item 1, item and item 4 of the JSA) and

- **breaches related to independence and resulting in a conflict of interests and damaging of the prestige of the judiciary** (Article 175j of the JSA).

Therefore, the following should be carried out:

- **more precise formulating and elaboration of the breaches of discipline provided for in Article 307 (3) items 3 and 4 of the JSA.**

- **specifying which specific breaches of the Code of Ethics for Behaviour of Bulgarian Magistrates should qualify as breaches of discipline, whereas they can be placed in a separate item, i.e. as a separate breach;**

- **considering also the possible removal of “integrity” from the group of breaches of discipline under Chapter Nine, Section Ib of the JSA,** in view of the circumstance that the elements of the offence overlap to a certain extent with the elements of an offence under the Criminal Code or at least to include a more precise definition of integrity. The latter is not

precise, as integrity is a summarising term and rather an intrinsic quality associated with numerous expressions of conduct that are far more than those described in the legal provision of Article 175j (2) of the JSA.

- to foresee that **failure to perform the duty of the administrative heads of the judiciary bodies to render assistance in connection to the discharge of powers by the SJC shall constitute a breach of discipline.** The introduction of such a provision – similarly to the framework in Spain – will have a very strong disciplining and preventive effect both with respect to administrative heads, and to judges, prosecutors and investigating magistrates.

These ideas should undergo an in-depth discussion, whereas they have the following advantages:

The precise classification of the punishable acts under Article 307 (3) of the JSA will have a preventive effect – the magistrates will know exactly what kind of conduct should be sanctioned and with what type of punishment.

Furthermore, precise qualification of the acts will provide more clarity as to what evidence should be gathered and will largely facilitate and improve the activities of the Inspectorate when performing inspections. It would be of significant importance to introduce a provision that all steps undertaken and evidence

gathered by the ISJC shall preserve their procedural value also before the disciplinary sanctioning body.

Finally, better conditions will be established in view of the right to defence of the respective judge, prosecutor or investigating magistrate.

The specific amendments could also cover Article 175j of the JSA by improving the provision and introducing more precise elements of the listed breaches. Moreover, it would be advisable to specify which grounds impose the instituting of inspections pursuant to Chapter Nine, Section Ib of the JSA and in which hypotheses an incoming alert should be forwarded to another competent body – for example, the Professional Ethics Commission of the relevant judicial body.

2. Proposals for the establishment of a system of deontological prevention

In substance, this group of proposals are a direct and immediate result of project implementation and the undertaking of measures to fulfil them would undoubtedly contribute to the prevention of conflicts of interest, manifestations of lack of integrity and acts damaging the prestige of the judiciary. Even though the JSA contains some provisions that could be seen as related to deontological prevention, namely the foreseen ethics commission of the SJC colleges and of each separate judicial body (Article (9) and Article 39b), they are insufficient. The preventive approach

however cannot be fulfilled only by the Inspectorate, as far as under the Constitution, it has functions related to exercising control and ascertaining. The following proposals are put forward:

- **to regulate in the JSA, additionally to Article 37 (9), a possibility for judges, prosecutors and investigating magistrates to raise ethics-related issues that are of interest to them before the ethics commissions of the relevant SJC college, in view of deontological prevention.** Additionally, rules should be elaborated, according to which the ethics commissions shall carry out activities related to review of the issues raised and if necessary, provisions shall be made for holding joint meetings between ISJC inspectors, members of the SJC and of these commissions, in order to examine specific problems;

- to regulate, by means of supplementing the Rules of Procedure on the functioning of the ISJC and on the functioning of the administration and of the experts, **the duty to publish on the ISJC website summaries of anonymous cases of breaches ascertained by the ISJC pursuant to Article 175j of the JSA,** whereas they should be published after the respective judicial instruments imposing sanctions enter into effect; these summaries could be foreseen as part of the bulletin on the results of performed inspections published by the Inspectorate;

- to organise training for the administrative heads of the judicial bodies, judges, prosecutors and investigating judges, and for junior judges, junior prosecutors and junior investigating magistrates in connection to integrity and deontological prevention (to include such topics in the curriculum of the NIJ, also as part of the mandatory initial and mandatory induction training).

3. The next group of proposals concerns property and interest declarations

Under the 2015 Constitutional amendments, the Inspectorate was assigned to perform checks of the property declarations submitted by judges, prosecutors and investigating magistrates. The obligation to declare property and interests was foreseen as an expression of the principle of proportionality of the measures related to strengthening of the judicial system and above all – strengthening public trust in it. The essence and the forms of proportionality fall within the prerogatives of the Bulgarian legislator, finding expression in the 2016 JSA amendments.

The experience gained by the Inspectorate in the years after the amendments to the Constitution and the mentioned European practices are at the foundation of the amendments, which could be undertaken in the JSA, the act that defines the structure of the judiciary:

- **Reducing the number of declarations, which need to be submitted by regulating an obligation to submit an initial declaration** (upon occurrence of the grounds for the declaration), **final declaration** (when the grounds for the declaration cease to exist) **and declaration in case of a change in the declared circumstances.** In France, for example, within two months after assuming their position, magistrates must submit an exhaustive, correct and truthful declaration concerning their interests (the interests that must be declared may concern property and morale). In addition to these initial declarations, after each appointment to a new position, magistrates must submit a new declaration, even if they continue to work in the same court. Any significant change in interests should be declared within two months of its occurrence by submission of an additional declaration. When leaving the judicial system, French magistrates submit final declarations.

- **Abolishing the requirement for publishing of the property declarations of judges, prosecutors and investigating magistrates following the French example,** where they are not published and the publishing or announcement of the entire or part of the information contained in the declaration is criminalised. This will not result in abolishment of the magistrates' obligation to submit declarations, nor for the ISJC to check the authenticity of the declared circumstances. The

principle rule that “additional” checks (more detailed than the initial ones) must be carried out if there is an alert against a judge, prosecutor or investigating magistrate will be preserved.

The organisational strengthening of the activities of the ISJC in connection to the checks of the property declarations may be carried out by means **of introducing software for gathering of the necessary information**, following the example of Croatia. The ISJC has already undertaken steps for the introduction of such a software product.

4. Proposals related to the status of the Inspectorate and of the judicial inspectors.

They are very important in view of the place that the body holds in the judicial system pursuant to the Constitution of the Republic of Bulgaria.

Even though the Bulgarian Inspectorate is structured “under” the SJC, it is a completely separate and independent body whose functions and clear powers are widely established in the Constitution. These functions and powers are developed further in the Judicial System Act.

Under the Constitution, the **Inspector General and the inspectors are elected by a majority of 2/3 of the Members of Parliament**, the JSA further elaborating the conditions and procedure for election. However, the JSA does not regulate which

bodies can put forward candidatures for inspectors. Therefore, after examining the rules in other European states, the JSA **should foresee that the following bodies may put forward candidates for inspectors to the Members of Parliament:**

- **the Plenum of the Supreme Court of Cassation, the Plenum of the Supreme Administrative Court and the Prosecutor General** (after the general assembly of prosecutors and investigating magistrates are held);

- **the professional organisations of judges, prosecutors and investigating magistrates.**

The voting should be for candidates who number 1/3 more than necessary so that in the framework of a competitive procedure, the National Assembly may elect between the nominated candidates. Another option would be to propose an exact number of candidates – as many as will be elected, but with an option for the general assemblies of judges and prosecutors to put together a reserve list so that if the NA fails to approve some of the candidates, another candidate from this list can be put forward immediately.

The candidatures should be presented to the attention of the MPs in view of preserving their discretionary power.

The outlined idea for legal amendments, of course, should undergo an in-depth and wide debate in the legal community, taking the following into account:

First of all, in order to avoid the threat of putting the inspectors under strong political influence.

Second, this will ensure better and higher quality professional representation by providing that the Inspectorate will be composed of professionals, whose merits and reputation have been recognised by the voting of their colleagues. This will make it possible to respond to the frequent recommendations of different international institutions to enhance the participation of acting judges, prosecutors and investigating magistrates in the senior staffing and control bodies of the judiciary, by foreseeing that they shall be put forward by their colleagues.

Another relevant point is that this will help ease the duties of the MPs, by eliminating the need for them to collect information on each of the candidates and to assess their merits, as they are often unknown to them.

Next, even though there is no direct link with the Project, another proposal, which is important in view of improving and strengthening the Inspectorate in Bulgaria could be examined. This is the inconsistency between the provisions on the Inspectorate's budget in the JSA and the provisions contained in the Constitution.

Pursuant to Article 132a (5) of the Constitution, the requirement for a separate budget is laid down in the Constitution. Precisely, it states that the Inspectorate's independent budget is adopted by the

National Assembly in the framework of the judiciary budget. This Constitutional provision is not interpreted correctly in the JSA. The explicit Constitutional provision for a separate budget of the Inspectorate does not mean only that it should include in a separate line within the judiciary budget. The budgets of other judicial bodies are also contained in different lines of this budget, for example of the National Institute of Justice, which is not required by Constitution to have a separate budget. By emphasising the term “separate” concerning the ISJC budget, the Constitutional legislator is saying something else, namely that **the Inspectorate is entitled not only to present a draft budget, but also to be able to defend it at all stages of the budget procedure as part of the state budget.** In practical terms, this means that:

1. The Inspectorate would discuss the draft judiciary budget proposed by the Minister of Justice with respect to the forecasts that concern it.

2. Together with the draft of the Minister, the Inspectorate may submit its own draft budget to the SJC.

3. The SJC must discuss the Inspectorate’s draft but it cannot reduce its parameters without its consent. It may propose an alternative to the National Assembly but without annulling the Inspectorate’s proposal.

4. Together with the representative of the SJC and the Presidents of the SCC, the SAC and the Prosecutor General, the Inspector General shall participate in the meetings of the standing commissions of the National Assembly and defend its draft budget.

This is the meaning of Article 132a of the Constitution. The provision is intended to defend the budget of the Inspectorate, including from reduction by the SJC, which hypothetically could hinder and limit its activity. This is the logic drawn from the systematic interpretation of Article 117 and Article 132a of the Constitution. **At present, the JSA foresees participation of the Inspectorate only in the first stage of budget drafting.** In order to fulfil the Constitutional requirements, the JSA should be amended as described above. Accordingly, amendments must also be made to the Rules of Procedure of the National Assembly.

In accordance with the Constitutional provisions on the separate nature of the budget of the ISJC, it is necessary to undertake legal amendments, namely to the Public Finances Act and the JSA.

In view of the fact that the independent budget also provides independence to the Inspector General to carry out the common organisational and methodological management of the body, Article 60 of the JSA should be supplemented with a new paragraph that the Inspector General manages the ISJC budget independently.

CONCLUSION

In conclusion, the Project activity implemented with the financial and expert assistance of the Structural Reform Support Service of the European Commission can be evaluated as being very effective. The shared experience and good practices with respect to integrity checks and disciplinary proceedings in the Member States of the European Union and the Council of Europe are very important for the activities of the ISJC and could bring visible and tangible results, including by means of legislative amendments in the near future. We hope that they will have a real and positive reflection on the entire judicial system, especially concerning deontological prevention with respect to the integrity of magistrates.