

STANDARDS FOR CONDUCTING DISCIPLINARY PROCEEDINGS UNDER CHAPTER SIXTEEN OF THE JUDICIARY SYSTEM ACT

The standards provide for rules for carrying out the activities of establishing disciplinary offences and imposing disciplinary sanctions on judges, prosecutors and investigating magistrates (the magistrates).

The objective of the standards is to guarantee full transparency, objectivity and fairness of the disciplinary process, to establish a uniform practice in disciplinary proceedings with a single approach and method of collecting evidence, while ensuring the right of defense to a disciplinary liable magistrate in full.

Disciplinary liability, which is conceived to ensure the accountability of the judiciary for the benefit of the citizens should not serve as a means of intimidating the magistrate and of infringing on the independence of the judiciary.

It is inadmissible in the course of disciplinary proceedings to initiate and perform any actions that impair the honor and degrade the magistrate's dignity.

I. PROCEEDINGS CONDUCTED BY AN ADMINISTRATIVE HEAD UPON MISCONDUCT OF A MAGISTRATE

1. When information about a disciplinary violation by a magistrate is obtained from the administrative head of a judicial body in light of the initial information, the administrative head may initiate an inspection to collect evidence for the respective breach and thus to clarify both to the magistrate, and to the administrative head the scope of the committed offence, which is actually the scope of the inspection itself.

2. The examination of the disciplinary offence shall start with an Order describing the offence itself, as explanations of the magistrate shall also be required.

3. A copy of the Order shall be handed over to the magistrate against whom the inspection is initiated and the latter shall be provided with a time limit for presenting explanations. The time limit for explanations should end on a specific working day and at the time specified in the Order /for instance, 07.08.2017 until 4:30 pm /. This aims to enable the magistrate to submit his/her written explanations within the specified time limit. If the magistrate wishes to provide verbal explanations to the Administrative head, such explanations shall be recorded.

4. Any evidence may be collected in the course of the inspection for the purpose of clarifying the facts. Where explanations are requested from persons, they should be in writing.

5. When the Administrative head completes the inspection, which should be executed within a short period of time, the latter may terminate the inspection by Order, may impose a compulsory administrative measure under Art. 327 of Judiciary System Act (JSA) or issue a new Order initiating disciplinary proceedings.

6. The Order on instituting the disciplinary proceedings must state the entire scope of the established breach. The evidence collected in the course of the inspection may be included in these proceedings, which should be reflected in the Order instituting disciplinary proceedings.

7. In the course of the disciplinary proceedings after the Order has been drawn up, a copy thereof shall be handed over to the magistrate against whom the proceedings are being conducted and a time limit for explanations in writing shall be given, which shall end on the working day and

time specified in the Order /for instance: 07.08.2017, until 4:30 pm /.

8. . In disciplinary proceedings, new evidence may be collected and those collected during the inspection may be included. Where explanations are requested from third parties, these should be provided in writing.

9. After completing the disciplinary proceedings, the Administrative head shall enable the magistrate against whom the proceedings are conducted to examine the collected evidence. Certification of this action shall be in writing.

10. The proceedings before the Administrative head shall end with an Order. A supervisor may terminate disciplinary proceedings when the latter deems that no offence has been committed or there has been an offence that is not subject to penalizing by a disciplinary sanction.

11. Where the Administrative head deems it necessary to impose the disciplinary sanction "Reprimand", the latter shall issue an Order stating what the violation is, the evidence from which it is established, as well as the reasons for imposing the sanction "Reprimand".

12. If the Administrative head considers that the offence is more severe in nature and that the sanction is within the competence of the Supreme Judicial Council (SJC), it shall suspend the disciplinary proceedings and submit a proposal to the SJC for the imposition of a more severe sanction.

13. When terminating disciplinary proceedings, the Administrative head shall comply with the time limit for appeal against such Order and upon its entry into force the latter may impose a compulsory administrative measure under Art. 327 JSA, if the breach is related to the initiation and movement of cases or to the organization of the work.

14. For each established breach, it is advisable for the Administrative head to initiate an inspection for collecting data about the breach and its scope. The purpose of the inspection is to clarify both the nature and scope of the breach and the conduct of the magistrate. Same is of a preparatory nature.

15. When the Administrative head assesses that for the committed breach a more severe sanction should be imposed, which is within the competence of the SJC, the former shall initiate disciplinary proceedings, collect evidence and then suspend same and refer it under the jurisdiction of the SJC.

The evidence shall serve as additional reasoning of the proposal of the Administrative head to SJC.

II. INSTITUTING DISCIPLINARY PROCEEDINGS BEFORE THE JUDICIAL AND PROSECUTOR'S COLLEGE OF THE SUPREME JUDICIAL COUNCIL

1. Disciplinary proceedings shall commence upon a proposal for instituting thereof, submitted by the persons under Art. 312, para. 1 of the Judiciary System Act:

- the respective administrative head;
- a higher-ranking administrative head;
- the Inspectorate to the Supreme Judicial Council;
- the Minister of Justice.

2. The proposal for instituting disciplinary proceedings shall set out the facts and

circumstances known to the proposer, based on the assessment of which a reasoned assumption of a disciplinary breach may be derived.

The evidence so far collected shall be enclosed to the proposal.

3. In the event of a proposal for instituting disciplinary proceedings, the relevant SJC college in accordance with the requirement of Art. 316, para. 6 of the Judiciary System Act is obliged to send copies of the proposal for imposition of disciplinary sanction and the enclosed written evidence to the person brought to disciplinary liability. The notification shall be made in accordance with the Administrative Procedure Code.

Within 7 days as of the receipt of the notification the person brought to disciplinary liability is entitled under Art. 316, para. 7 of the Judiciary System Act to submit written objections and specify evidence.

4. The proposal for instituting disciplinary proceedings shall be considered immediately after the submission of a written objection or after the expiry of the seven-day time limit for submission of written objection, in order to prevent any unjustified extension of the 7-day time limit under Art. 316, para. 1 of the Judiciary System Act for issuing an act under Art. 310, para. 1.

A copy of the decision instituting disciplinary proceedings shall be sent to the person brought to disciplinary responsibility. The notification shall be made in accordance with the Administrative Procedure Code. Within 7 days as of receiving the notification, the person brought to disciplinary responsibility may submit a response in writing and provide evidence.

5. Where the proposal is unfounded or manifestly unjustified, the relevant panel of the Supreme Judicial Council may refuse to initiate disciplinary proceedings by reasoned decision. The decision to refuse to initiate disciplinary proceedings may be appealed against by the proposer in accordance with the Administrative Procedure Code.

4. In accordance with Art. 313, para. 3 of Judiciary System Act, until serving the ruling on imposition of disciplinary sanction on the person brought to disciplinary responsibility, the facts and circumstances related to the disciplinary proceedings may not be disclosed.

Any information and actions related to the name of the person brought to disciplinary responsibility, the instituting and conduct of disciplinary proceedings shall be confidential and may not be divulged without the written consent or request of the magistrate.

Where the act for which the disciplinary proceedings are instituted has become publicly known through media publications, information shall be provided on the initiation of the disciplinary action, the stage of the proceedings and the closing thereof.

III. CONDUCTING OF DISCIPLINARY PROCEEDINGS

1. The disciplinary panel shall be designated in accordance with the procedure and within the time limit under Art. 316, para. 2 and 3 JSA. The person brought to disciplinary liability may request the removal of a member from the disciplinary panel in circumstances where there are reasonable grounds for suspecting his/her impartiality and personal disinterest.

The respective college of the Supreme Judicial Council is obliged to rule on the request for removal with a reasoned decision within a time limit of three days.

2. The person brought to disciplinary liability may be represented by a lawyer, by the persons under Art. 32, item 2 of the Civil Procedure Code or by another person selected by the latter through a power of attorney in writing with notarized signature, in accordance with Art. 18,

para. 2 of the Administrative Procedure Code, in conjunction with Art. 328 of the Judiciary System Act.

3. The Disciplinary panel shall clarify the facts and circumstances of the breach, by collecting verbal, written and material evidence, including through a delegated member thereof, as well as hearing expert witnesses, in accordance with the Administrative Procedure Code.

The procedural actions carried out by the disciplinary team shall be documented by drafting of subpoenas, minutes, etc.

4. For actions that damage the prestige of the judiciary within the meaning of Art. 307, para. 3, item 3 of the Judiciary System Act, are considered those established as contradictory to the publicly accepted notions of prudence and compromising the honor of a judge, prosecutor or investigating magistrate among the profession and in society.

For violations of the Code of Ethical Conduct of Bulgarian Magistrates within the meaning of Art. 307, para. 3, item 3 of the Judiciary System Act, as subject of disciplinary investigation are accepted cases of persistent or particularly unacceptable violation of ethical rules, and not all manifestations of non-compliance with the good practice of professional conduct.

The disciplining authority is obliged in each specific case of alleged disciplinary violation of professional ethics and morality to fill the ethical norm with the actual content of the act.

5. The interpretation of the law, the assessment of the evidence and the facts which magistrates perform when rendering their rulings do not entail disciplinary liability, save in the cases of malicious acts and gross negligence.

6. The imposition of any sanction shall in all cases be effected without undue delay.

Disciplinary proceedings shall be completed within three months as of the institution thereof. For disciplinary proceedings of factual and legal complexity by decision of the relevant college at the Supreme Judicial Council this time period may be extended with a period of up to 6 months.

The Disciplinary panel shall take the necessary measures for timely completion of the proceedings, as within three days after the institution thereof, it shall draw up a schedule for the dates of the meetings and provide instructions to the proposer and to the person brought to disciplinary liability regarding the submission of written, verbal or material evidence.

Extension of the time limits under Art. 316, Art. 319 and Art. 320 of the Judiciary System Act shall be admissible by decision of the relevant college of the Supreme Judicial Council in special and unforeseeable circumstances.

7. A decision of the relevant college of the Supreme Judicial Council on temporary removal from office of the person brought to disciplinary liability pursuant to Art. 230 of JSA shall be adopted in exceptional circumstances only if the continuation of the magistrate's activity would entail further offences or difficulties. For the period of temporary dismissal from office on the grounds of Art. 230 of JSA, the judge, the prosecutor or the investigating magistrate shall receive a monthly remuneration equal to the minimum salary for a country.

8. The reasons for the decision under Art. 320, para. 6 of the Judiciary System Act shall be notified as per the procedure provided for under Administrative Procedure Code in accordance with Art. 320, para. 8 of the Judiciary System Act. The person brought to disciplinary liability shall be provided with transcripts of the decision of the disciplinary panel, as well as with the recorded considerations stated by the members of the respective panel of the Supreme Judicial

Council at the session.

IV. INDIVIDUAL PLAN OF THE MAGISTRATE UNDER ART.204a, PARA.5 AND UNDER ART.325 OF THE JUDICIARY SYSTEM ACT

With the amendment of the Judiciary System Act /State Gazette, issue 62 of 2016/ the legislator regulates the legal figure of an "individual plan" for improving the work of the magistrate, in the cases of art. 204a and art. 325 of the JSA. Taking into account the responsibility that magistrates have to society and their workload, the legislator has considered it reasonable to provide for measures to assist magistrates in the event of any problems that could be resolved in a relatively short period of time.

The purpose of the elaboration of the individual plan is to overcome the drawbacks occurring in the work of judges, prosecutors and investigating magistrates - non-compliance with statutory time limits provided for in procedural laws, misapplication of substantive laws due to insufficient competence and experience, unjustified inaction in the organization of the work.

The means to attain this objective are individual and should be tailored to the specific reason for the omissions of the magistrate and the relevant measures for rectification thereof as set forth under the law.

The legal option under Art. 204a, paragraph 5 of the JSA for elaboration of an individual plan for the professional development of the magistrate in accordance with the identified specific needs for acquisition of professional skills, is a type of preventive measure to avoid the aggravation of a problem that has arisen and the initiation of sanction-imposing proceedings.

The individual plan for the work of the magistrate under the conditions of Art.325 of the JSA is a measure defending the magistrate in the presence of extraordinary circumstances, which have entailed problems in his/her work, which are however rectifiable in nature.

In its essence, the individual plan to overcome the disadvantages of a magistrate's work should be a means of safeguarding the interests of the latter and a possible failure should not be subject to sanctions and be regarded as grounds for disciplinary sanction.

1. The elaboration of an individual plan under Art. 204a, paragraph 5 of the JSA is performed subject to the existence of an open procedure for attestation of a judge, prosecutor or investigating magistrate on his/her own initiative. Same shall refer to the relevant panel of judges and competitions of the SJC colleges his/her wish and may indicate the specific needs for the development of his/her professional knowledge and skills.

2. The relevant Attestation and Competition Committee of the SJC College shall, within the shortest possible term, prepare, with the participation of the magistrate, an individual plan for his/her professional development, and for this purpose participations in seminars, training events of the program of the National Institute of Justice and other measures are envisaged, depending on the individual need to overcome the identified problems.

3. The magistrate's administrative head should assist in the implementation of this individual plan by providing him/her with time to attend the activities and, if necessary, prepare another individual plan for specific overcoming of delays, drafting of acts, carrying out certain procedural actions, etc.

4. The individual plan under art.325, paragraph 2 of the JSA, through which the execution of imposed disciplinary sanction can be postponed for a period of up to six months, is a legal opportunity to assist a magistrate in the event of extraordinary difficulties in his/her work. That is

why, the right under para 2 may be exercised only once during his/her professional career, regardless of the number of appointments.

5. The penal authority - the relevant administrative head or the disciplinary team of the relevant college - should draw up an individual plan for professional development of the magistrate, including measures to remedy the identified shortcomings in the work and training of the judge, prosecutor or investigating magistrate, in a form which is applicable and tailored to the personality of the magistrate.

6. When the penal authority determines that the provision of art. 325, paragraph 2 of the JSA may be applied to the offender, along with a proposal for imposing a penalty, it shall submit to the relevant SJC college a drafted individual plan, containing the signature of the magistrate in acknowledgment of his/her awareness of the terms and conditions of the plan.

7. The relevant SJC college may amend the proposed individual plan only with the consent of the proposal submitter and of the magistrate.

8. The relevant SJC college, after discussing the facts of the committed breach, shall vote whether to impose a disciplinary sanction. If such is imposed under Art. 308, App. 1, item 1, 2 or 3, in the event of an individual plan being applied, the postponement of the enforcement of the imposed sanction shall also be voted.

9. Upon presentation of an individual plan for postponement of the sanction enforcement, the relevant SJC college may not refuse the application of paragraph 2, since the final decision to enforce the sanction shall be made under the conditions of paragraph 4 of JSA.

10. After the expiration of the deadline set in the individual plan, the body under para 3, which has prepared same, shall submit to the respective SJC college a report on its implementation, having previously informed the interested magistrate of the content. In the event of failure to comply with all or part of the plan, the magistrate may submit his/her objection to the relevant SJC college before the deliberation thereof in plenary.

11. In its decision, the relevant SJC college shall express its opinion on the report and on the need to execute the sentence imposed.

12. The decision of the SJC college under item 11 is subject to appeal before the Supreme Administrative Court in compliance with the procedure of the APC.