



THE INDEPENDENT JUDICIAL INSPECTORATE IN BULGARIA – CONSTITUTIONAL BALANCE AND RELATIONS



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In this article an attempt will be made to define the nature and role of the Inspectorate as an independent control body of the judiciary from a constitutional point of view. The analysis of its structure at a constitutional level requires to reveal, in a doctrinal and practical aspect, the relations of this newly established constitutional body with the other bodies of the judiciary. These are the relations and balances between the Inspectorate and the court, the prosecutor's office and the investigation service, the relations related to their functional and institutional independence, the forms and the limits of inspections and controls. It will also examine the relationship between the Inspectorate and the Supreme Judicial Council presumed by the independence that is constitutionally envisaged for each of them – are subordinate relations possible, are there conflicting areas in the exercise of the powers, is the Constitution and the legal framework fit to ensure the proclaimed independence of each of them.

We can say even now that the concept of 'independence of the judiciary' as a generic term inevitably contains elements of imagery. Indeed, this independence is neither unified nor uniform, it has a different meaning and manifestation for each of the bodies of the judiciary, so there is also a different specific defence mechanism. If we define the independence of the judiciary as a generally denominated and understood attribute of relations with the bodies of the other powers in the state, we will enter the second, no less important, layer of study of the independence of each of the bodies of the judiciary which is within the relationship between them. There is little work on these issues, and I hope that the current work will contribute to the debate and scientific clarification of the constitutional balances and relations between the individual independent bodies of the judiciary, in particular the balance and relations associated with the independent Inspectorate as constitutionally established by the amendments to the Constitution in 2007 and 2015.¹

¹ The topic was first addressed by M. Spasov – „Инспекторатът към ВСС – българската юридическа иновация – жалбите срещу съдиите, а не срещу решенията“, „Административно правосъдие“ magazine, book No. 6/2007, and later by Prof. Emilia Drumeva, PhD – „Независимост и контрол на съдебната власт (Инспекторат към ВСС)“ in the publication „Вътрешни актове на Инспектората към ВСС“, Sofia, 2010, pp. 217 et seq.



The exhibition is designed to introduce a brief historical background and then outline the essence of the constitutional framework relating to the legitimacy, status and competencies of the Inspectorate, to emphasize its independence as a fundamental constitutional requirement, and finally to try to point out some regulatory issues.

The Judicial Inspectorate – from an auxiliary structure to an independent control body of the judiciary

The history of the Bulgarian judicial inspectorate starts with the amendments to the Structure of the Courts Act (SCA) in December 1911, when it is envisaged as a structure at the Ministry of Justice which reviews judicial authorities and prosecution supervisors and is subordinated to the Minister of Justice. Inspectors are appointed by a decree of the king which means a status close to that of judges and prosecutors. Judicial inspectors are permanent and are treated as deputy presidents of a court of appeal and the Inspector General is treated as a president of a division of the Supreme Court of Cassation. All activities of judges and prosecutors are audited, including the quality of their work and their conduct in the performance of their duties. With minor adjustments, the structure of the judicial inspectorate to the Minister of Justice remains in spite of all the vicissitudes of the complex era during and after the First and Second World Wars, and has generally had a positive impact on justice in Bulgaria. The fears that the Inspectorate, as a body to the Minister, will become a tool for imposing a dictatorship of the executive power over the judiciary does not come true, nor does it lead to any discontent in the judiciary itself. This is mainly due to the high professionalism of the inspectors, necessarily coming from judicial structures, with verified qualities and morals. The authority of the Inspectorate is not significantly affected even when the judicial inspectors were seconded directly by the Minister of Justice in 1941, and he himself carried out a revision of the SCC and the General Prosecutor's Office – something that would be absolutely unacceptable from today's democratic point of view.

On the eve of changes in 1989, the Inspectorate was also a structure of the apparatus of the Minister of Justice². There were thematic and planned audits of regional and district courts. Not only indicators of promptness and organisation of work were subject to inspection and assessment, but also the quality for which closed cases were inspected. The Supreme Court was not related to the Ministry of Justice in terms of staff and was not subject to an inspection. The General Prosecutor's Office, managed by the Prosecutor General, exercised autonomous revision functions over regional and district prosecutor's offices and the investigation divisions in the country.

For the whole historical time of existence of the judicial Inspectorate, there are several common founding principles that determine its vitality and necessity:

- The Inspectorate acted professionally and objectively without direct administrative intervention by the Minister of Justice in its work.

² See P. Ренев, „Съдебната власт в България 1889 – 2014 г., проблеми на съвременния дискурс“, published by: Sibi, 2014, pp. 59 et seq.



- There was no revision of pending cases that would jeopardise the independence of judges and prosecutors and the principle of free judgement.

- Acting judges and prosecutors with high professionalism and morality were appointed as inspectors who, after fulfilling their duties, returned to the judiciary. By 1989, there was a practice to keep the connection with the judiciary alive, the court inspectors being elected on an optional basis as judges at the Supreme Court where they served for three months a year as members of judicial panels.

Thanks to these principles, the Inspectorate has established itself as a very important disciplining and professionally integrating factor, very useful for Bulgarian justice.

The institute of the judicial Inspectorate underwent a true revolution with the constitutional amendments in 2007. The essence, the most important thing in this qualitative change, was that the Inspectorate became an auxiliary structure to the Minister of Justice as an independent body, part of the judiciary within the state (understood in the broad meaning of the term). The new Article 132a, established in 2007, provided that an inspectorate consisting of an inspector general and ten inspectors will be set up at SJC. In the new version of the text, the Inspectorate is designated 'to the Supreme Judicial Council', i.e. if we follow it dogmatically, the Inspectorate is situated as a structure to the SJC. It is, however, formal only grammatically and not essentially.

Inspectorate to the Supreme Judicial Council or Inspectorate of the Judiciary

The resolution of the dilemma whether the Inspectorate is 'to SJC' or 'of the Judiciary' is not of formal significance but has an existential projection since it is necessary to determine the place, meaning and relations of the Inspectorate with other bodies of the judiciary through it. To help solve this dilemma, we have to answer the following questions: what is the legitimacy of the Inspectorate as it is stated in Article 132a of the Constitution, and what is the relation thereof with the legitimacy of other bodies of the judiciary; what is the constitutionally established competence and how is it placed in comparison with the competence of other bodies of the judiciary, and finally – we have to interpret the constitutional requirement for independence of the Inspectorate and how it functions within the system of bodies of the judiciary, and in a broader sense – within the paradigm of separated powers of state.

The Inspectorate is a collective body that acquires legitimacy with the election of its members by the National Assembly. This is done with a majority of 2/3, aiming to achieve broader consolidation around eligible applications. The Inspectorate does not receive legitimacy through election by the governing administrative body of the system – the SJC. Such legitimacy is received by the bodies of the judiciary: courts, prosecutor's offices, investigation services that fulfil or support the implementation of the judicial function. The fact that the Inspectorate is elected by the highest legislative body of the state places its legitimacy in line with the legitimacy of the SJC, half of whose members are also directly elected by the National Assembly with a majority of 2/3. The Inspectorate has its own



legitimacy which ensures its independence from all other bodies of the judiciary and, of course, from the SJC. It is not in a relationship of subordination with the Supreme Judicial Council, does not place it in such a relationship, and the fact that the SJC's Plenum may request from the National Assembly to terminate the term of a guilty inspector means it has a referral rather than a decisive competence (Article 48, paragraph (2) JSA).

Considering the constitutional competence of the Inspectorate, it is a body with supervisory powers assisting the functioning of the judiciary to achieve quality of justice. The functioning of the Inspectorate is subject to two clear constitutional principles. The first is that the Inspectorate cannot in any way affect the independence of judges, jury, prosecutors and investigators in the performance of their functions when carrying out an inspection. The second is the principle of independence in the exercise of powers, independence both from bodies and factors external to the system, as well as from other bodies of the judiciary itself, and, above all, from the SJC as the administrative head of the system. Indeed, the Inspectorate assists the SJC's personnel activity, but this assistance is not conducted and cannot be influenced or guided in any way. The Inspector General and the inspectors are independent and obey the law alone in the performance of their functions (Article 132a of the Constitution). Having in mind what has been said so far and returning to the dilemma of whether the Inspectorate is a body to SJC or a body of the judiciary, I think it is clear that the exact qualification of the institutional nature of the Inspectorate is that it is not a body to SJC but an independent body with its own identity (a legal entity), its own composition with high legitimacy, its own structure and management, budget and constitutionally declared independence from other bodies of the judiciary in the performance of its functions. In the nicest possible sense, in order to put an end to the dispute 'Inspectorate to SJC' or 'Inspectorate of the Judiciary', let us say that 'to' is a constitutional term and this justifies its use. In this case, however, we need to understand the preposition 'to' in the following linguistic sense – 'to', not as a sign of subordination or affiliation, but 'to' as a sign of proximity in place³.

The proximity to SJC is indisputable but that is all. The Inspectorate is a different and independent body of the judiciary created by the constitutional amendments in 2007, and with the constitutional amendments in 2015, it has been entrusted, almost to the limit, with further supervisory powers that once again confirmed its autonomy and independence. So – 'to', in proximity and in the assistance of SJC, but not as part of or under the authority of SJC.

The independent status of the Inspectorate is explicitly deduced from the set of powers conferred by the Constitution and the Judiciary System Act. These powers far outweigh the original historical function of inspection control to assist the system's governing body (the Minister of Justice, now the SJC) in his personnel activity. Now, this is one of the important functions, perhaps the most important one, but along with it there are a number of others. Here are the main ones:

- The Inspectorate carries out its activities through inspections provided in its annual programme or upon alerts (Article 56 JSA). It draws up its annual program independently, and alerts that may trigger ad hoc inspections can be sent by the widest range of individuals and legal entities:

³ See Dictionary of the Bulgarian Language, publisher: Наука и изкуство, 2003



separate bodies of the judiciary, SJC, magistrates, citizens, state bodies, the ombudsman.

- The Inspectorate has the power to refer the matter to SJC and to request the initiation of disciplinary proceedings for sanctioning a judge, prosecutor or investigator as a result of an inspection. Moreover, if it is dissatisfied with the outcome of disciplinary proceedings, it may appeal the SJC's act before the Supreme Administrative Court. In case of relations of subordination between SJC and the Inspectorate this would be absolutely inadmissible (Article 312, paragraph (1), item 3 and Article 323, paragraph (1) JSA).

- The Inspectorate itself organises and manages its activities by drafting internal rules for performing the different types of inspections.

- The Inspectorate analyses and summarises the cases which have been closed with an effective judgement as well as the closed files and cases of prosecutors and investigators and, in case of contradictory case law, signals to the competent authorities for requesting the adoption of interpretative decisions or interpretative judgements.

- The Inspectorate is the body that performs inspections on applications for breach of the right to examine and resolve a case within a reasonable time – its opinion is decisive for the determination of the amount of compensation by the Minister of Justice.

- The Inspectorate independently performs a signalling activity by making suggestions and sending alerts to other state bodies, including the competent bodies of the judiciary (Article 54, paragraph (1), item 7 JSA).

- The Inspectorate performs important functions for the openness and publicity of the system by publishing its activity reports and issuing an operational newsletter on the results of specific inspections which is published on its website (Article 60, paragraph (1), item 4 JSA).

The above is a set of autonomous powers of the Inspectorate, during the implementation of which it not only does not act under any direction or guardianship, but on the contrary – the Constitution and the Judiciary System Act provide it with a broad operating autonomy. There is no doubt that the Inspectorate was created and acts as a new independent body, part of the judiciary, entrusted with supervisory, analytical and signal functions through which it assists the SJC's personnel activity, on the one hand, and on the other, through openness and publicity of inspections, as well as the possibility to refer to a wide range of entities, it becomes a powerful factor for transparency by facilitating the exercise of civil control over justice in Bulgaria.

The Inspectorate as an Independent Body of the Judiciary

According to Article 132a of the Constitution, the Inspector General and the inspectors are independent in the performance of their duties and obey the law alone. The independence specified by the Constitution has an institutional and functional projection. As we have already said, the Inspectorate, although elected by the National Assembly, is completely independent of it in the performance of its



activity. The report which the Inspector General presents through SJC to the National Assembly is informative, there are no mechanisms for intervention in the direct inspection activity. The Inspectorate is also independent of SJC. The SJC may issue alerts, may exercise a referral power to terminate the term of an individual judicial inspector, it also receives the report on the work of the Inspectorate, but in no way interferes with the inspections it performs. As an expression of institutional autonomy, the Inspectorate sends to the Supreme Judicial Council proposals for the realisation of disciplinary liability of guilty judges, prosecutors and investigators, it may appeal the act of the SJC terminating the disciplinary proceedings before SAC, it can independently address alerts both to SJC and the other bodies of the judiciary and other state bodies. The Inspectorate is directly informed about the work of SJC through the presence of the Inspector General at the sessions of the colleges and the Plenum of SJC. The functional independence of the Inspectorate is related to the conduct of inspections. They are carried out completely autonomously and the closing acts must be an expression of free inner conviction after an analysis of established facts and circumstances. It is very important in this respect that the law assigns to the Inspectorate to organise and focus its activities on its own. Its plenary assembly adopts internal rules for performing the inspections and the Inspector General performs general organisational and methodological management of the Inspectorate's activity.

The Constitution and the Judiciary System Act set up a comprehensive system to protect the independence of the Inspectorate. Here are the main elements of this system:

- The existence of a comprehensive regulation on the status and powers of the Inspectorate at constitutional and legal level which do not allow external intervention in the work
- The way inspectors are elected – by a majority of two-thirds and after a hearing of the candidates. It might be considered, however, for the nominations to be made by the bodies of the judiciary itself, to provide participation at the general meetings of judges, prosecutors and investigators. MPs have far less information about the candidates' professional qualities than the units they come from. The Constitution does not provide for a court quota for the Inspectorate and this further necessitates the active participation of professional communities in the process of nominating candidates.
- The established constitutional mandate – five years for the Inspector General and four years for the inspectors – which ensures the regular performance of functions
- The legal requirement for high professional and moral qualities and explicit reasons for early termination of the term of judicial inspectors (Article 42, paragraph (1) and Article 48, paragraph (1) JSA)
- The requirements for high professionalism, the introduction of the competition principle and the obligation to continuously upgrade the qualification of the experts who assist the inspectors
- The random allocation of inspections
- The independent budget of the Inspectorate

I left the independent budget last only in order to discuss further this extremely important constitutional requirement ensuring the independence of the Inspectorate. The requirement for an



autonomous budget is provided at constitutional level in Article 132a, paragraph (5) since the creation of this body in 2007. The text says that the independent budget of the Inspectorate is adopted by the National Assembly within the budget of the judiciary. I think this text is not clear enough, at least I find the interpretation and formulation thereof in JSA inaccurate and incomplete. The explicit imperative constitutional provision for an independent budget of the Inspectorate does not mean only that it must be on a separate line within the budget of the judiciary. On a separate line of this budget are also the budget of the National Institute of Justice and other bodies of the judiciary, but a constitutional requirement for an independent budget of the National Institute of Justice and these bodies of the judiciary does not exist. This means that the constitutional legislator wanted to say something else, and, in my view, the Inspectorate has the right not only to present a draft budget but also to be able to defend it at all stages of the procedure for the adoption of the budget of the judiciary as an integral part of the state budget. In practice, this means that: 1) The Inspectorate discusses the draft budget of the judiciary proposed by the Minister of Justice in the part on the budget of the Inspectorate; 2) In addition to the draft of the Minister, it presents to SJC its version of the draft budget; 3) SJC discusses the draft budget of the Inspectorate but cannot reduce the parameters thereof without its consent; 4) the Inspector General, together with the representatives of the Supreme Judicial Council and the heads of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, participate at the sessions of the standing committees of the National Assembly and defend their draft budget.

This is what is meant by Article 132a of the Constitution. The text aims to protect the budget of the Inspectorate, including from intervention by SJC, which could hypothetically hinder or limit its perimeter. This follows also from the systematic interpretation of Article 117 and Article 132a of the Constitution. The judiciary has an autonomous budget (Article 117), the Inspectorate has an autonomous budget within the autonomous budget of the judiciary (Article 132a). Such an interpretation also follows from the fact that no such constitutional requirement is foreseen for any other body of the judiciary. Currently, only the Inspectorate's participation in the first stage of the process, as outlined above, is foreseen in the Judiciary System Act. This renders the requirement introduced in Article 132a of the Constitution meaningless, and in practice puts the budget of the Inspectorate under the same regime as that of other bodies of the judiciary.

Legal Regulation of Certain Powers of the Inspectorate

This refers to the competence of the Inspectorate to perform integrity inspections of judges, prosecutors and investigators. The Constitution provides for inspections on conflicts of interest, for the identification of acts that undermine the prestige of the judiciary, as well as for violations of the independence of the judiciary. Integrity is a sign and a quality that is inherent to all these three groups of motives, but it is not, by itself, a legal basis for performing inspections. A magistrate is a man of



integrity when he/she does not allow conflict of interest, does not harm the prestige of the judiciary, and does not allow the violation of its independence. To define integrity as a legal basis in law is unnecessary and impossible. I find the definition contained in Article 175k, paragraph (2) of the Judiciary System Act to be scarce and incomplete, according to which ‘the integrity inspection is an inspection that seeks to ascertain whether the person receives tangible or intangible benefits beyond the law’. This definition only applies to one particular case of dishonesty. Hence the question, for example – is it honourable if a magistrate succumbs to intercession, if he/she deliberately discredits and, in general, violates a number of other moral rules and principles? The notion of integrity is used in the constitutional text as a generic term. As such, it relates to the other three sets of hypotheses – conflict of interest, violation of independence and violation of the prestige of the judiciary. Only in this context should the Inspectorate perform its inspections and verify the integrity of the person affected by the inspection.

Another issue related to the new competencies of the Inspectorate is the lack of authority in certain circumstances to be able to inspect the quality of work of judges, prosecutors and investigators. Historically, although the Inspectorate was not established as an independent body but only as an auxiliary structure to the personnel body of the judiciary, it was empowered to provide assessments on the quality of the magistrates’ work, thereby assisting the bodies performing appraisals and deciding on the professional growth of judges, prosecutors and investigators. Now, the Inspectorate is given the power to analyse case law and in case of a contradiction – to signal the need for interpretation and generalisation, but cannot draw conclusions about the quality of work of individual magistrates. Since the law recognises its capacity to do the former, why does it refuse to grant powers for the latter? The assumption that independence and free conviction may be prejudiced is unfounded because quality inspections will be based solely on the analysis of closed cases and files that have been screened at the level of the relevant judicial instance and have entered into force. I would even go a little further. The Inspectorate should also have the power to report cases of uncontested, enforced acts when they contain intolerable, scandalous mistakes, such as confusion of identities, exchanged motives from different cases, application of a repealed legal act – unfortunately there are such cases.

In conclusion, we have to say that there is one great challenge facing the Inspectorate in its current composition. It must stand up for its competence and independence and create a constitutionally sound and lawful practice in the implementation of the important and quite burdensome additional constitutional powers entrusted to it with the latest constitutional amendments in 2015.