**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE
IN COOPERATION WITH ACA-EUROPE**

***ETHICS AND RECRUITMENT
OF MEMBERS OF THE SUPREME ADMINSTRATIVE COURTS AND COUNCILS OF STATE***

Questionnaire

REPUBLIC OF BULGARIA

The Versailles seminar will address two related topics: ethics and recruitment.

The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.

The second topic will be addressed on Friday afternoon during the third round table.

Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.

I Ethics: Legal and institutional framework

1.1. General framework

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☐in the Constitution

☒in the law

Co-funded by
the European Union

☒in a regulatory text

☒in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

In Bulgaria public officials, who work in a public sector, follow the rules of the Code of Conduct for Public Servants (CCPS), published in SG. 33 / 7.04.2020. The Code is built on the basis of the already established legal framework, concerning the rights and obligations of the public servants (see for example the Law for the administration). CCPS regulates the ethical aspects of public servant's behavior. The Code has a statement of ethical principles, such as equity, impartiality, loyalty, confidentiality, etc. Also, one of the main objectives of the Code is to determine the standards of the integrity and conduct of the public administration employees.

Ordinary national law has specific ethic provisions, related to different persons/public officials and institutions.

For example, pursuant to Article 121, para. 1 of the Lawyers Act (amend. and suppl. SG. 31/7 Apr. 2023), the Supreme Bar Council adopts the Lawyer's Code of Ethics (amend. and suppl. SG. 31/7 Apr. 2023). The main ethical rules concern about the independence of a lawyer, trust and integrity, confidentiality, behavior and relations with clients.

The Act on the defense and armed forces of the Republic of Bulgaria states in Article 178, para.3 (new- SG 98/16), that in fulfilment of official duties and in their social life, the military servicemen are obliged to observe the Ethic Code for behavior of military servicemen, confirmed by the Minister of Defense.

Ethic rules are applicable for military officials and Ethic Charter of behavior is confirmed by the minister of Interior (Article 150 of the Ministry of Interior act.).

In Bulgaria, the specific charters of ethics often are a source of professional or organizational identity for individuals and are "framework" of the specific ethical rules, because there are limits to what laws can do.

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

☒Yes

☐No

If yes, they are enshrined (please check all applicable answers):

☐in the Constitution

☒in the law

☒in a regulatory text

☒in a Charter of Ethics or a Collection of Ethical Principles

☐other

Please explain if necessary:

In Bulgaria, the Supreme Judicial Council, through its Commission for Attestation/Appraisal and Competitions at the Judges College/Chamber of the Supreme Judicial Council and the Commission for Attestation/Appraisal and Competitions at the Prosecutorial College/Chamber, is the legal body that performs an objective assessment of the professional, business and moral qualities of magistrates.

On December 20, 2023, the National Assembly of Bulgaria adopted the Law on Amendments and Additions to the Constitution of the Republic of Bulgaria. This law concerns about the changes to the Constitution of Bulgaria, which relate to the structure of the national judiciary, the division of the Supreme Judicial Council into two new separate bodies: Supreme Judicial Council and Supreme Prosecutors Council.

Article 129 (Amend. - SG 106/23) of the Constitution states that judges are appointed, promoted, and dismissed from office by the Supreme Judicial Council.

According to Article 130b. (New - SG 100/15, amend. - SG 106/23) of the Constitution the Supreme Judicial Council and the Supreme Prosecutors Council shall exercise their powers independently and through a General Assembly.

It is stated in para. 23 of the Transitional and concluding provisions of the Constitution (Amend. - SG 106/23), that elected members of the Supreme Judicial Council and the Supreme Prosecutors Council will be elected within three months after the entry into force of the act referring to the application of Art. 129 - Art. 130b. Until the election of a Supreme Judicial Council and of a Supreme Prosecutors Council, the former Supreme Judicial College and the Prosecutors College of the existing Supreme Judicial Council shall perform the functions of Supreme Judicial Council, respectively of Supreme Prosecutors Council under this Constitution, with the exception of the powers under Art. 130b, Para. 2, item 2 and Para. 3, item 2.

The ethical obligations of the members of the present and still exciting Supreme Judicial Council are set out in Judiciary act and in the Code of ethical conduct for Bulgarian judges.

According to Article 18 of the Judiciary act, it is forbidden the elective members of the Supreme Judicial Council to be a national representative, mayor or municipal councillor to occupy a position in other state or municipal authorities; to exercise merchant activity or be a partner, a manager or participate in supervisory, management boards or boards of directors or in control boards of companies, cooperatives or non-profit legal persons exercising economic activity, except those of the professional associations of judges, prosecutors and investigators; to receive presents for exercising any activity under a contract or under official legal relations with a state or municipal organization, a company, cooperative, non-profit legal person, natural person or a sole entrepreneur, except for scientific or educational activity or for exercising copyright, and also for participation in international projects and projects financed by the European Union; to be a

member of political parties or coalitions, of organizations with political goals, carry out political activity, as well as be a member of organizations or exercise activities impairing their independence and etc.

The Code of ethical conduct for Bulgarian judges has been drafted in accordance with the Constitution of the Republic of Bulgaria, the Judiciary Act, the recommendations of the Committee of Ministers of the Council of Europe on the status of judges, prosecutors and investigating authorities, Opinion No. 3/2001 of the Consultative Council of European Judges, the Bangalore Principles on the Conduct of Judges of 2002, as well as all other national and international instruments regulating the activities of judges in the Republic of Bulgaria. The judges perform their duties, guided by the understanding of ethical conduct of judges, which is an important factor for building greater public confidence in the judiciary, for protecting human rights and upholding the rule of law, for preventing corruption in the judiciary.

1.2. Charter of Ethics

1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

☒Yes

☐No

If the answer is yes: On which date was this document adopted?

The Supreme Judicial Council as the supreme administrative and governing body of the judiciary in the Republic of Bulgaria, establishes the Code of ethical conduct for Bulgarian judges.

The Supreme Judicial Council is primarily responsible for the application of the rules of conduct promulgated therein in the official and non-official activities of judges.

The Code of Ethical Conduct is applicable to all judges, including the judges of the Supreme Administrative Court of the Republic of Bulgaria and members of the Colleges of the Supreme Judicial Council.

The Code was adopted in October 2023.

1.2.2. Is the adoption of this document an obligation for your institution?

☐Yes

☒No

Please explain if necessary:

The Code of ethical conduct for Bulgarian judges was adopted by the Supreme Judicial Council and it was its obligation.

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

☐Yes

☒No

If yes, please explain the legal and political context that led to the adoption of this text:

1.2.4. Who drafted this document?

☐A working group composed exclusively of members of your jurisdiction

☐A working group expanded to include outside persons

☐A working group involving associations of administrative judges

☒Other

Please explain if necessary:

With the amendments to the Judiciary act of 6 October 2023, the Supreme Judicial Council was explicitly vested with the authority to adopt separate codes of ethical conduct for judges and for the other magistrates (prosecutors and investigators) (Article 30, para. 23). According to the transitional provisions of that Judiciary act of 6 October 2023, the separate codes had to be adopted within short deadlines. Subsequently, on 24 October 2023, the Judicial Chamber of the Supreme Judicial Council adopted the Code of Ethical Conduct for Judges. The Code received formal approval from the Plenary Supreme Judicial Council on 30 October 2023. On 22 December 2023, the Bulgarian Parliament adopted amendments to the Constitution, which were assessed by the Venice Commission in October 2023.These amendments concerned, inter alia, the structural reform of the Supreme Judicial Council which was divided into two separate councils: the Supreme Judicial Council having competence over the

career of judges and the Supreme Prosecutorial Council with powers over the career of prosecutors and investigators.

The Judiciary act now is in the process of being amended to incorporate these recent constitutional amendments pertaining to institutional changes in the self-governing bodies of the judicial and prosecutorial systems.

1.2.5. Which authority signed and enacted this document?

☐The president of your institution

☐A collegiate body of your institution

☒Other

Please explain if necessary:

The Code of ethical conduct for Bulgarian Judges is adopted on the basis of Article 30, paragraph 2, item 23 of the Judiciary act by a decision of the Judicial Collegium of the Supreme Judicial Council, under Protocol No. 34/24.10.2023 and approved by a decision of the Plenum of the Supreme Judicial Council under Protocol No. 30/30.10.2023.

1.2.6. Has this document undergone one or more revisions?

☒Yes

☐No

Please explain the purpose of these revisions if necessary:

The Code was revised twice:

The Supreme Judicial Council under protocol No. 7/10.03.2004 adopted Rules for professional ethics of judges in Bulgaria, which were valid until 20.05.2009. According to the amendments introduced to JSA in 2009 (Article 30 §1 12), the Supreme Judicial Council "Endorse rules of professional ethics adopted by the professional organisations of judges, prosecutors and investigating magistrates".

The Supreme Judicial Council under protocol No. 21 of 20.05.2009 adopted Code of ethical behaviour of Bulgarian magistrates, amended by protocol No. 2 of 18.01.2011. The Code was valid until 30.10.2023.

The purpose of the changes, which relate to the ethic behaviour of the magistrates in Bulgaria, was to fulfil the outstanding recommendations of Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe, in regard to composition and functioning of the SJC including in the context of disciplinary proceedings, accountability and criminal liability mechanism for the Prosecutor General, etc.

1.2.7. What is the legal value of this document?

☒This document contains binding legal rules (hard law)

☒This document contains soft law standards

☐Other

Please explain if necessary:

According to the Bulgarian Judiciary act a violation of the Code constitutes one of the grounds for disciplinary liability: the Law provides that a disciplinary offence is an act or omission, including a violation of the Code of Ethical Conduct for Bulgarian Judges or the Code of Ethical Conduct for Bulgarian Prosecutors and Investigators, which undermines the prestige of the judiciary" (Article 307, para. 3(3)). Furthermore, the Code serves as a basis for assessing candidate judges. The Judiciary act provides that moral integrity and professional standing in compliance with the Code are an eligibility requirement for the appointment of judges (Article 162, para. 3). Additionally, the oral examination conducted for candidate judges must incorporate questions regarding the Code of Ethical Conduct (Article 184, para. 6).

Analysing the aforementioned articles, it can be said that the Code contains binding legal rules and a few soft law standards.

In this context, in October 2022 the Venice Commission advised the Bulgarian authorities to incorporate the main substantive principles of ethical behaviour of judges in the Judiciary act. Presently, this Judiciary act contains only certain rules on the ethical conduct of judges, for example, with regard to the conflict of interest, requirements of confidentiality, limitations on the freedom of speech, prohibition of giving legal advice.

1.2.8. Please attach this document to your response, if possible, in a French or English translation, in the form of an attached document or a web link.

The Code is accessible in English on the website of the Venice Commission: default.aspx (coe.int)

1.3. Scope of application of ethical rules:

1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

☒Yes

☐Partially

☐No

Please explain if necessary:

The Code of ethical conduct for Bulgarian judges is applicable to all judges, including those judges in the lower courts and members of the College of Judges of the Supreme Judicial Council.

1.3.2. To whom do these ethical rules apply?

☒To members of your institution who are active within it

☐To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

☐To resigning members

☐To retired members

☐To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

☒Other

Please explain if necessary:

The Code of ethical conduct for Bulgarian judges is applicable to all judges, including those judges in the lower courts and members of the College of Judges of the Supreme Judicial Council.

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

☐Yes

☐No

☒Not applicable

Please explain if necessary:

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

☐Yes

☐Partially

☒No

Please explain if necessary:

The Code of ethical conduct for Bulgarian judges is applicable to all judges, including those judges in the lower courts and members of the College of Judges of the Supreme Judicial Council.

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:

The Code of ethical conduct for Bulgarian judges is applicable to all judges, including those judges in the lower courts.

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

☒Yes

☐No

☐Partially

☐Not applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

The Code of ethical conduct for Bulgarian judges is applicable to all judges and the Code of ethical conduct for Bulgarian prosecutors is applicable to the prosecutors and to the investigators.

1.4. Relationship between ethical and disciplinary rules:

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

☒Yes

☐No

If not, please give an example:

See the answer of question 1.2.7. The Code is not directly integrated into the disciplinary system rules of the Judiciary act. In the proposed amendments to the Judiciary act, there are more clear draft rules for disciplinary liability.

1.5. Training on ethical rules:

Are members of your institution made aware of or trained in ethics?

☒Yes

☐No

If yes, how and how often?

The National Institute of Justice organizes training for magistrates and trainers on the topic "Judicial Ethics and Integrity". The National Institute of Justice establishes a Judicial Ethics Platform and offers many possibilities for training and obtaining information. The importance of ethics in preserving the independence and impartiality of the judiciary will also be presented through the lens of the relationship between the lawyer and the magistrates. The NIP's platform for judicial ethics unites not only magistrates, but also representatives of the bar, in whose section justice and independence should be established. The NIJ developed the idea and created a community called "Judicial ethics" within the framework of the Human Rights Forum by the project "Contemporary educational

environment for judges, prosecutors, investigators and other representatives of the professional community", implemented through the support from the program "Justice" by The Norwegian Financial Mechanism /NFM/ 2014-2021.

During the Norwegian Financial Mechanism /NFM/ 2014-2021 in 2022, a working group of 10 magistrates in cooperation with the Supreme Judicial Council, prepared an Analysis "Actions to ensure the improvement of the Bulgarian judicial system in connection with the procedures for the appointment, selection and career development of magistrates".The analysis contains a historical overview of competition procedures in the legal system of the Republic of Bulgaria following the adoption of the Bulgarian Constitution of 1991; a case-law analysis of the control tools ensuring lawful competitive procedures; basic principles and criteria for determining the efficiency and trust in the judicial systems of the member states of the European Union (EU) and the European Economic Area (EEA) and a comparative study of various legal instruments in Norway and the Netherlands and their ethical rules for magistrates. The competition procedures and practices of EU and EEA member countries have also been studied.

The analysis offers optimization proposals with three main goals - increasing public trust in the bodies of the judiciary; transparency and broad public representation in the selection, appointment, promotion and transfer of magistrates in the bodies of the Judiciary as well as improving the efficiency, quality and speed of carrying out the procedures for evaluation, appointment and career development of magistrates in the bodies of the Judiciary, including administrative heads.

1.6. The College of Ethics

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

☒Yes

☐No

1.6.2. If yes, how is it appointed?

See below the response to question 1.6.3.

1.6.3. If yes and in the case of a collegiate body, how is it composed?

Each administrative court has a College of Ethics. The College of Ethics of the administrative jurisdiction is composed of four magistrates from the administrative court, who are elected for 4 years. The members are appointed after the positive decision of the General Assembly of the respective court. The presidents of the administrative courts and the magistrates with a pending disciplinary procedure don't have a right to be elected as members of the College of Ethics.

1.6.4. Who can refer to this body?

☒A member of your institution for an ethical question concerning them

☒A magistrate from the lower courts for an ethical question concerning them

☒The president of your institution

☒Other members of your institution

☐A litigant who believes that a magistrate has disregarded their ethical obligations

☒This body can refer to itself

☐Others

Please explain if necessary:

Members from the jurisdictions, persons and legal bodies can refer to the College of Ethics.

1.6.5. Are the opinions given by this body made public?

☐Yes

☒No

1.6.6. If yes, are the published opinions anonymised?

☒Yes

☐No

1.6.7. Can these opinions be challenged before the court?

☐Yes

☒No

Please explain the legal scope of these opinions:

The opinions of the College are not a subject to appeal before the court.

1.7. Declaration of interests

1.7.1. Must members of your institution complete a declaration of interests?

☒Yes

☐No

If yes, please briefly describe the modalities of its submission:

Following the Article 175b of the Judiciary act, all the magistrates-the judges, prosecutors and investigators must submit to the Inspectorate to the Supreme Judicial Council a declaration of two parts -on property and on interests.

Concerning the interests they must declare participation in companies, in management or control bodies of companies, of non-profit legal persons or of cooperations, as well as acting as a sole entrepreneur at the date of election or appointment and 12 months before the date of election or appointment, contracts with persons operating in fields related to the decisions made by the person within the scope of his powers or official duties, information on related persons, to whose activities the judge, prosecutor or investigator has private interest.

The magistrates are obliged to submit the Inspectorate to the Supreme Judicial Council with the declaration on interests within one month from acquiring the capacity requiring the submission of a declaration annually by 15 May - for the preceding calendar year, within one month from losing the capacity requiring the submission of a declaration, within one month from the expiry of one year from the loss of capacity, which is basis for declaration.

The authority to which the declaration is submitted publishes on its website the declarations of the judges, prosecutors and investigators and a list of those of them, who have failed to file a declaration on time.

The amendments to the Judiciary act of 2016 in Art. 195a regulate a duty for each judge, prosecutor and investigator, members of the Supreme Judicial Council, the Chief Inspector and the inspectors of the Inspectorate to the Supreme Judicial Council to submit a declaration on all their activities within a period of one month from taking up office in the respective college of the Supreme Judicial Council and memberships in organizations, including secret and / or informal organizations and societies, non-profit legal entities, and in civil societies or consortia. The declaration shall be filled in in a form approved by the Supreme Judicial Council.

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

No.

1.8. The oath

Do members of your institution have to take an oath?

☒Yes

☐No

If yes, what does this oath consist of and how is it taken?

The Magistracy's oath has existed in every period of the social development of our state – from the Liberation of 1878 to the present day.

The oath reproduces and raises on a pedestal those universal Bangalore principles such as independence, justice, integrity, which are the moral compass of the Bulgarian magistrate. The oath also represents a promise and an ethical view in the judiciary. Knowledge of the oath is therefore very important for the development of the magistrate's profession and of the ethical principles to which it should be subject.

II Ethics: Content of rules

2. 1. Independence, impartiality and prevention of conflicts of interest

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

☒In cases of familial ties that may link the magistrate with a party

☒In cases of friendly ties that may link the magistrate with a party

☒Due to previous functions performed by the magistrate

☒Other

Please explain, citing any relevant jurisprudential examples

As it was mentioned above, the specific Code of ethical conduct for judges concerns all jurisdictions in Bulgaria – civil, penal and administrative. To eliminate the reasonable doubt, that may arise in the minds of the parties to a trial and to protect the impartiality or independence of judges of the legal case, Article 22 of the Code of civil procedure provides (applicable also for the administrative jurisdiction) some ethical obligations and requirements to the judges.

The respective judge cannot participate in the pending case, if he/she is a party in the case or, together with any of the parties of the case, they are subject to the disputed relationship.

Abstention is necessary when the judge has family relations with some of the parties of the legal dispute-for example he/she is a spouse or relative of one of the parties, or of its representative. The judge who has participated in a judicial decision, whether as president, reporting judge or consultant judge cannot be called upon to consider an appeal, a cassation appeal, or a request for correction of material error directed against this decision. The same obligation relates to the judge, who has previously taken participation in the court proceedings as a witness or as an expert.

In that regard, the ECtHR inter alia stressed that while the right to a 'tribunal established by law' guaranteed in Article 6(1) ECHR constitutes an independent right, it is nevertheless very closely related to the guarantees of 'independence' and 'impartiality', within the meaning of that provision. Thus, in the judgment of the ECtHR of 1 December 2020, Guðmundur Andri Ástráðsson v. Iceland (CE:ECHR:2020:1201JUD002637418, §§ 231 and 233), the court inter alia found that, although the institutional requirements of Article 6(1) ECHR each have specific aims which render them specific guarantees of a fair trial, they have in common the fact that they seek to observe the fundamental principles of the rule of law and the separation of powers, noting, in that regard, that the need to maintain public confidence in the judiciary and to safeguard its independence vis-à-vis the other powers underlies each of those requirements (judgment of 6 October 2021, W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment), C-487/19, EU:C:2021:798, paragraph 124).

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

☐Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion

☐Prohibition for members of a judgement panel to consult the files of advisory panels

☒Other

Please explain if necessary:

The Supreme Administrative Court of the Republic of Bulgaria is a court jurisdiction. But following the reasons of the Procola and *Sacilor-Lormines* judgements we agree that members of the Council of State cannot participate in the judgement of appeals directed against acts taken after an opinion from the Council of State if they participated in the deliberation of that opinion.

2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

☒Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them

☐Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities

☐Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period

☐Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served

☐Other

Please explain if necessary:

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2.1.4. Can a member of your institution receive gifts?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

The Code of ethical conduct for Bulgarian judges prohibits the judge to receive a benefit from a third party which would reasonably be perceived as resulting from a compromise of his integrity and fairness in the performance of his professional duties.

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

The judges from the Supreme Administrative Court, like all judges in Bulgaria, are only Bulgarian citizens.

2.2. Exercise of individual liberties

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

☒Yes

☐No

Please explain if necessary:

The public expression of the opinions of the judges in Bulgaria is limited, in some aspects:

According to the rules of the Code of ethical conduct for Bulgarian judges it is forbidden for the judges to make public statements or comments in proceedings pending before him or her by which he or she would commit himself or herself to the ultimate outcome of the case or by which he or she would create the appearance of bias or prejudice. It means that judges must refrain from comments which could affect, or are reasonably expected to affect, the right to a fair trial of any person or question referred to them. Outside hearings, judges are obliged not to discuss such proceedings before the parties, their legal representatives, other participants therein or third parties, except in the cases provided for by law.

In case *Miroslava Todorova v. Bulgaria* - 40072/13 (Judgment 19.10.2021 of the ECtHR) the Court found a violation of Article 10 of the ECHR concerning Bulgarian judge M.T. The reasons given by the Bulgarian Supreme Judicial Council and then by the Supreme Administrative Court to justify the disciplinary sanctions imposed on the applicant related to a failure to comply with her professional obligations, in particular to delays in processing cases, and not to any opinions she had expressed. However, the Supreme Judicial Council Inspector General had informed the press that the audit which gave rise to the first set of disciplinary proceedings had been a response to criticism by judges, including the appointment of the new president of the Sofia City Court. The Minister of the Interior had made personal attacks on the applicant judge M.T. The disciplinary procedure started against the judge. The disciplinary penalties had also represented an interference with the applicant's right to freedom of expression.

Concerning the case, as a president of Association of judges, the applicant had frequently taken critical positions with regard to the way in which the Supreme Judicial Council and the Government were managing and organising the justice system, matters which were undeniably in the public interest. Her statements were part of a wide public debate, ongoing at the relevant time, concerning reform of the judicial system and the efficiency and independence of the judiciary. It followed that the applicant's pronouncements clearly fell within the context of a debate on matters of great public interest, in her capacity as President of the main professional body representing judges. Her freedom of expression ought therefore to have been granted a high degree of protection and benefited from strict scrutiny of any interference, with a correspondingly narrow margin of appreciation being afforded to the authorities. In addition, in the present case, there was nothing to suggest that there had been no factual basis for the applicant's statements or that they had gone beyond acceptable criticism from a strictly professional perspective.

With regard to the severity of the penalties imposed, the applicant had been subject to an initial sanction of a two-year reduction in salary, and had then been dismissed, and this penalty had been replaced by a two-year demotion. These sanctions had been based formally on grounds of serious breaches of professional duty on the applicant's part, which had been separate from her public pronouncements and whose existence was indisputable. However, the proceedings against the applicant had been bound up with her public statements.

National judges follow the rules in Opinion № 25 of 2.12.2022, in which the Consultative Council of European Judges not only contemplates the legal and ethical duty of the judge to speak openly in order to defend the rule of law and democracy not only at national, but also at European and international level, but also sets out common guidelines for judges and a broad framework for ongoing discussion on the parameters to be taken into account when exercising their right to freedom of expression.

2.2.2. In particular, is the use of social media by members of your institution regulated?

☒Yes

☐No

Please explain if necessary:

The use of social media is a popular topic, but in Bulgaria there is not an increased use of social media platforms by judges. However, the application of judicial restraint to social media communications should not be understood as meaning that judges must withdraw from the public life that takes place on social media.

The EUCJ stresses that the nature of the different social platforms poses specific risks requiring judges to be given special attention in their communication. It is also noted that there is a significant risk that sharing personal content will adversely affect the reputation of a judge or the entire judicial system.

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

While it is not inherently forbidden for a judge to participate in a public debate of general scope, the Ethical Code recommends in cases where the law gives the judge the discretion to decide certain issues, the guiding principle is the requirement of fairness. As required by law, the judge should provide the public with objective, timely and understandable information. The judge shall state to the public, in person or through the media, the reasons for his or her decisions in cases of public interest. Within the limits of the law, the judge shall ensure the publicity of his actions and decisions, taking care that the legitimate rights and interests of the parties and participants in the proceedings are not prejudiced. But a judge must set an example of high morality and integrity by his or her personal conduct and sense of responsibility in official and non-official activities.

Strictly following the rules of conduct arising from the principle of confidentiality the judge may not make improper use of information which has come to his knowledge in the exercise of his functions.

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

Judges in Bulgaria can write an article or a book. They can teach.

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

☐Yes

☒No

Please clarify if necessary:

It is not necessary to seek for prior authorisation from the President of the Supreme Administrative Court, to write an article or a book. When the judge participates in teaching activities in the University or in the Nacional Institute of Justice or acts as a lector in seminars, a prior authorisation from the head of court is necessary.

2.2.6. Are members of your institution allowed to engage in political activities?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

Judges in Bulgaria cannot join a political party, they must keep political neutrality. Judges may freely associate in associations of judges for the purpose of protection of their independence and interests.

2.2.7. Can members of your institution run for elections?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

Article 18 of the Judiciary act states that none of the elective members of the Supreme Judicial Council may be a member of political parties or coalitions, of organizations with political goals, carry out political activity, as well as be a member of organizations or exercise activities impairing their independence. The same obligations have magistrates. They may not participate in political parties or coalitions, in organizations with political purposes, to carry out political activity, as well as to participate in organizations or perform activities affecting their independence.

If the judge decides to have a political activity, the Supreme Judicial Council, College of Judges, dismiss him/her as a judge.

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

If the judge is a subject of political election, he/she cannot continue to perform the functions as magistrate in the Supreme Administrative Court.

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

☐Yes

☐Yes, under certain conditions

☒No

Please explain if necessary:

See previous answer.

2.2.10. Can a member of your institution sign a petition?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

Judges can sign a petition; however, they must not mention their status.

2.2.11. Can a member of your institution participate in a demonstration?

☐Yes

☒Yes, under certain conditions

☐No

Please explain if necessary:

The freedom to participate in demonstrations is recognised by the judges in Bulgaria.

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

Judges cannot, without disregarding their duty of neutrality (and loyalty), prioritise their personal convictions, whether political or religious, over the law, the expression of the general will, which they are tasked with applying.

2.3. Case studies

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

The French Council of State proposes four questions to you, as an example:

- On impartiality: Can a consultant judge (*rapporteur public*) of the Council of State [responsible for presenting to the members of the judgement panel the case before them, the legal issues it raises, and proposing a solution] receive a gift from a third party, not a party to the litigation, for the direction of the findings he has made in a case concerning the euthanasia of an elephant? (Opinion no. 2013/4 of 17 June 2013)

- On conflicts of interest: Which cases can a head of jurisdiction assign to a magistrate whose spouse is one of the most important members of the French Government? (Opinion no. 2017/4 of 18 September 2017)

- On conflicts of interest: Under what conditions can a former administrative magistrate practise as a lawyer? (Recommendation no. 2017-1 of 15 November 2017)

- On the obligation of discretion and freedom to produce intellectual works: Can a judicial magistrate seconded to the Council of State, during their secondment period, publish a historical essay on the *Ranucci* case, which had caused a stir and led to one of the last capital executions in France in 1976? (Opinion no. 2016/4 of 17 January 2017)

Bulgarian proposal for discussion:

Is in the present case, a violation of the rules of conduct stemming from the ethical principles of independence, integrity and propriety?

The case: By a decision of the Supreme Judicial Council under Protocol No. 47 / 17.09.2015 a disciplinary sanction was imposed - disciplinary dismissal from the position of a judge for a violation under Art. 307, para 4, p. 4 of the Judiciary act. In this case, the judge wrote and sent a personal letter to the Minister of the Interior, in his capacity as the head of a political party, declaring his appreciation, affection and willingness to support and follow the policy that the political party carries out. In order for this decision to be made, the Supreme Judicial Council has accepted that the judge has violated the basic principles of ethical conduct, laid down in the Code of Ethics for Bulgarian Magistrates and prejudiced the prestige of the judiciary by issuing and sending that letter. By compiling and sending the letter, the judge violated the norms of the Code of Ethics for Bulgarian Magistrates, which are mandatory as specific moral norms for judiciary magistrates and not as normative legal act.

The Law (Judiciary act, SG. 14/20 Feb 2015):

Art. 307. (1) On a judge, prosecutor, investigator, state bailiff and registry judge shall be imposed disciplinary penalties for any committed disciplinary offence.

(2) (new – SG 103/09, in force from 29.12.2009) On an elective member of the Supreme Judicial Council shall be imposed disciplinary penalty for committed grave violation or systematic non-fulfilment of office duties, as well as for any actions, impairing the image of the judiciary.

(3) (prev. par. 2 – SG 103/09, in force from 29.12.2009) A disciplinary offence shall be any culpable failure to perform the official duties of a judge, prosecutor and investigator.

(4) (prev. par. 3 – SG 103/09, in force from 29.12.2009) The disciplinary offences shall be:

1. systematic failure to comply with the terms, specified in the laws of procedure;

2. (amend. - SG 33/09) acts or omissions delaying the proceedings without justification;

3. (amend. - SG 33/09; amend. - SG 01/11, in force from 04.01.2011) infringement of the Code of Ethical Conduct of the Bulgarian Magistrates;

4. (amend. - SG 33/09) acts or omissions affecting the prestige of the judiciary;

5. failure to perform other official duties.

(5) (new – SG 103/09, in force from 29.12.2009) For impairing the image of Judiciary by an elective member of the Supreme Judicial Council, the mandate of whom has been terminated prematurely due to an application for resigning on the grounds of Art. 130, par. 8, item 1 of the

Constitution, the same shall bear disciplinary responsibility, if he/she is a judge, public prosecutor or investigator reinstated in their previous office.

(6) (prev. par. 4 – SG 103/09, in force from 29.12.2009; amend. - SG 01/11, in force from 04.01.2011) Except for violations under Para 4 disciplinary liability shall be held also by

1. the administrative head - in cases of non-exercised control under Art. 143, Para 4;

2. a military judge, military prosecutor and military investigator - for offences, stipulated in the special laws and statutes.

(7) (prev. par. 5 – SG 103/09, in force from 29.12.2009) The disciplinary liability shall be held regardless of the civil, criminal or administrative penal liability, if such is provided for.

III. Recruitment of members

3.1. Who can be recruited in your institution?

3.1.1. How many members do you recruit on average each year in your institution?

The Supreme Administrative Court (SAC) of the Republic of Bulgaria is a part of the judicial system in the state. The judges of the SAC are appointed by the judicial appointment body-the College of judges, a part of the present Supreme Judicial Council. A person who has worked as a judicial official at least 12 years of legal practice may be appointed judge of the Supreme Administrative Court.

In Bulgaria, the Supreme Judicial Council is the administrative body, which represents the judiciary, ensures and defends its independence, determines the composition and organization of the work of the courts, prosecution and investigation authorities, secures financially and technically their activities, without intervening in their exercising.

According to the Constitution of the Republic of Bulgaria, the Supreme Judicial Council consists of 25 members. The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General are members ex officio.

According to the present Article 16, papa. 3 of the Judiciary act, the National Assembly elects members of the Supreme Judicial Council, of which for the judges collegium, and for the prosecutors collegium. The judges elect among themselves members of the Supreme Judicial Council for the judge's collegium. The prosecutors shall elect among themselves members of the Supreme Judicial Council for the prosecutor's collegium. The investigators shall elect among themselves a member of the Supreme Judicial Council for the prosecutor's collegium. As members of the Supreme Judicial Council may be elected lawyers with high professional and moral qualities, having at least 15 years of legal service. National parliament directly elects the rest of the members of the judicial appointment body.

The mandate of the members of the present Supreme Judicial Council was 5 years. The last election for members of the Supreme Judicial Council was in 2017.

With the amendments of the Constitution in December 2023 the mandate of the elected members of the Supreme Judicial Council and of the Supreme Prosecutors Council shall be four years. They cannot be re-elected immediately after this term expires. Elected members of the Supreme Judicial Council and of the Supreme Prosecutors Council shall retain their status as justices, prosecutors or investigators.

The selection and the appointment of the administrative judges are made on the basis of their academic and professional qualification. Only a Bulgarian citizen may be appointed for a judge.

Any judge, prosecutor, investigator, administrative head and a deputy of the administrative head, except the Chairman of the Supreme Court of Cassation, the Chairman of the Supreme Administrative Court and the Chief Prosecutor, can be appointed as a judge in the SAC, if they fulfil special requirements of the Judiciary act.

When the appointment procedure starts, a special appointment commission from judges of the Supreme Administrative Court ranks the candidates according to their results of the latest attestation, according to the analyses of the Inspectorate to the Supreme Judicial Council. The appointment commission takes into account the information of their employment file and their prior professional assessment. If the applicant for a vacant position "judge in the Supreme Administrative Court" is a prosecutor or an investigator, the commission checks the legal knowledge of the candidate, based on the results of a written exam.

The appointment commission ranks the successful candidates in a special protocol, which is delivered to the College of Judges of the Supreme Judicial Council. The College has a discretion to decide which of the candidates to appoint as a judge in the Supreme Administrative Court. The appointment decisions of the College of Judges can be challenged before the Supreme Administrative Court, acting as a court of a first instance, which decisions are final in that situation.

3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

All judges in SAC are recruited at the same rank.

3.1.3. Are age conditions set for the recruitment of these new members?

☐Yes

☒No

Please explain if necessary:

There aren't age restrictions for the judges of the Supreme Administrative Court. The only condition, based on the legal norms of the Judiciary act, is the judge, who applies for the position in the SAC, to have at least 12 years judicial professional experience-Article 123 of the Judiciary act.

3.1.4. Are diploma conditions set for the recruitment of these new members?

☐Yes

☒No

Please explain:

A diploma for completed higher education in Law is necessary only when the person is appointed as a judge for the first time.

3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

☐Yes

☒No

Please explain:

The judge, who applies for the position in the SAC, must have at least 12 years judicial professional experience.

3.1.6. Are conditions of prior professional experience required to become a member of your institution?

☒Yes

☐No

Please explain:

The prior professional experience is not a requirement to be appointed as a judge.

3.1.7. Can members of the lower courts become members of your institution?

☒Yes

☐No

Please explain:

The judges of the lower courts may be appointed as judges in the Supreme Administrative Court under the specific appointment procedure, stated in the Judiciary act.

If yes, what is their proportion in the number of new members?

There is not a proportion between the new judges and the judges, that have already been appointed.

3.1.8. How old is the youngest of your colleagues?

The youngest judge in SAC is 42 years old.

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

According to Article 165, para. 1, point 1 of the Judiciary act the judges can work as magistrates until 65 years.

3.2. How does the recruitment procedure work in your institution?

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?

☒Yes

☐No

Please explain:

The judges of the SAC are appointed by the judicial appointment body-the College of judges, a part of the present Supreme Judicial Council.

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

☐Yes

☒No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

☐Yes

☒No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

☐Yes

☒No

Please explain if necessary:

The appointment procedure doesn't depend on the rank of the candidate.

3.3. What is the procedure for appointing members of your institution?

3.3.1. The appointment of members of your institution results from a decision:

☒by the executive branch (for example, a presidential decree)

☒by the judicial branch (by the president of your institution or a panel of independent judges)

☐other

Please explain if necessary:

The judges of the SAC are appointed by the judicial appointment body-the College of judges, a part of the present Supreme Judicial Council.

3.3.2. Can the appointment of members of your institution be challenged in court?

☒Yes, through an action at the time of the appointment of said members

☐Yes, as an exception regarding the regularity of the composition of the members of the judgement panel

☐No

If yes, before which judge?

The appointment decision of the College of Judges is an individual administrative act, which can be challenged in Supreme Administrative court, which has the exclusive jurisdiction. The case is decided by a panel of three judges.

3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?

The panel of three judges of the Supreme Administrative Court, which decides the case, makes a very strong analysis of the relevant facts and applicable substantive law. The court is obliged to indicate to the parties the distribution of the burden of proof. The rule of law requires the SAC to operate within the applicable law and to be held to account. The judges should also assert their impartiality in cases of strong public sentiments of sympathy or antipathy towards participants in proceedings pending before them, deciding the case solely on the basis of the facts and the law.