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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

BULGARIA

DRAFT OPINION

**ON THE DRAFT AMENDMENTS TO THE JUDICIAL SYSTEM ACT
CONCERNING THE INSPECTORATE TO THE SUPREME JUDICIAL
COUNCIL**

On the basis of comments by

Mr Richard BARRETT (Member, Ireland)

Ms Regina KIENER (Member, Switzerland)

Mr Martin KUIJER (Substitute Member, the Netherlands)

Mr Qerim QERIMI (Member, Kosovo)

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I. Introduction

1. By letter of 11 August 2022, the Minister of Justice of Bulgaria, Mr Krum Zarkov, requested an opinion of the Venice Commission on the draft amendments to the Judicial System Act (hereinafter: JSA) introducing new functions of the Inspectorate to the Supreme Judicial Council. The official translation of the proposed draft amendments, explanatory report thereto and the consolidated text of the JSA were provided by the authorities (CDL-REF(2022)025).
2. Mr Richard Barrett (member, Ireland), Ms Regina Kiener (member, Switzerland), Mr Martin Kuijer (substitute member, the Netherlands) and Mr Qerim Qerimi (member, Kosovo) acted as rapporteurs for this opinion.
3. On 26-27 September 2022, a delegation of the Commission composed of Mr Barrett and Mr Qerimi, accompanied by Mr G. Dikov and Ms S. Japaridze from the Secretariat, travelled to Sofia and had meetings with representatives of the Ministry of Justice, representatives of political parties at the National Assembly, the Supreme Judicial Council, the Inspectorate to the Supreme Judicial Council, the National Institute of Justice, as well as with various civil society organisations. The Commission is grateful to the Ministry of Justice for the excellent organisation of this visit.
4. This opinion was prepared in reliance on the English translation of the draft amendments to the JSA. The translation may not accurately reflect the original version on all points.
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the mission to Sofia on 26-27 September 2022. [Following an exchange of views with ***,] it was adopted by the Venice Commission at its *** Plenary Session (Venice, *** 2022).

II. Background

6. Since 1999, the Bulgarian judiciary and the prosecution service have been continuously reformed, both at the constitutional and legislative level. These reforms were aimed at responding to the problems of organised crime, high-level corruption and inefficiency of the judicial system. These reforms also addressed recommendations by international partners (such as the EU¹ and Council of Europe bodies, in particular the Committee of Ministers,² the Venice Commission,³ and GRECO⁴).
7. The last attempt to amend the Constitution in order to respond to those recommendations failed: in November 2020, the National Assembly (hereinafter: the Parliament) did not gather the

¹ See European Commission, *Progress Report on Bulgaria under the Cooperation and Verification Mechanism*, COM(2019)498, *See also Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria*, SWD(2020)301.

² See CMDH meeting of 1-3 September 2020 (1377 bis), *H46-9 S.Z. / Kolevi v. Bulgaria (Applications Nos. 29263/12 and 1108/02)*.

³ See Venice Commission, CDL-INF(1999)005, Opinion on the reform of the judiciary in Bulgaria; CDL-AD(2002)015, Opinion on the Draft Law on Amendments to the Judicial System Act of Bulgaria; CDL-AD(2003)16, Opinion on the Constitutional Amendments Reforming the Judicial System in Bulgaria; CDL-AD(2008)009, Opinion on the Constitution of Bulgaria; CDL-AD(2009)011, Opinion on the Draft Law amending and supplementing the Law on Judicial Power; CDL-AD(2010)041, Opinion on the Draft Law amending the Law on Judicial Power and the Draft Law amending the Criminal Procedure Code of Bulgaria; CDL-AD(2015)022, Opinion on the Draft Act to amend and supplement the Constitution (in the field of Judiciary) of the Republic of Bulgaria; CDL-AD(2017)018, Opinion on the Judicial System Act; CDL-AD(2019)031, Opinion on the draft amendments to the Criminal Procedure Code and the Judicial System Act concerning criminal investigations against top magistrates; CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution.

⁴ See GRECO, *Compliance Report Bulgaria, GrecoRC4(2017)9*, adopted on 23 June 2017, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16807342c8>.

necessary 160 votes for the holding of a Grand National Assembly to revise the Constitution. As a result, the 1991 Constitution (as last amended in 2015) remained in force.⁵

8. The reforms in the area of justice and anti-corruption monitored by the EU first under the Cooperation and Verification Mechanism (hereinafter: CVM)⁶, are currently monitored under the Rule of Law Mechanism.⁷ The 2022 Rule of Law Report of the European Commission highlights the progress made by the Government of Bulgaria concerning some aspects of the justice system and the anti-corruption framework. The report recalls the remaining commitments under the CVM and the commitments made by the Government under the National Recovery and Resilience Plan of Bulgaria⁸, as well as further specific recommendations.⁹

9. One of the recommendations of both the European Commission and the Venice Commission concerns the status and functioning of the Inspectorate to the Supreme Judicial Council (hereinafter: the Inspectorate). In particular, the Venice Commission recommended to involve the Supreme Judicial Council (hereinafter: SJC) in the selection/nomination process of the Inspectorate members for the election by the Parliament, as well as to clearly separate the functions of the Inspectorate from the functions of the SJC.¹⁰ Likewise, the European Commission recommended to “advance with the legislative amendments aiming at improving the functioning of the Inspectorate and avoiding the risk of political influence, in particular by involving judicial bodies in the selection of its members”.¹¹

A. The Inspectorate to the Supreme Judicial Council

10. The Inspectorate is a body of the Bulgarian judicial system which was created as a result of the amendment to the Constitution of Bulgaria in February 2007.¹² The Inspectorate consists of an Inspector General (hereinafter: the IG) and ten Inspectors, who are elected by the National Assembly the Parliament with the qualified majority of 2/3 of the votes.¹³ The IG and the Inspectors have to be independent and the inspections have to be carried out without affecting the independence of the judges.¹⁴

11. The main task of the Inspectorate is the oversight of the judiciary: it evaluates the performance of magistrates and courts, conducts integrity checks and assesses potential conflict of interest of judges, proposes the initiation of disciplinary proceedings to the SJC via collecting and supplying

⁵ See CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution.

⁶ See Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (C(2006) 6570); See also Report by the Commission of 22.10.2019 under the “Cooperation and verification mechanism”, available at : [Progress report Bulgaria 2019\[COM\(2019\)498\] | European Commission \(europa.eu\)](#)

⁷ See European Commission, Rule of Law Report, The Rule of law Situation in the European Union, COM(2022) 500, 13 July 2022, available at: [EUR-Lex - 52022DC0500 - EN - EUR-Lex \(europa.eu\)](#)

⁸ Detailed information about the National Recovery and Resilience Plan of Bulgaria is available at: [Recovery and resilience plan for Bulgaria | European Commission \(europa.eu\)](#) and at: [Национален план за възстановяване и устойчивост \(nextgeneration.bg\)](#)

⁹ See European Commission, Rule of Law Report, Country Chapter on the rule of law situation in Bulgaria, SWD(2022) 502, p.2, available at: [2022 Rule of law report - Communication and country chapters | European Commission \(europa.eu\)](#)

¹⁰ See CDL-AD(2008)009, Opinion on the Constitutional Amendments Reforming the Judicial System in Bulgaria; CDL-AD(2017)018, Opinion on the Draft Act to amend and supplement the Constitution (in the field of Judiciary) of the Republic of Bulgaria; CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution.

¹¹ See supra (note 09).

¹² See Article 132a of the Constitution, available at: <https://parliament.bg/en/const>

¹³ See Ibid., paras.2 and 3; See also Article 42 of the JSA.

¹⁴ See Article 132a para.6 of the Constitution; Detailed overview of the Inspectorate’s activities and the laws and bylaws regulating its work is available at: [Inspectorate to the Supreme Judicial Council : \(inspectoratvss.bg\)](#)

the relevant information, examines “applications against an infringement of the rights to have a case examined and disposed of within a reasonable time”, etc.¹⁵

12. The procedure for electing a new IG was supposed to start no later than 9 February 2020 and no later than 14 January 2020 for the Inspectors (JSA, Art. 44. §1).¹⁶ However this has not happened to-date. The Constitutional Court of Bulgaria considered a request made by the Plenary of the Supreme Administrative Court concerning the interpretation of the constitutional provisions regarding the Inspectorate, in particular the question about the possibility for the IG and the Inspectors to continue their work after the completion of their mandates and before the appointment of the new office holders by the Parliament.¹⁷ On 27 September 2022, the Constitutional Court decided that this was possible and thus, the Inspectorate will continue to function in its current composition.¹⁸

B. The essence of the draft amendments

13. The draft amendments to the JSA introduce certain new powers and competences of the Inspectorate. In particular, the Inspectorate would receive:

- the power to adopt a procedure for the regular reporting and publication of the results of the closure of cases (amendment to Article 54 §1 (3));
- the power to make proposals to the relevant Chamber of the SJC for amendments and supplements to the Code of Ethical Conduct of Bulgarian Judges (hereinafter: Code of Ethical Conduct for Judges), respectively the Code of Ethical Conduct of Bulgarian Prosecutors and Investigators (hereinafter: Code of Ethical Conduct for Prosecutors and Investigators (amendment to Article 54 §1 (16));
- the competence to organize and conduct anti-corruption trainings, as well as trainings on integrity and conflict of interest (amendment to Article 54 §1 (17));
- the power to adopt a template for reporting on the completion of cases within the time limits set out in the law and in coordination with the SJC (amendment to Article 54 §1 (18));
- the competence to summarise annually good and bad practices with regard to compliance with ethical rules in accordance with relevant European and international standards, in cooperation with the Professional Ethics Committees of the Chambers of the SJC and the power to provide the information to the Chambers of the SJC (amendment to Article 54 §1 (19)).

14. One of the effects of the draft amendments would be to empower the relevant Chambers of the SJC (the Prosecutorial and the Judicial Chambers) to adopt a Code of Ethical Conduct for Judges and Code of Ethical Conduct for Prosecutors and Investigators respectively (amendment to Article 30 §5 (20) of the JSA). It is the understanding of the Venice Commission that the power to develop these two separate Codes of Ethical Conduct also belongs to the Prosecutorial and to the Judicial Chamber of the SJC.

15. Finally, according to the amendment to the transitional and final provisions of the JSA, within three months from the entry into force of the Law, each Chamber of the SJC shall adopt the respective Codes of Ethical Conduct. It is the understanding of the Venice Commission that these Codes will also apply to the members of the SJC and the Inspectors of the Inspectorate.

¹⁵ See CDL-AD(2017)018, Opinion on the Draft Act to amend and supplement the Constitution (in the field of Judiciary) of the Republic of Bulgaria, paras. 51-57; See also Chapters 3 and 3A of the JSA;

¹⁶ See *Annual Report on Human Rights in Bulgaria* (2021), Bulgarian Helsinki Committee, p. 33, available at: [Правата на човека в България през 2021 г. | Български хелзинкски комитет \(bghelsinki.org\)](https://www.bghelsinki.org/)

¹⁷ See *Country Chapter on the rule of law situation in Bulgaria*, p.9; more information can be found here: - [Конституционен съд на Република България \(constcourt.bg\)](https://constcourt.bg/)

¹⁸ [BTA :: Constitutional Court: Inspectorate under Supreme Judicial Council May Continue Working Despite Expired Term of Inspectors.](https://www.bta.bg/News/Constitutional-Court-Inspectorate-under-Supreme-Judicial-Council-May-Continue-Working-Despite-Expired-Term-of-Inspectors)

16. The rationale invoked by the Bulgarian authorities for drafting legislative amendments introduced by the Law on the Amendments and Supplements on the Judicial System Act¹⁹ was to ensure the implementation of the measure “Strengthening the role of the Inspectorate to the Supreme Judicial Council for the prevention and counteraction of corruption in the judiciary (Q4/2022)”, set under Reform 2: "Anti-corruption" of the National Recovery and Resilience Plan.²⁰

III. Analysis

A. Scope of the Opinion

17. The scope of this Opinion is limited to the draft amendments listed in paras.13-15 above. The Venice Commission will assess these draft amendments within the current context and, where it finds them relevant and important, will repeat some of its previous findings concerning the Inspectorate.

18. That being said, the Venice Commission will neither give an exhaustive analysis of the JSA nor repeat the analysis and the findings of its previous opinions concerning the Bulgarian judiciary in general.²¹ The Venice Commission is well aware of the problems of the Bulgarian judiciary and outstanding recommendations in regard to them (composition and functioning of the SJC including in the context of disciplinary proceedings, accountability and criminal liability mechanism for the Prosecutor General, etc).²² These issues are left outside of the scope of the assessment.

19. The intention of the Bulgarian authorities to strengthen the integrity of the judiciary is, in principle, to be welcomed. However, a closer look at the draft amendments, which would result in allocating additional powers to the Inspectorate, makes the Commission believe that these draft amendments neither necessarily strengthen the Inspectorate's role for the prevention and counteraction of corruption in the judiciary, nor address the main deficiencies identified by the Venice Commission in its previous opinions.

20. The Commission has in other instances emphasised the importance of sequencing reforms²³ in order to avoid transferring additional powers to a body within the judiciary which still needs to be reformed. Instead of a such fragmented approach, a more holistic reform of the Inspectorate is needed. In particular, the reform should start with addressing two main points of concern previously expressed by the Venice Commission.

¹⁹ The text of the Law in Bulgarian is available at: <https://www.justice.government.bg/home/index/9a1c0da6-6c6d-4148-81e2-afabbed5ff3d>; See also CDL-REF(2022)025.

²⁰ The text of the NRRP in Bulgarian is available at: [Национален план за възстановяване и устойчивост \(nextgeneration.bg\)](https://nextgeneration.bg)

²¹ Description of the Bulgarian judicial structure can be found in the Study on the functioning of the judicial systems in the EU Member States, CEPEJ (2021)18Rev1, 06.04.2022, available at: [Study on the functioning of judicial systems in the EU Member States - Publications Office of the EU \(europa.eu\)](https://european-council.europa.eu/media/e3000000/1/7/2/1/Study_on_the_functioning_of_judicial_systems_in_the_EU_Member_States_-_Publications_Office_of_the_EU_(europa.eu).pdf).

²² See CDL-AD(2017)018, Opinion on the Judicial System Act; CDL-AD(2019)031, Opinion on the draft amendments to the Criminal Procedure Code and the Judicial System Act concerning criminal investigations against top magistrates and CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution. See also supra (note 09), abstract of the report, p.1.

²³ See CDL-AD(2020)022, Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on draft amendments to the Law 'on the judiciary and the status of judges' and certain laws on the activities of the supreme court and judicial authorities (draft law no. 3711), para. 80, See also CDL-AD(2021)018, Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (draft law no. 5068), para. 14.

B. Outstanding recommendations

1. Election of the Inspector General and the Inspectors and their accountability

21. The first point of concern was the manner of appointment of the IG and the Inspectors by the Parliament. The competence of a political authority in this area increases the risks of political attachment, thus compromising the independence of the judiciary and minimising the chances for the Inspectorate to serve as a guarantor of judicial efficiency.²⁴ To neutralize these risks, the Venice Commission has previously recommended to give the Chambers of the SJC the power to nominate a certain number of candidates for election by the Parliament.²⁵ For the same reasons, the European Commission also recommended to involve judicial bodies in the selection process of the Inspectorate members.²⁶ In addition, the Venice Commission recommended providing for an anti-deadlock mechanism in case of failure to receive a qualified majority of the votes in the Parliament.²⁷

22. The Venice Commission maintains its position that it is important to involve the SJC in the selection/nomination process of the Inspectorate members and to have an anti-deadlock mechanism in case of failure to receive the required number of votes.

23. Likewise, the Commission remains convinced of the need to involve the SJC in the process of removing the IG and the Inspectors from office. The present text of the JSA remains ambiguous concerning the accountability of the IG and Inspectors and their removal from office.²⁸ The JSA may be construed as implying that the power to remove them from office belongs to the Parliament. This again creates the risk of political influence and prevents the Inspectorate from having institutional links with the SJC.²⁹ As already mentioned by the Venice Commission, “these links may be created if the nomination and removal powers are given to the SJC (at the proposal of a certain number of members of the SJC)”.³⁰

2. Division of powers between the Supreme Judicial Council and the Inspectorate

24. The second point relates to the delimitation of powers between the Inspectorate and the SCJ. While the Venice Commission refrained from assessing whether the existing powers of the Inspectorate were in line with the European principles³¹ or were constitutionally permissible, it has previously noted that there was a danger for the independence of judiciary due to a considerable expansion of the functions of the Inspectorate, with the consequence of a possible shift of the real power from the SJC to the Inspectorate.³² The Bulgarian (constitutional) legislator has still not clarified the exact scope and mandate of the Inspectorate which would result in a clear demarcation with other bodies/mechanisms. This makes it practically impossible to understand the logic of the draft amendments to transfer additional powers to the Inspectorate.

25. In its 2008 Opinion, the Commission recommended that the “inspection [...] should only concern material issues such as the efficiency with which the judicial bodies have spent the money allocated to them. The inspectors should not have the power to investigate complaints; that power should be left to the SJC itself, since it requires knowledge of or experience with the

²⁴ See CDL-AD(2008)009, Opinion on the Constitution of Bulgaria, para.47.

²⁵ See CDL-AD(2017)018, Opinion on the Judicial System Act, paras 58-59; See also CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution, para.77.

²⁶ See *Country Chapter on the rule of law situation in Bulgaria*, p.2.

²⁷ See also CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution, para.74.

²⁸ See article 48 of the JSA.

²⁹ See CDL-AD(2017)018, Opinion on the Judicial System Act, para. 60; See also CDL-AD(2020)035, Urgent Interim Opinion on the draft new Constitution, paras. 76-77.

³⁰ See CDL-AD(2017)018, Opinion on the Judicial System Act, para.60.

³¹ See CDL-AD(2015)022, Opinion on the Draft Act to amend and supplement the Constitution (in the field of Judiciary) of the Republic of Bulgaria, para.80.

³² See CDL-AD(2017)018, Opinion on the Judicial System Act, para.57.

administration of justice.”³³ Not only was this recommendation not followed, but the 2016 reform of the JSA resulted in a considerable increase in the powers and competencies of the Inspectorate, which are moreover ambiguously defined by the JSA. This makes it difficult to understand the exact role of the Inspectorate vis-a vis the SJC.³⁴

26. The concerns caused by the blurred lines between the appraisals (by the SJC), inspections (by the Inspectorate) and disciplinary proceedings (by the SJC) are exacerbated by the fact that these various mechanisms are not part of one sequential procedure: sometimes they interrelate and sometimes they simply co-exist. The extensive functions of the Inspectorate, coupled with the lack of clarity concerning the role of the Inspectorate vis-a vis the SJC, may create the risk of the Inspectorate encroaching on the constitutional mandate of the SJC.³⁵

27. The Venice Commission also raised concerns in relation to the procedure and the form of the execution of the functions and powers of the Inspectorate, for example with regard to individual inspections.³⁶

28. The above concerns were echoed in the 2020 urgent Interim Opinion of the Venice Commission on the draft new Constitution³⁷ The main thrust of these concerns continued to be that (i) inspectors are competent to examine virtually every aspect of the activities of courts, prosecution offices, individual judges and individual prosecutors, and that (ii) the competences of the inspectors should therefore be more clearly specified in the law, in order to avoid overlapping with other existing mechanisms and with the (constitutional) mandate of the SJC.

29. The Venice Commission maintains its position that there should be a clear distinction between the functions of the Inspectorate and the SJC, and that there should be more detailed rules in the law itself concerning the procedure of inspections. Overlapping functions, coupled with lack of clarity concerning their implementation, may lead to abuse of powers.

C. New powers and competencies of the Inspectorate

1. Codes of Ethical Conduct

30. The draft amendments envisage the introduction of an explicit competence of the relevant Chambers of the SJC to adopt a Code of Ethical Conduct for Judges and a Code of Ethical Conduct for Prosecutors and Investigators, as such competence does not appear in the current version of the law.³⁸ This is to be welcomed.

31. However, the draft amendments do not prescribe substantive rules of ethical behaviour of magistrates as such, leaving a substantial margin of appreciation to the bodies developing and adopting the Codes of Ethical Conduct. Both the draft amendments (Article 54 §1(19) and the Explanatory Report in this regard refer to the “relevant European and international standards”. However, such general wording is hardly in line with the principle of foreseeability of legal norms³⁹

³³ See CDL-AD(2008)009, Opinion on the Constitution of Bulgaria, para. 46.

³⁴ See CDL-AD(2017)018, paras. 55 and 61.

³⁵ See *Ibid.*, paras.62-66.

³⁶ See *Ibid.*, paras. 67-74.

³⁷ CDL-AD(2020)035, paras. 73-80.

³⁸ Current version of the JSA is silent about the authority having a power to adopt the Code of Conduct. According to the amendments introduced to JSA in 2009 (Article 30 §1 12), Supreme Judicial Council “Endorse rules of professional ethics adopted by the professional organisations of judges, prosecutors and investigating magistrates”. This provision was revised in 2016 and cannot be found in the JSA anymore. Current Code of Ethical Conduct of Bulgarian Magistrates (CECBM) was adopted on the grounds of Art. 30 §1 (12) of the JSA with Decision of the SJC by Protocol No. 21 of 2009, amended with SJC Decision by Protocol No. 2 of 2011.

³⁹ See ECtHR, *Sunday Times v. United Kingdom*, judgment of 26 April 1970, para.49; See also communication No. 578/1994, *de Groot v. The Netherlands*, Views adopted on 14 July 1995; See also CDL-AD(2015)015, Opinion on

or with the principles and rules governing judges' professional conduct, in particular regarding ethics, incompatible behaviour, and impartiality.⁴⁰

32. The lack of foreseeability is even more problematic given the specific relevance of the two Codes: moral integrity and professional standing in compliance with the Codes of Ethical Conduct will be an *eligibility requirement* for the appointment of judges, prosecutors and investigating magistrates. Also, a questionnaire based on the Codes will serve as a *benchmark for the assessment of candidates for office* (Articles 162 § 3 and 184 § 6 of the JSA). In addition, a breach of the applicable Code of Ethical Conduct constitutes a *disciplinary offence* (Article 307 § 3 (3) of the JSA).⁴¹ In this context, the Venice Commission recommends defining the main principles of ethical behaviour by law and leaving the rest to the Codes of Ethical Conduct for detailed regulation.

33. According to the draft amendments, the Inspectorate shall make proposals to the relevant Chambers of the SJC to amend and supplement the Codes of Ethical Conduct. This seems to be compatible with Inspectorate's mandate (Article 132a § 6 and Article 54 §1 (8) of the JSA) and should not be problematic *per se*. However, in the Venice Commission's opinion it is important that the Inspectorate should not be the only authority with such a function. The reading of the draft amendment suggests this to be the case. During the meetings with the Bulgarian authorities, the rapporteurs were assured that other bodies like the Committees on Professional Ethics of the respective Chambers of the SJC, which among other things carry out direct and immediate control over the implementation and observance of the Code of Ethical Conduct, can also make proposals to the relevant Chambers of the Supreme Judicial Council to amend and supplement the Codes of Ethical Conduct. However, neither the text of the JSA, nor the internal regulations concerning the respective Committees contain provisions confirming this suggestion.

34. The Venice Commission is of the view that the power to make proposals to amend and supplement the Codes of Ethical Conduct should not be limited to the Inspectorate only. In any case, a meaningful involvement of the magistrates in this process should be ensured.⁴² In addition, professional organizations like the professional association of judges, prosecutors or investigating magistrates could certainly bring an added value to the Codes of Ethical Conduct when it comes to making proposals for changes.

35. According to the transitional and final provisions of the JSA, the Codes of Ethical Conduct should be adopted within three months from the entry into force of the Law. The Venice Commission finds three months to be a very short timeframe, given the importance of the matter, the need for coordination between the two Chambers, and not least, the long-lasting discussion on judicial reform in Bulgaria.⁴³

Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, para. 22.

⁴⁰ See CCJE (2002) Op. N° 3, Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, 19 November 2022.

⁴¹ See also § 1 (7) of the Supplementary Provisions of the JSA in conj. with Article 175j § 1 and 175n of the JSA.

⁴² The international soft law-standards on judicial conduct are set out in Opinion no.3 of the Consultative Council of the European Judges (CCJE). It stipulates that the principles of professional conduct of judges, should be "drawn up by the judges themselves and be totally separate from the judges' disciplinary system" and "should offer judges guidelines on how to proceed".

⁴³ The mandate of the SJC expired as of 3 October 2022, while the 11 new members of the parliamentary quota have not been elected and the election of some members of the professional quota is challenged before the Supreme Administrative Court (SAC). Whether it will be possible to gather a two-third majority of votes which is required for the election of the news members of the SJC, depends on the composition of the newly elected Parliament. The absence of anti-deadlock mechanism prompts further questions concerning the possible scenario when the necessary two-third majority of votes is not gathered. This may affect the proper functioning of the SJC and its Chambers, including the execution of the new functions like adopting the Codes of Ethical Conduct.

36. In addition, it remains unclear what happens if the Chambers fail to adopt the Codes within the deadline. In these circumstances, it would seem reasonable to the Venice Commission if the Bulgarian authorities chose a more realistic (longer) timeframe for adopting the Codes.

2. Trainings

37. According to the draft amendment to Article 54 § 1 (17) of the JSA, the Inspectorate has been vested with the power to organize and deliver anti-corruption trainings, as well as trainings on integrity, independence and conflict of interest.

38. During the meetings with the Inspectorate and the National Institute of Justice (hereinafter: NIJ), the rapporteurs were informed that none of the institutions were formally consulted in the process of elaboration of the draft amendments concerning the trainings. The Venice Commission finds it difficult to understand this, given that these institutions are directly affected by the draft amendments and could have provided a meaningful insight. The rapporteurs were also informed during the meetings that both institutions submitted their opinions to the Ministry of Justice concerning the draft amendments and both disagreed with the new function of the Inspectorate to organize and deliver trainings.

39. The Venice Commission observes that the function of organizing and implementing training programs aiming to maintain and strengthen the qualification of judges, prosecutors and investigators, as well as the personnel of the judiciary is clearly vested with the NIJ (Article 249 of the JSA). Among the many programs run by the NIJ is the continuing legal education program, which essentially transcends the more ordinary, compulsory programs of training. Indeed, training on anti-corruption matters or other trainings that seek to strengthen the integrity and independence of judges, prosecutors and investigators, as well as trainings on conflict of interest, can well form part of both streams: *compulsory* and *continuing* legal education, provided by the NIJ.

40. In 2019, in its Second Compliance Report,⁴⁴ GRECO assessed the measures taken by the authorities of Bulgaria to implement the pending recommendations issued in the Fourth Round Evaluation Report on Bulgaria covering “Corruption prevention in respect of members of parliament, judges and prosecutors” and, *inter alia*, concluded that recommendations XI⁴⁵ and XVII⁴⁶ had been implemented in a satisfactory manner. These recommendations concerned different types of trainings for judges and prosecutors on the integrity, conflict of interest and corruption, as well as counselling and guidance on judicial ethics. GRECO reached this conclusion based on the assessment of broad information provided by the Bulgarian authorities where the NIJ was a key institution which conducted the respective trainings.⁴⁷

41. In addition, the rapporteurs were informed during the meeting with the Inspectorate that the trainings by the Inspectorate will have a significant impact on the budget of the institution, and

⁴⁴ See GRECO, *Second Compliance Report Bulgaria, GrecoRC4(2019)24*, adopted on 6 December 2019, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809981f2>

⁴⁵ GRECO recommended that i) the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior judges and judges subject to initial appointment be strengthened; and that ii) the professional in-service training on integrity, conflicts of interest and corruption prevention within the judiciary be prioritised and properly funded, and guidance and counselling on judicial ethics be made available to all judges.

⁴⁶ GRECO recommended that the integrity, conflicts of interest and corruption prevention component of the compulsory induction training provided to junior prosecutors and prosecutors subject to initial appointment be strengthened and that guidance and counselling on judicial ethics be made available to all prosecutors.

⁴⁷ See *supra* (note 44), paras. 28-42.

however are not included in the budget estimates for the period of 2023-2025. This, in the opinion of the Venice Commission, deserves to be given additional consideration.

42. These elements speak in favour of keeping the anti-corruption training function within the NIJ. On the other hand, the Inspectorate is vested with constitutional authority to “carry out checks on the integrity and conflict of interest” (Article 132a (6)). This function of the Inspectorate may explain the proposed amendment, even though there is no explicit mentioning of the function to organize or deliver trainings on such matters. After all, a specific operational function is distinct from a function of instruction or education.

43. In sum, the Venice Commission does not see very convincing reasons why the power to organize and conduct respective trainings should be transferred to the Inspectorate in addition to the NIJ.

IV. Conclusion

44. By letter of 11 August 2022, the Minister of Justice of Bulgaria, Mr Krum Zarkov, requested an opinion of the Venice Commission on the draft amendments to the Judicial System Act adding some new powers to the mandate of the Inspectorate to the Supreme Judicial Council.

45. The Venice Commission welcomes the intention of the authorities to strengthen the integrity of the judiciary. However, the Commission would like to stress again the importance of sequencing reforms. Before giving new powers to the Inspectorate, it is necessary to review its institutional model and define more clearly the scope of its mandate. In particular it is necessary to delimit more clearly the powers of the Inspectorate and the Supreme Judicial Council itself, in order to ensure that the Inspectorate does not encroach on the constitutionally defined mandate of the Supreme Judicial Council in the matters of discipline and judicial appointments.

46. The Venice Commission recommends the Bulgarian legislator to start with revisiting the method of election and appointment of the Inspector General and of the Inspectors. It is necessary to ensure that the judiciary, through the Supreme Judicial Council, be involved in this process by nominating candidates and by deciding on the accountability of the inspectors.

47. Once this is done, the legislator may consider entrusting the Inspectorate with additional functions, as proposed in the draft amendments, having in mind the following recommendations:

- the Judicial Supreme Act should describe at least some main substantive principles of ethical behaviour of judges, prosecutors and investigators, while more detailed and precise rules could be developed in the two respective Codes of Ethical Conduct (for judges and for the prosecutors and investigators);
- the power to make proposals to amend and supplement the Codes of Ethical Conduct should not be limited to the Inspectorate to the Supreme Judicial Council only. Other bodies and institutions of judicial governance – in particular the Committees on Professional Ethics of the respective Chambers of the Supreme Judicial Council should be able to suggest changes to the Codes;
- The deadline for adoption by the relevant Chambers of the Supreme Judicial Council of the two Codes of Ethical Conduct should be extended in order to ensure meaningful discussions about the provisions of those Codes;
- The authorities are invited to reconsider the practical expediency of entrusting the Inspectorate with the function of organizing and conducting anti-corruption trainings, as well as trainings on integrity, independence and conflict of interest.

48. The Venice Commission remains at the disposal of the Bulgarian authorities for further assistance in this matter.