



THE NEW POWERS OF THE INSPECTORATE TO THE SUPREME JUDICIAL COUNCIL



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General characteristics of the new inspections assigned to ISJC

In order to fully perform their duties and in compliance with the requirements of the law, the judge, the prosecutor and the investigator should be familiar not only with national, but in some cases also with European legislation, and they must also possess the necessary moral and ethical qualities to ensure their independence, objectivity, impartiality and fairness.

The change in the Constitution of the Republic of Bulgaria was designed and implemented for the establishment of these qualities in Bulgarian magistrates (SG No. 100/2015).

According to Article 132a, paragraph (6) of the Constitution, the Inspectorate to the Supreme Judicial Council performs inspections of judges, prosecutors and investigators for:

- the declared property status;
- integrity and conflict of interest;
- independence and subordination to the law alone;
- acts and behaviour prejudicial to the prestige of the judiciary;

The nature of these qualities is not the result of a magistrate's activity but a subjective prerequisite for fast, effective and fair justice (law enforcement). Therefore, the presence or lack of these qualities cannot be determined through the general inspections performed by the Inspectorate to SJC until the constitutional change occurs. The aforementioned qualities and requirements are set forth in the Code of Ethics of Bulgarian Magistrates (CEBM) and are established through a special procedure provided for by the law (Article 175k, paragraphs (1) to (4) JSA), as well as through the procedure of APC, according to Article 175q JSA applicable to all magistrates. The subject of these new types of inspections is not the result of the current activity of magistrates but the particular psychological (moral and ethical) conditions in which the official work of those persons, or part thereof, is carried out.



The legislator has rightly accepted that the independence, objectivity, impartiality and fairness of magistrates can be negatively affected: (a) by receiving undue benefits not provided for by law; (b) by the existence of a private (tangible or intangible) interest of a magistrate or related parties thereto, both in the performance of his/her general duties (outside the administration of justice, law enforcement), and in the examination and settlement of cases and files; (c) by exercising or being susceptible to external or internal influences (intercession, relations, suggestions) and other factors that alter the neutrality and objectivity of the magistrate.

All these external conditions can put the magistrate in a new psychological setting where the requirements of the law for independence, objectivity and impartiality are no longer available and there are other new factors instead that can influence them in a purposeful manner and always contrary to law and justice. If this situation occurs, the magistrate has one and only correct and lawful move, namely to state the reasons why he/she does not consider him/herself independent and to withdraw from the respective activity (in terms of the general duties or with respect to the settlement of the particular case or file).

If such a withdrawal does not follow, the case or the file will be resolved or the execution of other official duties will be performed through a breach of the requirements of integrity (Article 175k, paragraph (2) JSA), eventually in the case of a conflict of interest under Article 175i, paragraph (1) or (5) JSA, or in violation of the independence under Art. 175k, paragraph (3) JSA.

The reason for disciplinary liability under Article 175k, paragraph (4) JSA is purely individual. This ground does not directly affect the psychological fitness of the magistrate to decide on the case (the file) or to perform other official duties. The same violation of decency and good morals in society affects the prestige and authority of the judiciary which should always be positive and unambiguous, because they are a necessary external condition and an objective prerequisite for a convincing, timely and fair justice. This is precisely why the law flatly protects the prestige of the judiciary (Article 175k, paragraph (4) JSA), introducing a disciplinary violation for causing prejudice thereto which may have serious consequences for the perpetrator.

The Inspectorate to SJC does not decide on the cases and files of the bodies of the judiciary. Therefore, the Inspectorate is not part of the institutional system of courts and prosecutor's offices. The mission of the Inspectorate to SJC is to observe and control the deadlines for examination and settlement of cases and files, and to what extent magistrates respect the principle of independence and subordination to the law alone in the performance their duties, i.e. whether they act in a state of conflict of interest, breach of integrity and violation of their independence in some of the other ways and through means provided by the law. In short, the essence of the newly established inspections assigned to the Inspectorate to SJC consists of control of the moral and ethical qualities, in the presence of which magistrates exercise their official functions. Any encroachment on their independence, which may affect objectivity and impartiality, constitutes a specific (moral and ethical) disciplinary violation which immediately and simultaneously forms two negative consequences:



- 1) grounds for disciplinary liability occur for the guilty official – the magistrate concerned;
- 2) the same person is prohibited from continuing to participate in the examination and settlement of the case (file).

Nature of the inspections performed by the Inspectorate to SJC according to the law

The Constitution and the JSA regulate various types of inspections that the Inspectorate to SJC may and must perform, and the factual and legal grounds thereto are also regulated. These inspections are the following:

1. Inspection of the organisation of the administrative activity of the bodies of the judiciary – Article 54, paragraph (1), item 1;
2. Inspection of the organisation of the initiation and progress of court, prosecutor's and investigation cases and their closure within the prescribed time limits – Article 54, paragraph (1), item 2;
3. Analysis and summary of the cases closed by an effective judgement as well as the closed cases and files of the prosecutor's office in terms of consistence with established case law and in case of contradictory practice – sending a report to the competent bodies for referral to the supreme courts for rendering interpretative acts – Article 54, paragraph (1), items 3 and 4 JSA;
4. Inspection of the merits of applications for violation of the right to examine and settle cases within a reasonable time – Article 54, paragraph (1), item 9 and Chapter IIIA JSA;
5. Inspections of integrity and conflicts of interest of judges, prosecutors and investigators, their asset declarations as well as to identify acts prejudicial to the prestige of the judiciary and those relating to the violation of the independence of judges, prosecutors and investigators under Article 54, paragraph (1) item 8.

Within the general group of new inspections under Article 54, paragraph (1), item 8 there are five separate types of inspections. In other words, the Inspectorate to SJC is competent to perform a total of 9 types of inspections.

All the inspections assigned have specific factual and legal grounds for their initiation and execution, a particular and specific subject matter for each inspection, an established procedure for their implementation, a regulated procedural act to close them, as well as provided follow-up actions within the powers of Inspectorate to SJC.

Differentiation criterion for different types of inspections

Despite the indicated legislative specificity and variety of statutory inspections, there are still criteria that distinguish them. The first one is the procedure provided for execution: for the inspections under Article 54, paragraph (1), item 1-4, this is the so-called general procedure for performing planned inspections and inspections upon reports by citizens and legal entities. This procedure is elaborated



in JSA (Articles 56-59) and in the Rules on the Organisation of Activities of the Inspectorate to the Supreme Judicial Council and on the Activities of Administration and Experts, as well as in the adopted internal rules (the relevant methodology for performing inspections by the Inspectorate). The characteristic feature of integrated (planned), thematic and control inspections and inspections upon reports is that they are performed under the same procedure and completed according to the results obtained in an identical manner.

The unifying unit of the inspections performed under the general procedure is their subject. The subject of any inspection of this type are the results of the activity of the inspected magistrate and in particular its compliance with the requirements of the law, i.e. the quality of the magistrate's activity is verified but not in respect of settlement of cases and files, but in terms of their initiation, scheduling, progress, closure, including the deadlines for rendering the relevant act. The object of the inspection is to say, a materialised product and this product is verified as to whether it complies with the legal requirements established by an external (formal) party, as well as the other criteria established regarding the requirements for the judiciary, prosecution and investigation activities.

The inspection on an application for a violated right to examine and settle the case within a reasonable time is similar to the inspections performed in compliance with the general procedure – Article 54, paragraph (1), item 9, although there is another procedure for completing this type of inspection (Chapter IIIA JSA, Article 60a – Article 60m). The similarity between this inspection and the other inspections performed according to the general procedure is based on the identical subject of the inspections. The inspection performed under the procedure set forth in Chapter IIIA JSA concerns the verification of compliance of the activity of the magistrate, through his/her actions and acts, with the requirements for examination and settlement of cases within a reasonable time, i.e. the subject of this inspection is the quality of the magistrate's official duties in relation to certain physical parameters – the timely settlement of cases. Or, in other words, the unifying unit for the inspections performed according to the general procedure is that their subject is the existence or lack of certain qualities of the magistrate's personality and the quality of performing his/her official functions from an external (formal) point of view, in light of the requirements and criteria established in the law and practice for their implementation.

If the nature of the inspections under Article 54, paragraph (1), item 8 is to be analysed, it will undoubtedly be established that they have a common unifying object of research which directly affects the personality of the magistrate. In these inspections, the immediate subject matter is whether the magistrate performs his/her function in the presence of a private interest (Article 175k, paragraph (1)), whether he/she obtains material or non-material benefit outside the scope of the law (Article 175k, paragraph (2)), whether he/she exercises or is susceptible to pressure or external influence (Article 175k, paragraph (3)), and whether there has been any act or conduct that is contrary to public perceptions of decency, which undermines the prestige of the judiciary or affects the honour of the judge, the prosecutor and the investigator in the eyes of the profession and the public (Article 175k, paragraph (4)).



In contrast to the inspections performed under the general procedure (Article 54, paragraph (1), items 1-4 and 9), the inspections under Article 54, paragraph (1), item 8 concern certain qualities of the magistrate's personality: whether the magistrate focuses the direction and quality of his/her activity depending on the existence of a private interest which stands between him/her and his/her duty to be objective and impartial; is he/she inclined to accept, and whether specifically accepts, tangible or intangible benefits beyond the law that may cast doubt on his/her independence and impartiality; whether he/she exerts undue external influence (pressure) on his/her colleagues; whether the magistrate him/herself is susceptible to such influences; whether he/she respects the standards of decency established in society; and whether he/she adequately declares his/her property status in the declarations provided by law. The aforementioned circumstances are the immediate subject of the inspections under Article 54, paragraph (1), item 8. By their very nature, these circumstances have a moral and ethical essence and therefore have a huge impact on the quality of performance of the professional rights and obligations. While the inspections under Article 54, paragraph (1), items 1-4 and 9 deal with the quality of performance of the official duties in relation to the legal requirements, the inspection under Article 54, paragraph (1), item 8 deals with the moral and ethical prerequisites for the quality performance of the magistrate's official duties. Therefore, and above all, in view of the special (specific) subject of the inspections under Article 54, paragraph (1), item 8, the law has established a special order for their implementation and completion which also determines their name – 'special inspections'. The protection of information relating to the performance of these inspections and the classification thereof as official secret are external, additional circumstances, which are layered on top of the abovementioned essential reasons for declaring such inspections to be special.

In light of the above, we can make the following classification of inspections:

Inspections performed according to the general procedure are those relating to the quality of the magistrates' activity, in view of the established legal requirements and other criteria for the activity being inspected (Article 54, paragraph (1), items 1–4, 9).

Inspections performed according to the special procedure are those relating to certain moral and ethical qualities of the magistrate, which are a prerequisite for the quality performance of his/her official powers and duties (Article 54, paragraph (1), item 8).

In the first case, the subject of the inspection is the results of the magistrate's activity.

In the second case, the subject of the inspection are the qualities of his/her personality having a direct relation to the quality of performance of his/her functions.

Legal nature and subject of identification of the newly assigned inspections of the Inspectorate to SJC

The requirements for integrity, independence and impartiality of Bulgarian magistrates are laid down in the Constitution, JSA, and the Code of Ethics of Bulgarian Magistrates.

I.1. According to the legislation of the Republic of Bulgaria, integrity is violated when the



magistrate accepts benefits beyond the law that may prejudice his/her independence and impartiality. There is no law that allows other tangible or intangible benefits for the magistrate in the performance of his/her functions other than those related to his/her official status.

2. Obtaining an unacceptable benefit is a circumstance that may cast doubt on the independence, objectivity and impartiality of the magistrate, and this revokes professional and moral confidence in the magistrate.

Confidence is the subjective prerequisite that totally excludes the possibility of corrupt activity. In this sense, confidence is also defined as a professional and moral and ethical perfection in the activity of the magistrate. This state is equivalent to the required professional integrity.

3. Integrity, in a purely psychological plan, constitutes a voluntary denial of gaining an undue advantage, which is by law inadmissible because it violates the basic principles of the process. Therefore, integrity can also be defined as material restraint.

4. Violated integrity is possible and accomplished when the magistrate has not shown honest and earnest attitude towards the activity he or she carries out and the persons involved therein.

De lege ferenda, it would be reasonable and fully in line with the approved moral and ethical standards for magistrates' performance to add the cases of abuse of power in addition to violations of integrity, i.e. application of the law without the factual and legal prerequisites for this being in place or for reasons and purposes other than those provided by the legislator, as well as for other serious offences. The opinion of the President of the Venice Commission, Mr Gianni Buquicchio, published in „Общество и право“ magazine, vol. 4, 2016, pp. 72–79, is formulated in this direction.

5. Broken integrity is a necessary prerequisite for a conflict of interest and constitutes a minor disciplinary offence that performs a preventive function against the conflict of interest.

6. Violation of integrity requirements constitutes a private case of violation of the magistrate's independence through the benefit obtained and the consequences thereof.

II. 1. The independence of the magistrate in the performance of his/her official duties and his/her subordination to the law alone implies full internal (psychological) and external (material) freedom to examine and settle the cases only in the light of the evidence, inner conviction and the law.

2. Subordination to the law alone means not only lack of any dependence of the magistrate on the examined case and the persons involved, but also an imperative obligation for an objective, comprehensive and complete examination of all circumstances relevant to the resolution of the case clarified in accordance with the procedural law.

3. The independence of the magistrate necessarily implies not only knowledge but also correct application of the law, which is permissible only if the necessary factual and legal prerequisites exist.

4. The independence of the magistrate is legally established and legally guaranteed. Any situation or condition of the magistrate which results in impairment of his/her independence, is a ground for revocation of the act concerned due to the illegitimate participation of the same magistrate in the settlement of the case.



5. The independence of the magistrate in his/her factual and psychological state in the examination and resolution of the case is the most important condition for a fair trial and a fair final act.

6. The independence of the magistrate is mostly objectified by his/her sole subordination to the law alone and no one else.

7. The independence of the magistrate constitutes an indispensable triune ensemble of subordination to the law alone, objectivity and impartiality.

8. The independence of the magistrate may be affected by violation of integrity, the performance of official activity in case of conflict of interest, breach of the rules of objection under procedural laws, and by the forms and means referred to in Article 175k, paragraph (3) JSA (exercising or being susceptible to pressure, influence, intercession, etc.).

9. The impaired independence has objective and subjective consequences on the requirements of objectivity and impartiality.

III. 1. The requirement of impartiality in examining and resolving cases occurs when the truth of the material facts is established on the basis of an objective analysis and assessment of the evidence where procedural equality and equal distance from the parties is ensured, guaranteed implementation of the right to a fair trial and the right of defence of participating parties and individuals.

2. Impartiality can only arise as a consequence of respecting the principle of independence of the magistrate and his/her obedience to the law alone. Impartiality itself cannot be self-evident and, in turn, trigger the emergence of independence if it (independence) was not an objective transient fact, since the effects of a phenomenon can never re-create the cause of its occurrence since the causal process moves only in a straight and not in the opposite direction.

3. The Constitution and procedural standards set the requirements for independence, objectivity and impartiality in the actions and acts of the magistrate and ensure the necessary conditions for rendering lawful and fair acts. Impaired integrity, independence, objectivity and impartiality act counter-productively in a direction contrary to positive legal requirements. Therefore, the fight against these violations remedies and validates the rule of law.

4. The requirements for the magistrate's integrity, independence, objectivity and impartiality are not so much connected with the level of his/her professional training as with his/her moral and ethical qualities in the performance of his/her professional duties. The presence of these qualities is a compulsory psychological prerequisite for each magistrate to legally perform his/her service. The main moral values that are included in the contents of the abovementioned qualities are good faith, honesty, fairness, trust, duty, truthfulness, etc. These are the necessary moral and ethical limits to the official conduct of each magistrate as an essential condition for quality and fair justice.

In line with the above, it can be concluded that the role of the Inspectorate to SJC is to observe, preserve and validate the necessary subjective conditions in terms of morals and ethics for rendering objective, lawful and fair court and prosecutor's acts.

At the same time, the Inspectorate to SJC may put in place the first real barrier to morally and

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ethically unlawful acts of the judiciary: objectified dishonesty, conflict of interest, violation of the magistrate's statutory independence, and violation of the prestige of the judiciary, which violations together or separately negatively affect the quality and usefulness of the work of the bodies of the judiciary, including its authority in society.