

# The Inspectorate to the Supreme Judicial Council as Body of the Judiciary with Control Functions in Bulgaria

Assistant professor **Diana DIMITROVA**<sup>1</sup>

## Abstract

The article examines the Inspectorate to the Supreme Judicial Council as body of the judiciary with control functions, namely to inspect the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of their duties. The aim of the research is to analyze the control functions and their importance for assuring the access to justice and effective judicial protection of the rights and legitimate interests of the citizens. In order to achieve the set aim the author implements following tasks: to analyze the national legal framework related to the establishment of the Inspectorate to the SJC and its powers, to identify some problems in relation to the functions of the Inspectorate to the SJC and to make conclusions and summaries about the applicable legal framework. Comparative legal, dialectical, critical-analytical methods are used as the methodological basis of the study. The research was developed in the framework of the author's participation in the national scientific project NPI №57 of 2022 on the topic "Legal Relations and Status of Persons in the Judiciary in the Conditions of Digitalization".

**Keywords:** Inspectorate to the Supreme Judicial Council, control functions, inspect the operation of judicial authorities, independence of the judges, jurors, prosecutors and investigating magistrates

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## Article History

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## 1. Introduction

One of the fundamental values on which the European Union is built is the rule of law. According to the European Semester – thematic factsheet – Effective justice systems the key elements of an "effective judiciary" are quality, independence and efficiency. The existence of effective judicial control is essential for the rule of law. The monitoring and evaluation of the work of the courts has been identified as one of the factors helping to improve the quality of justice systems. In Bulgaria, the Inspectorate of the SJC inspects the activities of the judiciary without affecting the independence of judges, juries, prosecutors and investigators in the performance of their functions. The researched problems are undeniably topical. On the one hand, the ongoing judicial reform is one of the challenges in Bulgaria. Officially, the initiative for its implementation was launched in 1999 and since then it has been one of the topical issues in our public life. On the other hand, the term of office of the members of the Inspectorate expired in 2020 and no new members have been elected by the National Assembly so far. The Plenum of the Supreme Administrative Court of the Republic of Bulgaria has referred to the Constitutional Court of the Republic of Bulgaria the question whether the powers of the Chief Inspector and the Inspectors of the Inspectorate to the Supreme Judicial Council are terminated or whether they should continue to perform their functions until the National Assembly elects a new Chief Inspector and Inspectors, respectively. Clarification has also been sought as to whether it is constitutionally permissible to suspend indefinite time the activities of the Inspectorate of the Supreme Judicial Council due to the expiry of the mandate of the Chief Inspector and Inspectors and the failure of the National Assembly to elect new ones. A reference for a preliminary ruling has also been sent to the Court of Justice of the European Union (CJEU). The issue has not yet been

<sup>1</sup> Diana Dimitrova - University of Economics – Varna, Bulgaria, dianadim@ue-varna.bg, <https://orcid.org/0000-0001-5809-2612>.

resolved.

The article examines the Inspectorate to the Supreme Judicial Council as body of the judiciary with control functions, namely to inspect the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of their duties. The aim of the research is to analyze the control functions and their importance for assuring the access to justice and effective judicial protection of the rights and legitimate interests of the citizens. In order to achieve the set aim the author implements following tasks:

- 1) to analyze the national legal framework related to the establishment of the Inspectorate to the SJC and its powers;
- 2) to identify some problems in relation to the functions of the Inspectorate to the SJC;
- 3) to make conclusions and summaries about the applicable legal framework.

Comparative legal, dialectical, critical-analytical methods are used as the methodological basis of the study. The research was developed in the framework of the author's participation in the national scientific project NPI №57 of 2022 on the topic "Legal Relations and Status of Persons in the Judiciary in the Conditions of Digitalization".

The material is in compliance with the legislation in force as of 1 November 2024.

## 2. Constitution of the Inspectorate to the Supreme Judicial Council (SJC)

The national legal framework concerning the Inspectorate of the Supreme Judicial Council (SJC) is first and foremost in the Constitution of the Republic of Bulgaria<sup>2</sup>, detailed in the Judicial System Act (JSA)<sup>3</sup> and other provisions (e.g. rules and regulations for the activities of the Inspectorate issued by it). It was established when the Constitution was amended in 2007, in the process of our country's accession to the European Union and the fulfilment of the requirements for membership, with a view to improving the functioning of the judiciary. Public expectations of the judiciary are that it should be the foundation of the rule of law, protect the fundamental rights and freedoms of citizens and legal entities, and be a major factor in the fight against crime, especially organized crime and corruption<sup>4</sup>. The Inspectorate was established as a body with a high degree of independence to inspect the activities of all judicial bodies without affecting the essence of their administration of justice. Until its establishment, the Minister of Justice and the Judicial Inspectorate attached to it had the power to inspect the organisation of the initiation, course and accomplishment of the court cases (Article 35b of the Judicial System Act, repealed in 2007).

In order to create a body with a high degree of independence, a completely new Article 132a has been adopted in the Constitution, according to which an Inspectorate shall be established to the Supreme Judicial Council, which shall inspect the activities of the judiciary bodies without affecting the independence of judges, jurors, prosecutors and investigators in the performance of their functions. The independence of the judiciary does not preclude accountability, since any body entrusted with functions to exercise the state authority owes a duty of accountability. Providing for a body with control functions such as the Inspectorate at constitutional level is consistent with the objective of "strengthening accountability in order to give greater legitimacy to independence"<sup>5</sup>.

Pursuant to Art. 132a, para. 1 of the Constitution, the Inspectorate shall consist of a Chief Inspector and ten Inspectors. They shall be elected by the National Assembly for a term of five years for the Chief Inspector and four years for the Inspectors and may be re-elected to the same office for only one further term after the latest amendments of 2023<sup>6</sup>. The additional restriction introduced by § 19 of the Constitutional Amendment Act in Article 132a, paragraph 2, sentence 2 - that they may not hold the positions of judge, prosecutor and investigator for two years and may retire in the order

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<sup>2</sup> State Gazette n. 56 of 13.07.1991

<sup>3</sup> State Gazette n. 64 of 07.08.2007

<sup>4</sup> Ahmedi, Blerta, and Stefani Stojchevska. (March 2024). "The Challenges of European Union Integration: The Parallel between Human Rights and Corruption Perceptions." *Juridical Tribune - Review of Comparative and International Law* 14 (1): 130 - 146.

<sup>5</sup> Verbatim Report, 40<sup>th</sup> National Assembly, 16<sup>th</sup> Session, 21 November 2006.

<sup>6</sup> SG n. 106 of 22.12.2023.

determined by law after the end of the term of office - has been declared unconstitutional<sup>7</sup>. According to the previous wording, they could be re-elected, but not for two consecutive terms, in order not to create ties between persons exercising this activity. The purpose of the difference in the terms of office is to ensure that the election of the Chief Inspector and the Inspectors do not coincide, and that the election of the Inspectors is a prerequisite for election by different chambers of the National Assembly.

The election shall be made by a qualified majority of two thirds of the Members of the National Assembly<sup>8</sup>, in order to mitigate the risk of politicisation of appointments and to ensure as much independence as possible by electing members of the Inspectorate who are not politically dependent on the ruling majority but professionally recognised individuals. They take up their duties on the day on which the term of office of the persons they replace expires, thus realising one of the fundamental principles of the functioning of the administration - continuity in its activities.

The conditions and procedure for their election and dismissal, as well as the requirements to them are regulated in detail in the Judicial System Act (JSA). They must be jurists of high professional and moral qualities (Article 42, paragraph 1 of the JSA). The requirements for Chief inspector are: the person must have at least 15 years of legal practice, of which at least 10 years as a judge in a district or appellate court, in a Supreme Court of Cassation or Supreme Administrative Court, as a prosecutor in a district or appellate prosecutor's authority, in a Supreme Prosecution Authority of Cassation or Supreme Administrative Prosecution Authority or as an investigator in the National Investigation Service or in a district investigation department. Inspectors are required to have at least 12 years of legal practice, and for a certain number of inspectors, 8 years/5 years of this practice should be in a specific field, thus ensuring practice in different judicial authorities and qualification in different areas of law (Article 42 paragraph 3 of the JSA). These requirements are aimed at appointing judges, prosecutors and investigators with a great practical experience as a guarantee of better knowledge of the specifics of the particular activity.

Dismissal before the expiry of the term of office shall be in case of: resignation; entry into force of a judicial act for a criminal offence; permanent factual inability to perform their duties for more than one year; deprivation of the right to exercise a legal profession or activity; serious misconduct or systematic failure to perform the official duties, as well as actions damaging the prestige of the judiciary; incompatibility; entry into force of a decision establishing a conflict of interest.

### **3. Powers of the Inspectorate to the Supreme Judicial Council**

The powers of the Inspectorate are regulated both in the Constitution and in the JSA. Pursuant to Article 132a paragraph 6 of the Constitution, the Inspectorate "shall inspect the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of their duties". In the exercise of their functions, the Chief Inspector and inspectors are independent and shall obey only to the law. The Inspectorate shall carry out inspections:

- the integrity and the conflicts of interest of judges, prosecutors and investigating magistrates;
- their property declarations;
- for ascertaining any actions damaging the prestige of the judiciary;
- violating the independence of judges, prosecutors and investigating magistrates.

These additional powers were granted in 2015 under the Fifth Amendment to the Constitution<sup>9</sup>, aiming at strengthening the Inspectorate by giving it functions directed towards ensuring accountability and integrity in the judiciary. This is expected to reinforce the independence of the judiciary, given that the Inspectorate is an internal body of the judiciary and will now carry out integrity and conflict of interest inspections (previously carried out by the executive or the

<sup>7</sup> Decision no. 13 of 26 JULY 2024. Constitutional case no. 1 of 2024.

<sup>8</sup> The qualified majority was introduced with the amendments of the Constitution in 2015, SG n.100 of 18.12.2015.

<sup>9</sup> SG n. 100 of 18.12.2015.

legislature). This should also lead to a more transparent and more efficient judiciary, which in turn will increase public confidence in it<sup>10</sup>.

Pursuant to the JSA (Article 40), the activity of the Inspectorate is based on the principles of legality, objectivity and publicity. The powers of the Inspectorate are regulated in detail in Article 54 of the JSA in the following areas:

- control over activities of the judiciary;
- signaling the competent bodies;
- proposals for imposing of disciplinary sanctions;
- offering of public information;
- organizational and financial;
- examining applications against violations of the right to have cases heard and determined within a reasonable time;
- carry out checks for integrity and conflict of interests of judges, prosecutors and investigators, of their property declarations, as well as for establishing activities damaging the prestige of the judiciary, and such related to the violation of the independence of judges, prosecutors and investigators

The Inspectorate shall carry out its activities through inspections provided for in its annual programme or on signals, acting *ex officio*, at the initiative of citizens, legal entities or state bodies, including judges, prosecutors and investigators. In carrying out its activities, it shall be assisted by an administration, which shall be qualified and trained<sup>11</sup>.

The Inspectorate shall exercise control over activities in the judiciary - it shall check the organization of the administrative activities of the courts, prosecutors' offices and investigative bodies; it shall check the organization of the initiation and course of judicial, prosecutorial and investigative cases, as well as the completion of cases within the established deadlines; it shall analyze and summarize the cases that have been closed by a final judicial act, as well as the closed files and cases of the prosecutors and investigators, adopting a procedure for regular reporting and publication of the results of the analysis and summary of the closed cases. A distinction should be made between the power to review complaints against judges and the power to review their decisions. The Inspectorate may not affect the independence of magistrates in the exercise of their functions. As regards the administration of justice, magistrates may be subject to review only by way of instance control by the superior court, which may review the correctness and lawfulness of the judicial acts rendered<sup>12</sup>. The Inspectorate is empowered to check the organisation and course of cases and, in the event of any irregularities in the performance of those activities, to report them to the administrative head of the relevant judicial authority and to the SJC.

Related to the control over activities in the judiciary are the powers of the Inspectorate regarding the disciplinary responsibility of magistrates (Article 54 item 5 and 6 of the JSA), namely: in case of violations detected in the course of activities related to the control, it has the possibility to report to the administrative head of the relevant judicial authority and the relevant collegium of the SJC or to make proposals for imposing disciplinary sanctions on judges, prosecutors, investigators and administrative heads of judicial authorities. In the one case, the right to decide whether and what action to take on disciplinary action is left to the relevant authority, while in the other case, the Inspectorate submits a proposal to open a disciplinary case. It is not, however, the body which issues the act initiating disciplinary proceedings and imposing a disciplinary sanction.

The Inspectorate also examines applications against violation of the right to hear and decide cases within a reasonable time (Article 54, paragraph 1, item 9 of the JSA). Thus, a national remedy has been established enabling the persons affected to obtain compensation for the damage caused to them by a violation of a right under the Convention for the Protection of Human Rights and

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<sup>10</sup> Verbatim Report, 43<sup>th</sup> National Assembly, 114 h, 23 September 2015.

<sup>11</sup> Andreeva, Andriyana, and Darina Dimitrova. 2023. "Contemporary Aspects of Judicial Administration Training in the Context of the Digitalization of the Educational Process." *Strategies for Policy in Science and Education* 31 (2): 136-153. doi: <https://doi.org/10.53656/str2023-2-2-con>.

<sup>12</sup> Ghigheci, Cristinel. (June 2024). "Legality and Equity in Judicial Activity." *Juridical Tribune – Review of Comparative and International Law* 14 (2): 286 – 300.

Fundamental Freedoms committed by the State or its organs and officials. The establishment of a mechanism to compensate citizens and legal persons in cases of violation of their right to have their cases heard and decided within a reasonable time is in line with the Recommendation of the Committee of Ministers to Member States on effective remedies for excessive length of proceedings. According to it, governments should ensure, on the one hand, that measures are in place to expedite proceedings in danger of becoming excessively protracted and that effective remedies exist before the national authorities for all defensible claims of violation of the right to a trial within a reasonable time. On the other hand, to ensure that requests for expediting proceedings or for compensation are dealt with promptly by the competent authority and that they constitute an effective, adequate and accessible remedy. The introduction of the provisions in a new Chapter 3 "a" of the JSA has created a national more easy order for redress. Evidence is collected *ex officio* without the involvement of the complainant, no state fee is payable and the procedure is concluded within six months by a conciliation report on the basis of which prompt payment of compensation is guaranteed.

The Inspectorate also carries out checks on the integrity and conflict of interest of judges, prosecutors and investigators, checks on their property declarations, as well as for the detection of actions that damage the prestige of the judiciary and those related to the violation of the independence of judges, prosecutors and investigators (Article 132a paragraph 6 of the Constitution). Completely new Sections I "a" and I "b" have also been created in Chapter Nine of the JSA on "Checks on the property declarations of judges, prosecutors and investigators" and "Checks on integrity and conflict of interests and on the detection of acts damaging the prestige of the judiciary and checks relating to violations of the independence of judges, prosecutors and investigators". In connection with the checks on declarations, the Inspectorate has the power to:

- Verification of the authenticity of the declared facts, in connection with which it has the right to direct access to the electronic databases and other information arrays maintained by the state and municipal authorities, the judicial authorities and other institutions before which the declared facts are subject to registration, declaration or certification, as well as the right to request additional information from the state authorities, local self-government and local administration bodies, the judicial authorities and other institutions before which the declared facts are subject to registration, declaration or certification (art. 175 e of the JSA);

- Sending the report to the competent authorities for check of the economic status of the person in case of discrepancy between the declared and established facts in the amount of not less than BGN 20 000, after the expiry of the deadline for the correction of incompleteness and errors;

- Notifying the competent authorities to take appropriate action in the event of a non-compliance report and further inspections.

The verification of declarations ends with a compliance report (where no difference has been found between the facts declared and the information received of up to BGN 10 000) or a non-compliance report.

The conflict of interest check should establish sufficient evidence of a private interest in the performance of the person's specific official functions. The determination of whether the person accepts material or immaterial benefits outside the framework of the law, whatever their nature, which may call into question his independence and impartiality is subject to the integrity check. The check of independence of a judge, prosecutor or investigator is whether, in the performance of his or her duties, the person exercises or is subject to pressure, threats, stimulus, direct or indirect influences from public authority representatives or private influence, internal or external to the judiciary. In the case of acts damaging to the prestige of the judiciary, it shall be ascertained whether the conduct of the person is contrary to the established public notions of decency and whether his or her actions compromise the honour of the judge, prosecutor or investigator in the profession and in society. Inspections shall be carried out on a signal, at the request of a magistrate or *ex officio* by the Inspectorate, and upon receipt of a judicial act revoked for violation of the legal provisions regulating the grounds for challenging a judge, prosecutor or investigator in handling lawsuits and files.

Each of the above-mentioned inspections ends with the preparation of a reasoned report, which indicates the actions carried out during the inspection, the facts and circumstances found. That

report shall contain a specific statement as to whether or not there is sufficient evidence of a conflict of interest or of acts or omissions contrary to the principles of integrity, damaging of the prestige of the judiciary or related to the violation of the independence of judges, prosecutors and investigators. This report shall be submitted to the Inspectorate of the Supreme Judicial Council for consideration. It shall adopt a decision to terminate the investigation in the absence of sufficient evidence or to submit a proposal to impose a disciplinary sanction or to establish a conflict of interest to the relevant collegium of the Supreme Judicial Council when sufficient evidence is available.

The extension of the powers secures the status of the Inspectorate to the SJC as an independent body of the judiciary<sup>13</sup>. Its powers of control over the activities, property and integrity of judges, prosecutors and investigators, as well as their independence, are clearly outlined. This legislative decision, whereby the declaration and verification passes to a judicial authority rather than, as in the previous legislative decision, to authorities outside the judiciary, is to be evaluated positively. In this way, a mechanism has been introduced for internal control by the judiciary over the independence and impartiality of magistrates<sup>14</sup>, their professionalism, motivation, responsible attitude, accountability in compliance with the ethical norms. The Inspectorate shall summarise annually good and bad practices in terms of compliance with ethical rules in accordance with relevant European and international standards in relation to integrity and conflict of interest checks of judges, prosecutors and investigators, of their property declarations, as well as for the identification of actions that damage the prestige of the judiciary and are related to the violation of the independence of judges, prosecutors and investigators. The information shall be provided to the colleges of the Supreme Judicial Council. It may make proposals to the relevant collegium for amending and supplementing the Code of Ethical Conduct for Bulgarian Judges and the Code of Ethical Conduct for Bulgarian Prosecutors and Investigators, respectively. These powers allow for the improvement of the provisions, and in this way to the improvement of the functioning of the judiciary, which should lead to the strengthening and consolidation of the authority of the Bulgarian magistrates and to the increase of public confidence in them.

The Inspectorate submits an annual report on its activities to the SJC and provides public information on them, is obliged to prepare an annual programme of planned inspections and to publish the annual report on its activities on its website. This publicity makes it possible to hold magistrates to account without interfering with their internal conviction and their activities. The public disclosure of information enables citizens and legal entities to become aware of these activities and to be able to propose solutions for their better functioning.

#### **4. Problems related to the functions of the Inspectorate to the Supreme Judicial Council**

There are several problems that should be noted in relation to the functions of the Inspectorate. First of all is the expiry of the term of office of the inspectors, respectively the non-election of new ones by the National Assembly. In this connection, the Constitutional Court of the Republic of Bulgaria has been referred by the Plenum of the Supreme Administrative Court of the Republic of Bulgaria with two questions:

1. „Are the powers of the Chief Inspector and the Inspectors of the Inspectorate of the Supreme Judicial Council terminated upon the expiry of their term of office, or do they continue to perform their functions until the National Assembly elects a new Chief Inspector or Inspectors, respectively?“

2. „Is it constitutionally permissible to suspend for indefinite time the activities of the Inspectorate of the Supreme Judicial Council due to the expiration of the mandate of the Chief

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<sup>13</sup> Ortiz, Pablo Jose Castillo. 2017. “Councils of the Judiciary and Judges' Perceptions of Respect to Their Independence in Europe.” *Hague Journal on the Rule of Law* 9 (2, Special Issue SI): 315 - 336. doi:<https://doi.org/10.1007/s40803-017-0061-2>.

<sup>14</sup> Llano, Arjana. 2013. “Independence of the judiciary.” *Juridical Tribune-Tribuna Juridica* 3 (2): 109 - 115. Murillo de la Cueva, Pablo Lucas. 2017. “The Independence and Government of the Judiciary. A constitutional debate.” *Teoria Y Realidad Constitucional* 40: 351 - 368; Richmond, Baroness Hale. 2023. “The independence of the judiciary and some of its enemies.” *University of Toronto Law Journal* 73 (Supplement S, Special Issue SI): 140 - 151. doi: <https://doi.org/10.3138/utlj-2023-0063>; Kondratova, Iryna, and Tetiana Korotenko. 2020. “Towards Modern Challenges in Financing the Judiciary: Between Independence and Autonomy.” *Access to Justice in Eastern Europe* (Issue 2-3, Special Issue SI): 134 - 147. doi: <https://doi.org/10.33327/AJEE-18-3.2-3-a000030>.

Inspector and the Inspectors and the failure to elect new ones by the National Assembly?”

In Decision № 12 of 27 September 2022, (SG, n. 78 of 30.09.2022) the Constitutional Court has pronounced, that:

1. „Upon the expiry of the term for which they were elected, the Chief Inspector and the Inspectors of the Inspectorate of the Supreme Judicial Council shall perform their functions until the National Assembly elects an Chief Inspector or Inspectors, respectively.“

2. „It is constitutionally unacceptable to automatically suspend for indefinite time the activities of the Inspectorate of the Supreme Judicial Council due to the expiration of the term of office of the Chief Inspector and the Inspectors and the failure of the National Assembly to elect a new composition of the Inspectorate to ensure its functioning in accordance with the constitutional prescriptions. Parliament's discretionary power is limited and the reverse undermines the democratic order under the rule of law, which is constitutionally established by the will of the sovereign as an element of the fundamental structure of the Basic Law.“

The problem is that from 2020 the National Assembly does not elect new inspectors, and this is too long a period to perform functions until the election of a new Chief Inspector, respectively inspectors. This threatens legal certainty. The validity of many acts of the Inspectorate for the period from the expiry of the mandate of the Chief Inspector and inspectors until now, and in the future, is being called into question. There is no legal provision on the possibility of extending the mandate, and no constitutional or statutory basis for appointing a temporary incumbent. There are no provisions for situations in which the mandate of the Chief Inspector and the inspectors of the Inspectorate has expired, but the National Assembly, which should constitute the new composition of this permanent body, has not fulfilled its constitutional obligations to elect its members. The relations are regulated by constitutional norms in the first place, which actually have supremacy over all other norms, but it seems to lack a mechanism for making them viable in the practice<sup>15</sup>. In this case, a body of state power established by the Constitution cannot function (Inspectorate) because another body of state (the National Assembly) has not fulfilled its constitutional obligations. Such a situation was not envisaged by either the constitutional or ordinary legislature.

The question of the expired mandate is also before the CJEU - Joined Cases C-313/23, C-316/23 and C-332/23 "Inspectorate of the Supreme Judicial Council" on a request for a preliminary ruling from the Sofia Regional Court, and there is no decision yet, but there is a conclusion of the Advocate General Priit Pikamäe, submitted on 4 October 2024. The case provides the Court of Justice with the opportunity to rule for the first time on the compatibility with Article 19 TEU of a national rule which allows members of a judicial inspection body with powers in the field of disciplinary proceedings against judges and prosecutors to continue to perform their functions de facto and indefinitely beyond the statutory term of their mandate. The referring court, the Regional Court of Sofia, wishes to establish whether, in the light of European Union law, the continuation of the mandates of those members may prejudice the independence of that body, in so far as it is empowered to bring disciplinary proceedings against judges.

If so, this Court would wish to ascertain the criteria for determining whether such an extension is permissible. According to the Advocate General's conclusion “the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, must be interpreted as precluding legislation, as interpreted by national case-law, which authorises members of a body who are elected by Parliament for terms of office of a predetermined duration, which may not be renewed consecutively, and who are empowered to scrutinise the activities and integrity of judges and public prosecutors and to propose the initiation of disciplinary proceedings against them, de facto to continue to exercise their functions indefinitely after their term of office has expired, without efforts being made in the short term to break the deadlock in electing new members of that body, where that legislation has not been designed in such a way that there can be no reasonable doubt, in the minds of individuals, as regards the use of the powers and functions of that body as an instrument to exert

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<sup>15</sup> Sinani, Blerton. 2024. “Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World.” *Juridical Tribune-Tribuna Juridica* 3 (2): 109 - 115.

pressure on, or political control over, the activity of those judges and public prosecutors.”. With the amendment to the constitutional provisions, the term of office of the Chief Inspector and Inspectors may be renewed consecutively, which has not been considered by the Advocate General. However, this should not change his opinion on the issue, since even with the possibility of successive renewal, such indefinite extension of powers could be seen as an instrument for pressure and political control over the activities of judges.

In this regard, the national legislator should provide for such measures to unblock the process of renewal of the Inspectorate, ensuring that its powers and functions are not used as an instrument to pressure the activities of judges and prosecutors. Consideration could also be given to the Venice Commission's recommendation that the power to appoint the Chief Inspector and inspectors should pass to a neutral entity, such as general assemblies of magistrates, and to avoiding the risk of political influence, in particular by involving the judiciary in the selection of its members. Other recommendations of the Venice Commission that could be taken into account are the refinement of the legal framework on the conduct of inspections and the powers of the Inspectorate to avoid overlapping with the powers of the SJC, the subjecting of the investigative powers of inspectors to control by an independent body (such as the SJC) so that they are not unlimited, as well as the need for a framework regarding the activities of this body given the nature and scope of its tasks and powers.

The conclusion of the Commission Staff Working Document 2024 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria is that some progress has been made, but it is recommended to work on the draft legislative amendments aimed at improving the functioning of the Inspectorate of the Supreme Judicial Council. The draft of a new Judiciary System Act was developed and published for preliminary consultations on 25 March 2024. It has not yet been submitted to the National Assembly. It provides for a change in the procedure for appointing the Chief Inspector and inspectors to address concerns about its functioning and the risk of political influence. In line with the recommendations in the 2022 and 2023 reports on the rule of law, nominations for the Chief Inspector and Inspectors are made not only by MPs, but also by the general assemblies of the Supreme Court of Cassation and the Supreme Administrative Court, as well as the general assemblies of prosecutors from the Supreme Prosecutor's Authority for Cassation and investigators from the National Investigation Service. It is proposed that more than half of the members of the Inspectorate be elected from among those proposed by the judiciary.

Several factors are influencing the amendment process: first, the Constitutional Court's decision declaring unconstitutional some of the amendments to the 2023 Constitution, including the SJC. Second: the decision of the Constitutional Court to extend the mandate of the Chief Inspector and the Inspectors until new ones are elected (given that there was a similar problem in previous periods, where the Chief Inspector continued his activities for 2 years after the expiry of the mandate). It raises the question whether the behaviour of the dysfunctional political body (the National Assembly) is not aimed at retaining in office persons with compatible political preferences and avoiding the renewal of the Inspectorate on the basis of a more open way of selecting candidates<sup>16</sup>. Third: new elections are held in October 2024, so the National Assembly has not yet begun its work.

The decision of the CJEU should be awaited, but the conclusion of the Advocate General may lead to the conclusion that the independence of the Inspectorate may have been compromised. Which means that it is expected that swift legislative measures shall be taken to amend the Constitution and the Judiciary System Act to take into account the recommendations made.

## 5. Conclusion

The establishment of the body with control functions over the activity of the judiciary – the Inspectorate - on Constitutional level in Bulgaria shows that the legislator understands its importance.

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<sup>16</sup> Asenov, Simeon. 2024. „Influence of the Political Crisis on Constitutional Justice in Bulgaria.“ *Challenges in front of the legal regulation in Bulgaria*. Sofia: Publisher complex UNWE: 285-299.



Its establishing to the SJC was a good legislative decision, creating it as a body with a high degree of independence within the judicial authority. However, the implementing of the regulations into the practice led to the problems mentioned above – not electing new inspectors and lack of legal provisions for extending the term of office and for appointing a temporary incumbent. According to the Constitutional court's decision it shall continue performing its functions, but also European regulations shall be considered (for example compatibility with Article 19 TEU), as Bulgaria is a member of the EU. The situation requires quick legislative amendments considering following:

- In this case the regulation of the Inspectorate on constitutional level might be a problem. A constitutional amendment shall require a majority of three quarters of the votes of all Members of the National Assembly in three ballots on three different days, while a majority of more than the half of the present members would be sufficient for the amendment of a law;

- The National Assembly failed to perform its constitutional obligation to elect new inspectors. It is reasonable to give consideration to the Venice Commission's recommendation that the power to appoint the Chief Inspector and inspectors should pass to a neutral entity, such as general assemblies of magistrates, and to avoiding the risk of political influence, in particular by involving the judiciary in the selection of its members;

- It is advisable to regulate explicitly the possibility for extending the term or for appointing a temporary incumbent;

- Adopting the new legislative frame to consider not only the national regulations, but also the European regulations and recommendations and good practice from other countries.

The examination of the Inspectorate to the Supreme Judicial Council as body of the judiciary with control functions, namely to inspect the operation of the judicial authorities has importance on the one hand for the doctrine by analyzing the relevant legal framework, and on the other it might be of interest for the competent authorities drawing their attention to the problems in the implementation of the legal regulation mentioned above with view of its future amendment and improvement.

The independence of the judiciary is one of the most important values not only on national, but also on European and international level. The independence and impartiality are guaranteed internationally by the European Convention on Human Rights as well as by the Universal Declaration of Human Rights and other European and international instruments. The existence of effective judicial control is essential for the rule of law because the independence of the judiciary does not preclude accountability. It is of importance to find a good balance, assuring that the control over the activities of the judiciary shall be exercised by an independent body, regulated with clear and strict rules and without affecting the independence of judges, jurors, prosecutors and investigating magistrates in the performance of their duties.

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