REPORT

THE SYSTEM OF COMPLAINTS AND SIGNALS
AGAINST JUDICIAL MISCONDUCT IN THE COURTS

ANALYSIS OF THE SITUATION IN BULGARIA
REVIEW OF BEST PRACTICES IN EUROPE

2009

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Program for the Development of the Judicial System (PDJS)
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Silvia Ilieva
Silvia Dimitrova

Tsoni Tsonev
Petar Stoyanov
Nikoleta Petkova
Lyuben Hadzhiivanov
Nadya Pelovska – Dilkova
Ekaterina Nikolova
Radost Mihalkova
Velislava Delcheva
Verginia Ananieva
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REPORT

THE SYSTEM OF COMPLAINTS AND SIGNALS AGAINST JUDICIAL MISCONDUCT IN THE COURTS

ANALYSIS OF THE SITUATION IN BULGARIA
Summary

The Bulgarian legislation guarantees the possibility for the citizens to lodge complaints against the unauthorised conduct of magistrates. However, there is no codifying legislative instrument or another document detailing how a complaint is to be handled and the functions of the individual authorities which review it.

There are many authorities which are competent to review complaints:
- Inspectorate with the Supreme Judicial Council (ISJC);
- Supreme Judicial Council (SJC) Committee on Professional Ethics and Countering of Corruption;
- SJC Disciplinary Proceedings Committee;
- Anti-Corruption, Conflicts of Interest and Parliamentary Ethics Committee with the National Assembly;
- Committee for Prevention and Countering of Corruption with the Council of Ministers;
- The respective administrative head of a judicial unit;
- Prosecutor’s Office of the Republic of Bulgaria.

In many cases, complaints have to be forwarded to another authority which is competent in the respective situation which delays the process and leads to the complainants’ dissatisfaction.

In addition, the citizens are not familiar with the powers of these authorities and the content of the complaints they file fails to fall within their competence. The complaints most often:
- Concern the subject matter of a case on the merits. The majority of the complaints are against the legality of acts of the court and the prosecutor’s office which are subject to instance control or have entered into force and there is no procedural possibility to challenge them;
- Are too general without specific facts and circumstances. In these cases, it is hard for the authority reviewing the complaint to filter the useful information from the personal complaints or reproach against the political system.

The SJC has posted on its website a sample anti-corruption signal but most of the complaints received are in a free form and have too large a volume which also makes their processing more difficult. It would be useful to use a standard form and to develop unified rules for working with complaints and deadlines for their review.

In the past two years, there has been a marked increase in the number of the complaints lodged. Even though such a trend can also be seen in the number of the disciplinary sanctions imposed by the SJC, there has been no in-depth analysis of how useful the complaints are or tracking of the relation between the information submitted and the sanction imposed. According to the competent authorities, the value of the information contained in the complaints is relatively small in comparison to the volume of work related to their processing.

It is a fact that, despite the growing number of complaints lodged with the competent Bulgarian institutions, many citizens keep addressing their signals to international organisations or foreign embassies to Bulgaria. The reason can be sought partially in the lack
of adequate legal protection of the complainants. The availability of legal guarantees for their safety would result in specification of the complaints and easier finding of the misconduct.

There is no unified electronic register of complaints which is accessible to all competent authorities in order to overcome the possible duplication of information and functions. Such a register can be used for quantitative analysis of the workload and a qualitative assessment both of the work of the competent institutions and of the extent to which the citizens can adequately control the judiciary and contribute to the removal of magistrates with improper or unethical conduct.

As a whole, the possibilities of the media to inform the citizens about the competent authorities, the manner of lodging complaints and the form of the complaints are not used actively. The media are not fully involved in the dissemination of the results of the checks performed on complaints and the disciplinary sanctions imposed.
Introduction

The lodging of complaints, signals and proposals is the citizens’ constitutional right. On the one hand, this is a means of civil control over the activities of government bodies. On the other hand, it is a means the administration can use to improve and democratise its work. This helps to guarantee the principles of accessibility, public nature and transparency as well as continuity and predictability in the actions of the administration. It is the bodies’ obligation to take action and respond to complaints and proposals and this removes the adverse consequences from their unlawful or inappropriate actions.

The present Report is divided into four chapters which cover the regulatory framework for the process of accepting signals and complaints from citizens and organisations against misconduct of judges, prosecutors and investigators in Bulgaria, the competent authorities and committees, the procedures for review of signals and complaints as well as findings, problems and recommendations.
Chapter 1

Regulatory Framework for the Work of Accepting Signals and Complaints from Citizens and Organisations against Misconduct of Judges, Prosecutors and Investigators

1. Constitution of the Republic of Bulgaria

Article 45 of the Constitution of the Republic of Bulgaria provides for the citizens’ right to lodge complaints, proposals and petitions with government bodies. The laying down of this text in the fundamental law along with the other constitutionally established principles concerning the citizens’ rights and freedoms is a guarantee of civil control and the strengthened role of the citizens and organisations in the assessment how the government bodies work.

2. Administrative Procedure Code

The Administrative Procedure Code (APC) dedicates a special chapter (Articles 107 – 125 of the APC) to the scope, principles, organisation of work, form of the signals and proposals every citizen or organisation may file with the administrative bodies and other bodies performing public and legal functions. The specific procedure for working with signals is set out in the structural rules of the respective bodies – Article 110 of the APC.

The APC lays down in principle the possibility for special laws to contain special rules for the lodging of proposals and complaints. They must take into account the specific issues which make up the subject matter of the provisions of the respective laws and the authorities which will be entrusted with the review, resolution and taking measures in relation to a proposal or a complaint.

3. Judicial System Act

The Judicial System Act (JSA) is the special law which defines the magistrates’ status, the disciplinary liability borne in the event of misconduct and other issues related to the functioning of the judiciary. It provides for the authority of the judicial bodies and the SJC as a body which determines sanctions and takes decisions in disciplinary cases against magistrates. A separate chapter sets out the powers of the Inspectorate with the SJC whose main functions include the performance of inspections in relation to the work on cases, notifying the administrative heads and the SJC should violations be found and making proposals for disciplinary sanctions.

4. Rules for the Organisation of the Work of the Supreme Judicial Council and Its Administration

The Rules for the Work of the SJC provide in detail for the activities this body must carry out to perform its functions related to the imposition of disciplinary sanctions on judges, prosecutors and investigators in the event of misconduct committed by them. With regard to the organisation of the work, Article 16 (1) provides for a Professional Ethics and Prevention of Corruption Committee which has the obligation, if there are signals from citizens and government bodies concerning instances of corruption or publications in the media, etc., to
notify the competent authorities and inform the SJC about the results of the respective check. This Committee must publish an annual report about its work.

5. Rules for the Organisation of the Activities of the Inspectorate with the Supreme Judicial Council and for the Activities of the Administration and the Experts

The Rules for the Work of the ISJC contain similar provisions which allow the ISJC to act ex officio and perform inspections on signals, complaints and requests from individuals, legal entities, government and administrative bodies, judges, prosecutors, investigators, etc. Inspections in relation to misconduct may also be initiated on information from the press, the media and other sources. The ISJC draws up quarterly reports about the results of the inspections performed on complaints lodged by citizens and legal entities.

When it finds that there is information about violations and the measures for their removal do not fall within its competence, the Inspectorate sends the signals to organisations and government bodies, including the competent judicial bodies.

6. Code of Ethical Conduct of the Bulgarian Magistrates

The Code of Ethical Conduct of the Bulgarian Magistrates sets out the rules for ethical conduct of judges, prosecutors and investigators stemming from the main principles – independence, impartiality, justice and transparency, kindness and tolerance, integrity and decency, competence, qualification and confidentiality. It empowers the professional ethics committees in the judicial bodies to render opinions when complaints or signals are filed by citizens concerning magistrates’ conduct which is incompatible with the requirements for ethical behaviour.
Chapter 2

Bodies and Committees Which Are Competent to Review Complaints against Judicial Misconduct

The bodies and committees with which the citizens and the organisations can lodge complaints against judges, prosecutors and investigators are the Supreme Judicial Council through the Professional Ethics and Prevention of Corruption Committee, the Inspectorate with the Supreme Judicial Council, the respective administrative heads of the judicial bodies and the committees with the professional organisations of the judges, prosecutors and investigators.

The prosecutor’s office is competent to review proposals, signals and complaints in relation to doubts of corruption practices arising with respect to judges, prosecutors and investigators and when it collects sufficient facts and evidence, it may initiate prosecution case files against the respective magistrate.

1. Professional Ethics and Prevention of Corruption Committee with the Supreme Judicial Council

The Professional Ethics and Prevention of Corruption Committee consists of 5 members. Its authority is related to the organisation of the implementation of the strategy adopted to fight corruption and the action plan to it; analysis of information about the existence of corruption practices in the judiciary; development of measures of prevention and countering of instances of corruption in the judiciary; performance of joint activities and exchange of information with the Anti-Corruption Committee with the National Assembly, the Committee for Coordination of the Fight against Corruption with the Council of Ministers, the National Audit Office and other government and public structures created to counter corruption, etc.

The main activity of the Professional Ethics and Prevention of Corruption Committee is to consider and resolve complaints and signals from individuals, government bodies and organisations about instances of corruption and magistrates’ conduct which is incompatible with the requirements of the rules for ethical behaviour. When it completes a check, it informs the SJC about the results and timely refers the matter to the competent authorities if there is information about magistrates’ corruption conduct. An annual report about the work of the Committee is drawn up and posted on the SJC website.

The Professional Ethics and Prevention of Corruption Committee acts ex officio on significant subject matters in the public spotlight and when there are publications in the media which give information about judicial misconduct.

The Committee forwards the proposals and complaints which lie outside the competence of the SJC to the respective government bodies requiring a response to the sender. When necessary, it sends signals for inspections to be conducted to the Inspectorate with the SJC.

To receive signals about instances of corruption, the Committee has dedicated an electronic address on the SJC website which the citizens can use to submit their complaints using a form provided.
The number of complaints lodged with the SJC is growing. After the Inspectorate with the Supreme Judicial Council was set up, it was expected that the complaints filed with the Council would decline in number significantly. Yet, in practice, their number went up in 2009. In 2008, the Professional Ethics and Prevention of Corruption Committee received 1,934 complaints, requests and signals, given 1,385 in 2007 and 1,007 only for the first six months of 2009.¹

Figure 1

The total number of signals submitted by individuals, government bodies and legal entities to the Inspectorate with the SJC in 2008 is 1,644², while the number from the beginning of 2009 till 30 September 2009 is 1,472. For the sake of comparison, 801 signals from citizens, government bodies and legal entities were submitted to the Inspectorate with the SJC, a newly-established body, in the period January – July 2008; 2,108 signals were filed for the same period in 2009.

Figure 2

The comparison of the statistical data about the signals submitted by citizens, legal entities and government bodies (respectively inspections carried out) to the Inspectorate with the SJC shows a growing trend in the number of signals both in the SJC and the Inspectorate with the SJC. This is evidence of a change in the citizens’ trust in the benefit of lodging complaints.

¹ Reports of the Professional Ethics and Prevention of Corruption Committee with the Supreme Judicial Council http://www.vss.justice.bg/bg/start.htm
and of the fact that the fear that a signal could have an impact on the outcome of a case has been overcome.

2. Disciplinary Proceedings Committee with the SJC

The powers of the Disciplinary Proceedings Committee encompass: review of the case files and orders of the administrative heads for imposition of the disciplinary measures of rebuke and reprimand; submission of proposals to the SJC to confirm, remove or change the sanctions imposed by administrative heads; carrying out of checks about the admissibility of the proposals for imposition of disciplinary sanctions; summary of the results from the disciplinary proceedings and reporting them to the SJC.

If there is information about disciplinary offences of judges, prosecutors and investigators, this Committee timely refers the matter to the competent authorities and proposes to the SJC to assign it to the Inspectorate with the SJC to conduct inspections.

3. Inspectorate with the SJC

The Inspectorate inspects the activities of the judicial bodies without infringing upon the magistrates’ independence in the performance of their functions. The Chief Inspector and the inspectors act on signals, complaints and requests lodged by citizens and are obligated to make the respective checks.

4. Anti-Corruption, Conflicts of Interest and Parliamentary Ethics Committee with the National Assembly

The Anti-Corruption, Conflicts of Interest and Parliamentary Ethics Committee acts on submitted signals and has the right to perform functions related to establishing and clarification of data, facts and circumstances, including through ad-hoc inspections on site of all structures of the government and municipal administration of which it may require information and documents.

The internal rules adopted allow any individual or organisation to turn to the Committee with a written or oral signal. Anonymous signals are not considered except for the cases when they contain specific facts and information and there are documents appended to them which presuppose or show an act of corruption or the existence of conditions of corruption.

The Committee may act ex officio on topics of high public interest, audit reports received from the National Audit Office and others.

5. Committee for Prevention and Countering of Corruption with the Council of Ministers

The Committee for Prevention and Countering of Corruption develops the priorities of the government anti-corruption policy, proposes amendments to legislative instruments in relation to the government anti-corruption policy, draws up strategic documents, organises the monitoring of the implementation of specific anti-corruption measures and proposes changes

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3 The bodies listed below are not directly related to the judicial bodies which review complaints and conduct inspections but have a good cooperation with them.
in the structures of internal administrative control with a view to increasing their effectiveness.

The implementation of the Committee’s decisions is assigned to the central executive authorities and the Chief Inspectorate Directorate with the Council of Ministers which are supported by the heads of the inspectorates in the administrative structures of the central executive authorities.

The Committee cooperates actively with the structures of civil society in the periodic studies they conduct to assess the dissemination of corruption in the country and the attitude of the citizens and businesses towards the quality and results of the work of the state administration.

The checks on complaints submitted to the Committee are carried out by the inspectors with the administrative structures of the central executive authorities supported by the Chief Inspectorate Directorate with the Council of Ministers.

The citizens may send a signal directly to the established unified information system for coordination and communication of the anti-corruption structures in the Republic of Bulgaria. Addressees in the system to which proposals and signals may be sent are all structures of the central executive authorities which have set up Inspectorates under Article 46 of the Administration Act – ministries and some agencies as well as the regional public councils for prevention and countering of corruption with the regional governors. Addressees in the system are also the Prosecutor’s Office of the Republic of Bulgaria, the National Assembly and the Professional Ethics and Prevention of Corruption Committee with the Supreme Judicial Council.

The electronic signals and proposals to the administrations connected to the system may be filed only through it. For this purpose, the electronic addresses for submission of signals will be replaced with a link to the website of the Committee for Prevention and Countering of Corruption with the Council of Ministers. A signal submitted is processed by staff who have a universal electronic signature and who have received a password for access to the data in the system in accordance with the procedure for review of signals from the competent authority with the respective executive or judicial body.

6. Council for Coordination of the Anti-Corruption Activities in the Republic of Bulgaria

The Council has been set up to improve the coordination between the legislative, executive and judicial branches of government in the field of prevention and countering of corruption. It includes the chairpersons of the Anti-Corruption Committee with the National Assembly, the Judicial Anti-Corruption Committee with the Supreme Judicial Council and the Committee for Prevention and Countering of Corruption with the Council of Ministers as well as one more member of each of the three committees. The Coordination Council meets on a monthly basis. The sessions are open and public.

The main tasks include providing information to one another, coordination and harmonisation of the activities. The committees exchange information on signals of public significance and establish the existence of prerequisites for corruption in the regulatory framework and the manners for its application.
There are also other bodies which deal with complaints of corruption in executive bodies and by civil servants in high positions, with checks on signals, requests and complaints against unlawful or inappropriate acts or omissions of administrative staff of the central executive bodies.
Chapter 3

Procedure for Review of Complaints Lodged with the Different Competent Authorities

The signals or complaints lodged with the Supreme Judicial Council, the Inspectorate with the SJC and the other competent authorities constitute written or oral referral of matter by individuals, legal entities, organisations and others with respect to misconduct of judges, prosecutors and investigators.

Signals of corruption are submitted to the SJC through the standing Professional Ethics and Prevention of Corruption Committee, the professional magistrates’ organisations and the ethical committees set up with them as well as the professional ethics committees with the judicial bodies.

Signals about unprofessional or unethical conduct of judges, prosecutors and investigators are submitted to the Supreme Judicial Council through the Professional Ethics and Prevention of Corruption Committee and the professional ethics committees with the judicial bodies which exercise a direct and immediate control of the application of and the compliance with the Code of Ethics. Such signals may also be sent to the respective professional organisation.

Signals about the failure of judges, prosecutors and investigators to perform their official duties are submitted to the Supreme Judicial Council through the Professional Ethics and Prevention of Corruption Committee and the Disciplinary Proceedings Committee as well as to the respective administrative head.

Signals about the initiation, movement and compliance with terms on case files and cases are submitted to the Inspectorate with the Supreme Judicial Council.

1. Procedure for review of signals and complaints by the SJC Professional Ethics and Prevention of Corruption Committee

Signals submitted by citizens to the Supreme Judicial Council are reviewed by the standing Professional Ethics and Prevention of Corruption Committee which allows for different ways of filing of signals – by post, electronically or through the anti-corruption boxes placed in all judicial bodies.

The signals received (regardless of the manner in which they are received) are recorded in the intake office of the Supreme Judicial Council. They are assigned an incoming number and allocated for responses which are prepared by the respective experts with the Committee. The responses prepared together with the entire case file are reviewed by the members of the Professional Ethics and Prevention of Corruption Committee and discussed at one of its meetings. As a result of the decisions taken at the meeting, the respective checks are made and responses sent to the submitters of the signal.

To improve the work of the Committee, a differentiated approach to the discussion and the decision-taking on the signals in different groups has been taken.
a. **General signals**

The first group of signals is general and they are most often filed against the lawfulness of judicial or prosecutorial acts which are subject to instance control or have entered into force and there is no procedural possibility for them to be challenged. This is the main group of complaints lodged by the citizens. The Committee also receives signals with most general objections against the political situation in the country or personal complaints which do not fall within the competence of a specific government body. Such signals are not considered and the persons who have filed them are advised to seek protection for their rights in the procedure of instance control because the SJC is not competent to render opinions on the correctness or lawfulness of the magistrates’ acts.

b. **Signals of corruption**

The second group is signals which contain specific information about instances or practices of corruption. These signals are given numbers and followed up until the work on them is completed, regardless of whether they were sent in view of the body’s competence or a check was assigned.

c. **Signals of violations of the rules of ethics**

Signals which contain information about violation of the rules of ethics committed by magistrates are reviewed by the Committee. In this third group, an inspection on site is usually carried out or the citizen who filed the signal, respectively the respondent, is heard in person and other evidence is collected. Should violations be found, a proposal for the initiation of disciplinary proceedings and imposition of a disciplinary sanction for the violation of the rules of ethics is prepared. The lack of ethical committees set up in all places hinders to a great extent the performance of competent checks in this regard.

d. **Signals of contradictory practice**

These are not few in number either. The Committee drafts opinions on them. The whole case file appended with the Committee’s opinion is sent in view of the competence respectively to the chairpersons of the Supreme Court of Cassation and the Supreme Administrative Court who may request the issuance of an interpretative decision. The sender is notified about this.

e. **Signals related to the initiation, movement and compliance with terms in cases**

In this group, the complexity and gravity of the violation is considered in every case and, in view of this, the signal is forwarded to different competent authorities. The more complex and grave cases as well as those indicating a systematic nature are forwarded to the Inspectorate with the SJC to be checked while the easier ones go to the respective administrative heads who make checks and notify the Committee. The Ministry of Justice is informed about violations committed by registry judges or bailiffs, be they private or government ones.

For this group of signals, the case file is not closed by the Committee until the results of the check are received. Depending on them, the respective action is taken and the senders are duly notified.
In all these cases, the Committee sees to the compliance with the term for the respective checks.

Another way in which signals reach the Committee is the anti-corruption boxes. They have been placed in every court and prosecutor’s office in accordance with an SJC decision. They are opened every month by a committee whose members have been appointed by the respective administrative head of the judicial body. When the boxes are opened, the committees draw up minutes describing their contents. If there is a signal, it is sent to the Professional Ethics and Prevention of Corruption Committee. The improve the work related to the review of the signals from the anti-corruption boxes, it is good to consider the possibility for having not a committee appointed by the respective administrative head do this but the ethical committees elected in different places.

2. Procedure for review of signals and complaints by the Inspectorate with the Supreme Judicial Council

The signals submitted to the Inspectorate must be in writing. They must be signed and are registered in the intake office. An inspection is conducted by the Chief Inspector or another inspector supported by two experts. The inspection team is assigned randomly in view of the order of receipt of the signals. The Chief Inspector issues an order setting out the procedure for the inspections. The work on a signal may be performed in two stages: a preliminary research and a check in accordance with the JSA.

The competence of the Inspectorate to review every one of the complaints made is considered at the stage of the preliminary research. If necessary, additional materials are collected to clarify the facts and circumstances related to what is claimed in the signal. If it is found beyond any doubt that the complaint does not lie within the competence of the Inspectorate or that it is ungrounded, a reasoned opinion is drawn up and sent to the complainant.

When it is found that the matter referred to the Inspectorate is within the competence of another body, the case file is sent in view of the competence and the complainant is duly notified.

When the problem which is the subject matter of a signal is within the competence of the Inspectorate and there is information about violations, an inspection is carried out under Articles 56 – 58 of the JSA and an order of the Chief Inspector is issued to that effect. An act is drawn up about the results of the inspection and the complainant is notified about it.

3. Procedure for review of signals and complaints by the ethical committees with the professional magistrates’ organisations

The citizens still do not use sufficiently the respective professional organisations and the ethical committees set up with them. They usually consist of members of the organisation who meet when a signal is submitted and discuss the complaint. As they have no functions to investigate or impose sanctions, the complaints are usually sent to the competent authority.
4. Procedure for review of signals and complaints by the professional ethics committees with the judicial bodies

At present, such are still being formed with the regional courts and prosecutor’s offices in the regional centres, the district and appellate structures of the judiciary, with the Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Prosecutor’s Office of Cassation, the Supreme Administrative Prosecutor’s Office and the National Investigation Service. The composition and the number of members of each committee are determined by the general assembly of the respective structure. The professional ethics committees are auxiliary bodies of the Professional Ethics and Prevention of Corruption Committee with the Supreme Judicial Council. Their main task and purpose are to provide advice and render opinions in relation to the application of the rules for ethical conduct and in the event of conflict of interest.

As no experience has been gain in relation to their work, no clear internal mechanism for organisation and cooperation with the SJC Committee has been created.

5. Procedure for review of signals and complaints by administrative heads

This is the method the citizens use most often as they prefer the direct contact with the administrative heads. In this regard, every administrative head organises the work differently. In most places, in addition to the signals in writing, there are also working hours with the public when the administrative heads personally hear the complainants.

The signals received by the administrative heads are checked by them, regardless of the fact that the issue is laid down in the law and is within the competence of the Inspectorate with the SJC. This is so because at the end of every six months the administrative heads prepare and provide the Inspectorate with the Supreme Judicial Council and the Minister of Justice with summarised information about the initiation, movement and completion of cases.

When violations are found with respect to the initiation, movement and compliance with the terms for case files and cases, the administrative head initiates disciplinary proceedings and imposes disciplinary sanctions – reprimand or rebuke or draws the attention of the person whose disciplinary liability is sought to the matter. If it is found that the violation is material and that a sanction outside the administrative head’s competence must be imposed, the administrative head proposes to the Supreme Judicial Council to initiate disciplinary proceedings.

Another way in which signals can be received is the boxes for signals and proposals placed in most of the courts. This mechanism is used mostly by the courts which have developed and implemented an internal procedure for checking the contents of the boxes. The proposals and signals are collected and evaluated periodically as defined in advance. The signals sent in accordance with the general procedure are registered in the intake offices of the respective judicial bodies and the administrative heads, to the extent of their competence, check them or send them to the SJC, the Inspectorate with the SJC or the prosecution bodies. In some courts, committees made up of magistrates and court staff have been set up by virtue of the administrative head’s order. The committees meet every month and keeps minutes of the review of the signals, proposals and complaints submitted by citizens in relation to the functions of the court. The committees prepare proposals for improvements and send responses to the senders.
The websites of the courts also have electronic boxes for signals which allow the citizens to make proposals and draw the leadership’s attention to various problems without having to go to the court building.
Chapter 4

Findings and Recommendations

In view of the findings, an overall approach must be developed to achieve better results and reduce the number of complaints.

Measure 1: Elaboration of an Act to protect the people who submit signals to the judiciary

Better protection is necessary for the submitters of signals. The protection of the people who submit signals of corruption bona fide is provided for in Chapter VIII of the Administrative Procedure Code. Pursuant to Article 108 of the APC, no one may be prosecuted for filing a signal. The administrative bodies must review and resolve the signals submitted objectively and lawfully in compliance with the terms set.

In practice, there is a possibility for information to be leaked to the magistrate targeted in the signal and this could entail difficulties for the complainant. This phenomenon renders the process meaningless and makes the complainants hesitant, thus undermining their confidence in the effectiveness of the system.

The legal framework outlined proves inexhaustive and insufficient to prevent the leaking information and thus influence the check. That is why, it is very important that an Act protecting the people who submit signals is adopted with respect to the judiciary only. The creation and availability of ongoing effective measures for protection of the submitters of signals will contribute to the improvement of the signals and this, on its part, to the easier revealing of violations because the people performing the check will have sufficient and more specific information. At present, there are no plans for the adoption of such an act but for the expansion of the scope of the existing provisions in the APC in its upcoming amendments.

Measure 2: An information campaign for citizens and organisations on how to submit signals on issues related to judicial misconduct

The citizens do not have sufficient and complete information about the body and the procedure they need to use to file the respective signal. Complaints and signals are very often sent to several bodies which are not competent to ensure that they will be considered. As a result, they are forwarded in view of the competence and their review is delayed further. The lack of a timely response makes the citizens believe that nothing is being done.

The situation is similar when the body to which a signal has been sent is not the first addressee. It must always carry out a check if this is within its authority. Otherwise, it must forward it to the competent authority. This is what the Supreme Judicial Council does as well as the Inspectorate with the SJC and all other bodies which are competent to review signals.

This measure entails that it is important to clarify in detail what the signals against magistrates can be filed for, which body they need to be addressed to, what the procedure for review of the signal is and what response can be expected. To achieve the measure, it is necessary to hold periodic round tables and other forms of public debates related to the submission of complaints about the misconduct of judges, prosecutors and investigators.
In this regard, the role of the media, which are the main information transmitters, is essential. The judicial bodies must use the possibilities provided by the media to a sufficient extent.

In addition, the citizens’ point of view must be studied with respect to the effectiveness of the procedures in the various places for review of the complaints and the level of satisfaction.

A specific measure which the judicial bodies can undertake is to use more widely the existing websites where they can publish the procedure for review of signals and the results of the checks made.

**Measure 3: Creation and maintenance of a unified electronic register of the complaints lodged with judicial bodies**

This will improve the interaction among all specialised bodies conducting checks on complaints about misconduct. There will also be greater transparency and every competent person will be able to check the information about a specific complaint and/or complainant they need in the register. The signals will be submitted and processed faster.

**Measure 4: Greater use of various methods to receive signals**

The anti-corruption boxes, the boxes for proposals and signals and the electronic mail are not used sufficiently. One of the main reasons is that the citizens do not know how to use them. Most of them do not have the necessary knowledge and skills to do it. In addition, it can be pointed out that the citizens prefer the personal contact and still find the form in writing more reliable.

The same conclusions can be reached with respect to the oral signals as well. There are reserves about the oral complaints and this possibility is not used fully. These signals are not registered and there is no way of tracking what has happened with a signal. It can be concluded that it is necessary to use various means in view of the needs and abilities of the different social groups.

**There are different practices in relation to the review of anonymous signals.** For example, the Professional Ethics and Prevention of Corruption Committee considers the signals, especially when they contain specific information about misconduct (including disciplinary violation within the meaning of the JSA) or corruption practices. They believe that such a check would not infringe upon the rights of judges, prosecutors or investigators. On the other hand, Article 18 (3) of the Rules for the Work of the Inspectorate with the SJC expressly lays down that anonymous signals are not considered by the Inspectorate. The talks with magistrates from different judicial bodies and at various levels show that they also lack a uniform understanding of the issue and, as far as the administrative heads are concerned, they do not have a unified practice.

**The anonymous signals must not be ignored.** On the contrary, they may constitute a sufficient body of information and can be periodically compared with the checks performed and sanctions imposed to see if there are any repetitions. The anonymous signals are an important source of information and can point to patterns in the conduct of judges, prosecutors and investigators which can be the subject matter of the respective inspections. The information which can be collected in such a way in a database which has been set up is already a reason for a check.
To reduce the cases when anonymous signals are submitted, it is possible to create a special telephone line and the citizens will be informed in advance that the information/signal they submit will be recorded. This information will make it easier for the bodies to perform further checks.

Measure 5: Unification of the practice for all judicial bodies

To unify the practice for all judicial bodies, and not only with respect to the anonymous signals, **it is necessary to prepare methodological guidance on how to work with all types of signals** – anonymous and others – with clearly differentiated functions, responsibilities, deadlines and procedure for responding to complaints/signals. In this regard, it is also necessary to **unify the sample forms to be filled out in the event of signals about misconduct** – the form approved by the SJC must be unified and cover all bodies. If necessary, this form can be detailed and updated to make things easier for those who submit complaints – so that they can be better formulated.

The practice for dealing with numerous signals filed by the same sender is not good. At present, the SJC and the Inspectorate record and review the complaint or signal separately. This practice must be changed to link and review all complaints, especially when they concern the same situation. If different situations are referred to, the signals must be checked separately even though they come from the same sender.

Measure 6: An increase of the cases when the authorities act ex officio

The number of cases when the authorities competent to conduct inspections against magistrates act ex officio must be increased. This issue is provided for in the Constitution of the Republic of Bulgaria whose Article 132а sets out that the Inspectorate with the SJC acts ex officio, on the initiative of citizens, legal entities and government bodies, including judges, prosecutors and investigators. To strengthen the practice of the Inspectorate with the SJC to act ex officio, to conduct ad-hoc checks and expand their scope is also the first ongoing measure in the judicial reform enshrined in the schedule of urgent measures and actions of the government and the judicial bodies to implement the progress benchmarks in the field of judicial reform and the fight against corruption and organised crime for the period September – December 2009.

There is no obstacle, however, for the Supreme Judicial Council, the prosecution bodies and others to **exercise their right to act ex officio more often** should there be sufficient information about misconduct. Good results have already been achieved after the Supreme Judicial Council and the Inspectorate with the SJC have repeatedly acted ex officio upon media publications. After several such cases, timely checks have been carried out of facts presented, proposals have been made and disciplinary proceedings have been initiated in the Supreme Judicial Council.
REPORT

THE SYSTEM OF COMPLAINTS AND SIGNALS AGAINST JUDICIAL MISCONDUCT IN THE COURTS

REVIEW OF BEST PRACTICES IN EUROPE
Summary

Despite the impossibility to reach a unified conclusion about the system of complaints against judicial misconduct in the European Union (EU), general conclusions can be made in several directions on the basis of the experience in seven EU Member States analysed in this Report:

Subject matter of the complaints

As a rule, subject to consideration are complaints concerning the conduct of individual magistrates or the attitude of the court as an institution (the Netherlands). In most cases, the conduct is defined as unauthorised, inappropriate or unethical in the complaint. The Judicial Power Act in Spain contains a detailed list of the misconduct against which the citizens may lodge a complaint. It is classified in three groups – very serious, serious and petty misconduct.

A complaint in the Netherlands may also be about non-compliance with the terms in a case. Such an approach has been adopted in Sweden as well where the subject of complaints may include the unreasonable postponement of a case or the excessive duration of the process.

In all systems analysed, complaints about the legality and correctness of the magistrates’ acts issued are not reviewed, i.e. all issues which are subject to instance control remain outside the scope of complaints.

Competent authority

In the prevailing part of the systems analysed, the complaints are reviewed by a body which is internal to the judiciary. Two main approaches have been adopted to determine this body. Under the first approach, the authority is reserved for the court president (the Netherlands, Germany and France), while under the second approach, there are provisions for the setting up of a specialised body: in the United Kingdom it is the Office for Judicial Complaints which is accountable to the Lord Chancellor and the Lord Chief Justice; in Spain it is the Inspection Office with the General Council of the Judicial Power; in Belgium it is the Advisory and Investigation Commission with the High Council of Justice.

Only in Sweden is the review of complaints against judges and prosecutors entirely within the authority of a body which is external to the judiciary – the Parliamentary Ombudsman. In the Netherlands, the Ombudsman may render opinions on complaints as well but only on those concerning the activities of judicial staff.

The competent authority reviews the complaints, carries out an inspection and proposes to another body to impose a disciplinary sanction. In Germany, the court president may impose a lighter sanction (notice or reproach) while the graver sanctions lie within the authority of the specialised courts.

Form of the complaints

In all systems analysed, complaints are lodged in writing. The manners of submission include post, electronic mail, fax or personal delivery. In the Netherlands, there is a contact person for judicial complaints in every court. This person is included in a network of such officers who get together periodically to elaborate unified rules and practices for the review of complaints.
In most systems, anonymous complaints are not considered. This, however, is possible in Sweden in exceptional circumstances. In some counties (the United Kingdom, Sweden, Belgium) there are obligatory elements of a complaint – complainant’s name and address, name of the magistrate whose conduct is subject of the complaint, facts and circumstances, date, signature.

**Deadline for lodging complaints**

In some systems, deadlines are set for the lodging of complaints after the elapse of which complaints will not be reviewed. The deadline in the Netherlands is 6 months, in the United Kingdom it is 1 year and in Sweden it is 2 years as of the misconduct.

**Term for review of complaints**

In some systems, there are express provisions for the term within which the complaints must be reviewed. It varies from 10 weeks in the Netherlands to 3 months in the United Kingdom and 6 months in Spain.

**Possibility to appeal**

The possibility for the complainant to appeal against the decision of the body which has reviewed the complaint is expressly laid down in Spain. Such a possibility has also been provided for in the United Kingdom where complaints against the work of the Office for Judicial Complaints may be lodged with the Judicial Appointments and Conduct Ombudsman.

**Registration of complaints and access**

In the Netherlands, all complaints received are entered into a register which is public. In a similar way, the law in Sweden allows for public access to the complaints except for special circumstances which require that the confidentiality of certain information and circumstances be preserved.
Introduction

One of the main tasks of the project *The System of Complaints and Signals against Judicial Misconduct in the Courts – Analysis of the Situation in Bulgaria and Review of Best Practices in Europe* is the preparation of a comparative legal study outlining the best European practices in this field.

The building of an overall vision about the system of citizens’ complaints and signals filed with the court is a fundamental element of the implementation of successful judicial reform. The citizens’ signals and complaints received in the courts allow for effective countering and fight against corruption in the judiciary.

The present study encompasses several components whose overall purpose is to review the system of citizens’ complaints and signals in European Union Member States and consider whether this system is succeeding as an effective means of fighting corruption while, at the same time, it guarantees the independence of the judiciary.

The Report covers the following components:

a) **Overall review of the systems of citizens’ complaints and signals against judges.**

The main task here is to outline the regulatory framework for the system of citizens’ complaints and signals in the courts, see the development of this regulatory framework as a result of legislative amendments and identify the competent authorities which take part in the process of review of citizens’ complaints and signals.

b) **Drawing attention to the procedure for accepting and reviewing citizens’ complaints and signals.**

The main issues discussed in this part concern the scope of the complaints lodged in the different European Union Member States and the scope of the inspections and investigation of judges as a result of the complaints and signals filed.

c) **Consequences from the review of complaints and signals submitted against judges.**

An analysis has been made of the issues related to the authority of the bodies reviewing the complaints – to what extent they have functions of investigation or notification only – as well as the consequences from the acts issued by these bodies.

In the past years, serious changes have been seen in the field of disciplinary proceedings in the EU Member States. The present study focuses on the judicial systems in 7 countries – the United Kingdom, Sweden, the Netherlands, Germany, Spain, Belgium and France. These countries have gained significant experience, they embody different approaches to the organisation of the system of citizens’ complaints and signals and they apply the common law system and continental law system.
Chapter 1

The United Kingdom

The reform of 2005 in the United Kingdom gives the Lord Chancellor and the Lord Chief Justice in England very broad authority to consider complaints about the judges’ personal conduct. A special Office for Judicial Complaints has been functioning since April 2006 which supports the Lord Chancellor and the Lord Chief Justice and, in practice, carries out inspections on citizens’ signals and complaints.

The procedure for review of complaints and signals against judges is provided for in the Judicial Discipline Regulations (2006).

Status of the Office for Judicial Complaints

The Office for Judicial Complaints is an associated office of the Ministry of Justice. Its status has been provided for in the Memorandum of Understanding between the Ministry of Justice, the Judicial Office for England and Wales and the Office for Judicial Complaints. Complaints against the Office for Judicial Complaints are considered by the Judicial Appointments and Conduct Ombudsman.

In accordance with the Memorandum of Understanding, the Office for Judicial Complaints is jointly accountable to the Lord Chancellor and the Lord Chief Justice. It reports to both on a monthly basis providing reports about the number and type of the complaints dealt with. The Office also provides quarterly reports about the performance of the annual strategic goals. Every year, the Office draws up an annual report giving:

- Information about the complaints lodged and the measures taken;
- Expenditure report of the Office for the financial year.

The report is provided to the two Houses of Parliament.

Relationship between the Lord Chancellor and the Lord Chief Justice

The Ministry of Justice monitors the work of the Office for Judicial Complaints in relation to the reporting for its expenditure. In this regard, the Lord Chancellor is accountable to Parliament for the expenditure made. That is why, the Ministry of Justice determines the financial framework of the Office as well as the financial and accounting rules it must comply with in the performance of its activities.

In the cases when there is information about the initiation of a discipline case against a magistrate, the Office for Judicial Complaints notifies the Lord Chief Justice and the Lord Chief Justice identifies a judge to carry out the judicial investigation.

The Office for Judicial Complaints supports the Lord Chancellor and the Lord Chief Justice only with respect to the performance of their functions of control over the judges’ conduct and not their acts.

Complaints against the work of the Office for Judicial Complaints are considered by the Judicial Appointments and Conduct Ombudsman.
Types of signals and complaints lodged by the citizens

The citizens may complain against the judges’ incorrect or inappropriate conduct – for example, the use of insulting words, unsubstantiated or debasing comments and biting remarks to attorneys or parties to cases. A complaint is lodged in writing by post or electronic mail to the Office. It must contain:

- Complainant’s name, address and telephone number;
- Name of the judge, number of the case and date of the court hearing;
- Grounds for the complaint.

The complaint must be submitted no later than 12 months as of the alleged magistrate’s misconduct. If there is an ongoing case or appeal, the complaint will not be considered until the case is closed.

After the complaint has been lodged, the Office sends an acknowledgement to the sender within 2 working days. The Office may request additional details about the circumstances presented as grounds for the complaint and it may require explanation from the judge against whom the complaint has been made or from other people. If the case is more complex, the Office may request of the Lord Chief Justice that another senior judge carry out the investigation. If the complaint is substantiated, the Lord Chancellor and the Lord Chief Justice may impose disciplinary sanctions on the judge.

Usually, the investigation of complaints is carried out within 3 months. If the complainant believes that the Office has failed to deal with their complaint appropriately, the complainant may refer the matter to the Judicial Appointments and Conduct Ombudsman.

Authority of the Judicial Appointments and Conduct Ombudsman

The Judicial Appointments and Conduct Ombudsman considers complaints against the procedure for judicial appointment and complaints about breaches of the rules for ethical behaviour committed by judges. When a complaint concerns a judicial appointment, the complainant must first address the Judicial Appointments Commission.

With respect to the complaints against the work of the Office for Judicial Complaints, the complainant must have turned to the Office first. After a complaint has been lodged with the Ombudsman, the Ombudsman renders an opinion whether to consider the issue or not. In relation to the work, the Ombudsman may require all documents on the complaint from the Office for Judicial Complaints. An investigating officer with the Ombudsman reviews the complaint and reports on it. A draft of the Ombudsman’s decision is sent to the Lord Chancellor and the Lord Chief Justice for comments. After receiving their opinions, the Ombudsman takes the final decision on the complaint.

The Ombudsman may set aside the decision of the Office for Judicial Complaints and issue instructions by:

- Recommending that a new investigation is conducted by a review body;
- Asking the Office to apologise officially to the complainant for the breach allowed;
- Recommending changes in the work of the Office to prevent future violations;
- Suggesting compensation for the mishandling of the complaint by the Office.

Translation from Bulgarian
The Ombudsman does not have the right to:

- Impose a sanction on the officer who committed the violation;
- Carry out a new investigation of the complaint;
- Award compensation for the damages inflicted as a result of the mishandling of the complaint by the Office for Judicial Complaints.
Chapter 2

Sweden

The status of judges is provided for primarily in the Constitution of Sweden. The rules of the Public Service Act apply to judges, too. The Swedish Penal Code contains norms about certain crimes committed by civil servants, including judges, in the performance of their duties.

Cases against justices on the Supreme Court are tried by the Supreme Court. The Ombudsman (Riksdagens ombudsman) and the Chancellor of Justice (Justitiekanslern) have exclusive competence to be prosecutors in such cases. As for the other judges, the disciplinary cases are tried by the courts of appeal. Judges may be removed if they have committed a premeditated crime or in the event of continued negligence in the performance of their official duties which has made it obvious that a judge is not suitable to occupy the respective position. If the decision to remove a judge has been taken by another body and not by the court (for example, the National Disciplinary Offence Board), the judge may request that their case be re-heard by a court.

The disciplinary proceedings are laid down in the Public Service Act.

In Sweden, there is no Code of Ethics for the judges. The Ombudsman and the Chancellor of Justice exercise control over the conduct of all civil servants, including judges. They may publicly criticise the conduct of a judge, including any unreasonable postponement of a case or excessive duration of the process. The Ombudsman and the Chancellor of Justice, however, do not have the right to issue mandatory instructions to the judge to close a case in a given term. They also do not render opinions on the legality and correctness of the judicial acts except for the cases when they have been issued in obvious procedural violations.

In Sweden, all complaints and signals against representatives of the local and central authorities, judges and prosecutors are lodged with the Parliamentary Ombudsman. The Ombudsman is the body elected by Parliament (Riksdag) to ensure that the courts and public services perform their duties in compliance with the law. The Ombudsman has a four-year term of office. The Ombudsman’s enquiries are based on complaints and signals submitted by citizens, on cases initiated by the Ombudsman and on observations made during the course of inspections. Approximately 6,000 complaints are lodged with the Ombudsman’s administration annually.

Organisation

The institution of the Ombudsman in Sweden consists of 4 Ombudsmen and each has their own area of responsibility or supervisory area. One of the Ombudsmen is responsible for complaints and signals lodged against judges and prosecutors. Each Ombudsman has a team of 5 – 6 people who conduct enquiries on the complaints.

Anyone can lodge a complaint with the Ombudsman – there is no requirement for citizenship, and complaints may also be filed by people who have been detained or charged with crimes. Article 20 of The Act with Instructions for the Parliamentary Ombudsmen clarifies that a complaint must not concern circumstances which date back two or more years, unless there
are exceptional grounds for this. Anonymous complaints are not reviewed but, in exceptional circumstances, the Ombudsman may initiate an enquiry into them.

Complaints must be made in writing and they may be submitted by post, electronic mail or fax or they can be delivered to the Ombudsman’s secretariat. A complaint must contain information about the complainant (name and address), the name of the judge against whom it is filed and reasons for the facts and circumstances. The complaint must also be signed by the complainant.

The enquiries conducted by the Ombudsman aim to establish whether the complainant’s rights have been infringed upon as a result of the judge’s unauthorised or inappropriate conduct. The Ombudsman does not render opinions on the legality of the judgment issued nor may the Ombudsman change it or repeal it partially or in its entirety. An enquiry concerns only the judge’s conduct and not the acts the judge has issued.

The Act with Instructions for the Parliamentary Ombudsmen provides for public access to the Ombudsman’s documentation. Any person has the right to read the complaint or signal, unless there are exceptional circumstances requiring that it be kept confidential.

Out of 5,000 complaints lodged annually, 40 – 50% remain without review. In some cases, the complaints concern institutions with respect to which the Ombudsman has no supervisory authority (banks, doctors who are private practitioners, insurance companies, government ministers). Many of the complaints seek changes in judgments issued – an authority the Ombudsman does not have. Numerous complaints refer to circumstances that happened more than 2 years before their submission and that is why they are not reviewed.

Should an enquiry be conducted into a complaint or signal lodged, the Ombudsman turns to the judge or prosecutor allegedly committing misconduct. The latter must provide the necessary information and a response in writing with an assessment of the circumstances. The written response is sent to the complainant for comments. Finally, the Ombudsman renders their opinion and the decision is not binding. The judges and prosecutors must cooperate with the Ombudsman in the inspections. Otherwise, the magistrate’s disciplinary liability may be sought and a fine may be imposed on them.

**Authority of the Ombudsman**

The measure the Ombudsman uses most frequently if there is unauthorised conduct of an official or a judge is to express an opinion whether the action/conduct of the official or the judge is in conflict with the law or the rules of ethics. The Ombudsman’s decision is not binding – the magistrate whose conduct has been investigated is not obligated to take into account the Ombudsman’s opinion. The Ombudsman may also criticise an official or a magistrate in relation to the procedure of a case (its initiation, movement or compliance with terms for the cases).

The Ombudsman has the right to propose legislative amendments to prevent violations found.

The Ombudsman may act as a prosecutor bringing charges against a person who has committed a crime or abused their official position in the performance of their duties.
Should the Ombudsman find any disciplinary offences, the Ombudsman also acts as a public prosecutor. The Ombudsman may initiate disciplinary proceedings and propose the imposition of the sanctions of admonition or a salary deduction. The disciplinary body of the civil servants and the magistrates is the Civil Service Disciplinary Board. The Ombudsman may request graver sanctions in the disciplinary proceedings – suspension or dismissal.
Chapter 3

The Kingdom of the Netherlands

In 2002, the Kingdom of the Netherlands launched a far-reaching project dedicated to the procedure applied by the citizens to lodge complaints and signals against judges and judicial officers. The project focuses on the judges’ conduct – on the one hand, it can be discussed within their career development and, on the other hand, disciplinary proceedings may be initiated on the basis of it. The Dutch project pays special attention to the internal procedures for lodging complaints against judges in the courts. There is also the so-called “external procedure” for complaints and signals against the judges’ conduct which takes place before the Supreme Court. The Supreme Court may, in given circumstances, remove a judge (when the judge has committed a crime). In practice, this procedure has never been used. In the cases when judges have been accused of crimes, they prefer to leave the court themselves to prevent any public humiliation because of the circumstances under which their work in the court has been terminated.

Internal procedures for complaints and signals

The implementation of the initiative of the Dutch Ministry of Justice for improvement of the system of complaints from the public in the courts was accompanied by a study of the public level of satisfaction with the work of the court. Six district courts were analysed. The analysis shows that, as a whole, the citizens are satisfied with the work of the courts and the main problem indicated is that few people are familiar with their right to lodge internal complaints with the courts. According to the general public, the essential factors in the work of the court include its transparency and the public nature of its activities, the availability of updated information on the court website and over the telephone as well, the accessibility of the court, the availability of information boards about the judicial hearings and the cases postponed as well as the availability of conveniences such as sufficient refreshing drinks, food and seats in the court.

A key component of the improvement of the effectiveness of the courts is the organisation of public complaints and signals in the courts. It was back in 1992 when the National Ombudsman in the Kingdom of the Netherlands drew the attention of the judicial system that there was a gap in the legal protection of the clients who used the services of the court. The Ombudsman emphasised the great number of shortcomings of the judicial organisation in the Kingdom of the Netherlands leading to a growing public dissatisfaction with the initiation and the terms for movement and completion of the cases as well as the insufficient information provided by the court. Initially, the National Ombudsman did not have authority and competence with respect to the work of the judges and judicial officers. The complaints lodged by citizens with the court were entirely within the competence of the court president. That is why, the National Ombudsman appealed that, on the one hand, the internal procedure for submission of citizens’ complaints to the courts be provided for expressly and, on the other hand, an additional external procedure be set up under which the Ombudsman would be competent to render opinions on the complaints. In 2002, a Council for the Judiciary began functioning in the Kingdom of the Netherlands and, since then, every court has been obligated to elaborate and apply internal rules for lodging and review of citizens’ complaints against judges and judicial officers. The existence of an internal organisation for lodging and review of citizens’ complaints has become an obligatory condition for the work of all courts in the country.
The internal rules of the courts for the citizens’ complaints differentiate between three stages of the procedure: lodging of a complaint, its review and consequences from the investigation carried out on the basis of the complaint.

Stage One: Lodging of a complaint

The subject of a complaint may be the court’s attitude as an institution or the behaviour of a judge or a judicial officer. A complaint may also concern the non-observance of the terms in a given case. Any objections against the content of a court judgment and the procedure for its issuance are inadmissible. The complainant, however, may request that a judge recuse on the basis of facts and circumstances giving rise to doubts about the judge’s impartiality.

Disciplinary measures

A complaint about the unauthorised or inappropriate conduct of a judge may initiate disciplinary proceedings heard by a special chamber of the Supreme Court.

Stage Two: Review of a complaint

Until 2002, every court president decided on their own how to organise the review of the complaints submitted to the court. Until then, there was not register of the complaints and signals and no express rule for them to be published. No information was disseminated about the citizens’ right to lodge complaints against judges and judicial officers. The procedure was changed on 1 January 2002 when all these gaps in the regulatory framework were provided for in detail in the internal acts adopted by the courts with respect to the citizens’ complaints and signals. The extent to which the internal rules of 2002 are successful and working has been established in a survey covering all courts in the country. It must be noted that there is a contact person for judicial complaints in every court. The first national meeting of such contact persons was held in 2003 and the shortcomings and the advantages of the existing internal rules in every court were discussed at it. This is how a unified model of the procedure for review of complaints was developed and this procedure is followed, with few exceptions, in almost all courts in the country. Some of the basic rules of the procedure are given below.

- The court must send an acknowledgement of the complaint or signal received in writing.
- If another institution is competent to render an opinion on the case, the court forwards the complaint.
- The participation of the person whose misconduct is alleged is guaranteed in the process of review of the complaint.
- If the complaint is rejected, the complainant must be notified within 4 weeks.
- The complainant and the person whose misconduct is alleged are given the possibility to present their views about the complaint.
- The review of the complaint ends with a decision reached at within 6 to 10 weeks.
- The complainant is notified in writing of the court’s decision about the complaint.
- All complaints received must be registered.
- All complaints registered must be published.
- The complainant is notified in writing about the decision of the court.
Problems identified in the procedure for review of complaints

The obligation to register all complaints is too complex to be fulfilled to the extent to which it is not always clear whether a letter sent is a complaint or not. Very often, the problem indicated in a complaint is resolved before the complaint has been registered – is it necessary then for the complaint to have a registration number? Another question is if registration is necessary if the complaint is withdrawn. These issues have been resolved in different ways in the different courts.

Scope of a complaint

The main issues in the procedure for lodging complaints are who may complain, what about and within what term. There is an explicit rule that the complaints may not be about the content of a judgment or the procedure in which it was reached at. The subject matter of a complaint may be the attitude of the court as an institution or the behaviour of a judge or a judicial officer. The courts usually set a six-month term within which a complaint must be submitted. Another issue raised is if a complaint may be lodged against the extensive delay of the movement of a case – some courts believe that this is a procedural matter and only the judge is competent to render an opinion on it while other courts take that a complaint about the duration of a case is a signal about the judge’s unauthorised conduct.

Compensation and recovery of expenses

The prevailing part of the courts have rules for the recovery of expenses by the complainant (travel expenditure is recovered in most cases).

Review of complaints and signals by another body outside the court

Half of the courts in the Kingdom of the Netherlands allow for the complaints received to be reviewed by another body. The Ombudsman renders an opinion in the cases when a complaint was submitted against a judicial officer and a specialised chamber of the Supreme Court is empowered to conduct investigations in the cases of complaints against judges.
Chapter 4

Spain

The Spanish Judicial Power Act contains a detailed list of the judges’ misconduct against which the citizens can lodge complaints. Disciplinary proceedings may be initiated on the basis of the complaints. The judges’ misconduct is classified in three groups: very serious misconduct, serious misconduct and petty misconduct.

Very serious misconduct (Article 417 of the Judicial Power Act)

Judges may be accused of very serious misconduct in the following cases:
1. Exercise of pressure on another judge’s internal conviction.
2. Performance of incompatible activities.
3. Unsubstantiated delay to initiate or hear a case, extensive delay to issue a judgment.
4. Inappropriate announcement of facts and circumstances related to a case the judge is hearing.
5. Conflict of interest.

Serious misconduct

1. Lack of respect for the superior judges in view of the hierarchy demonstrated in public.
2. Interference in other judges’ work.
3. Unsubstantiated criticism of institutions and government officials which undermines the judge’s reputation.
4. Abuse of official position, lack of politeness with complainants, prosecutors, attorneys and judicial staff.
5. Use of insulting and debasing comments and biting remarks during the hearing of a case or in the judgment.
6. Announcement of facts and circumstances related to the hearing of a case which does not constitute a serious offence.
7. Unsubstantiated delay to initiate or hear a case which does not constitute a serious offence.
8. Delay, prevention and hampering of checks and inspections of the work of the court conducted by the General Council of the Judicial Power of Spain.

Petty misconduct

1. Lack of respect for the superior judges in view of the hierarchy which does not constitute a serious offence.
2. Lack of politeness and respect for the judge colleagues or judges from the lower instances as well as for the citizens, prosecutors, attorneys and police representatives.
3. Failure to observe the terms for issuance of a judgment on a case set in the law.
4. Ungrounded absence from work from 1 to 4 days without leave or the express permission of the court president.
Procedure

Any citizen may lodge a complaint against a judge’s misconduct with the Inspection Office of the General Council of the Judicial Power. On the basis of the complaint, the Office draws up a report proposing to the court president to close the case, conduct a preliminary investigation or initiate disciplinary proceedings.

The preliminary investigation in practice means a research into the facts while disciplinary proceedings are initiated only if there is any evidence. Should an investigation be conducted or disciplinary proceedings be initiated, the court president appoints an “instructor” (who is a judge) and a “secretary” to assist them. The instructor is responsible to collect any evidence to qualify the facts. If the instructor finds any evidence of misconduct, the instructor may bring charges against the judge. The latter may present counter arguments within eight days. After familiarising themselves with the opinion of the Prosecutor General, the instructor proposes a solution to the Inspection Office. The Office may issue a decision, transfer the case to a superior judge or request that the instructor gather additional evidence and formulate additional charges. The term for review of a complaint is 6 months. The final decision is announced to the prosecutor and the judge accused who may appeal the decision. The citizens who have lodged the complaint may also appeal the decision.

The sanctions which may be imposed on judges as a result of disciplinary proceedings are a fine, transfer to another court, suspension or dismissal.
Chapter 5

Germany

Judges and prosecutors in Germany are civil servants and the Federal Civil Service Act applies to them. The duties of a civil servant, including a judge, are set out in the laws of the individual states. These laws, however, are no codes of ethics. As civil servants, the judges take an oath to act in accordance with the Constitution and the laws, the conduct themselves in a way that is worthy of the citizens’ respect and trust and to be objective and unbiased. Any breach of these duties is treated as a disciplinary violation. The jurisprudence gained in the area of disciplinary proceedings elaborates even further the list of possible duties and breaches in the judges’ conduct.

Any citizen may lodge a complaint against a judge and this may initiate disciplinary proceedings (Article 26 of the Judiciary Act). The complaint is only about the judge’s conduct. The jurisprudence shows that a judge may not be criticised for the excessive duration of a judicial case unless the issuance of the judgment has been delayed so much that it constitutes evidence of the lack of professional ethics in the judge’s work. The disciplinary sanctions which may be imposed include notice, reprimand, reduction in payment for a period of time, transfer to another court and dismissal. The court presidents render opinions on the first two measures; the graver sanctions are imposed by specialised courts of the Judicial Service which function at the federal and regional levels. There is no separate law providing for the disciplinary proceedings against judges. The federal disciplinary law applies to the civil servants and the judges at the federal level while regional disciplinary laws apply to the judges in the states.

The judges bear liability for damages arising from their premeditated action or gross negligence. The government is responsible for the compensation of such damages and, at the same time, it has the right to seek liability of the judge. In practice, the government rarely seeks for compensation from judges – mostly in cases of abuse of official position, extensive negligent performance of official duties and deliberate delay of cases.
Chapter 6

Belgium

The main legislation providing for the status of magistrates in Belgium is the Constitution of 17 February 1994 and the Judicial Code of 10 October 1967.

The Constitution of 17 February 1994 lays down the main principles of the Belgian judiciary and defines its bodies. Article 151 guarantees the independence of the magistrates in the performance of their official duties.

Pursuant to Article 151 of the Constitution, there is a High Council of Justice (HCJ) which exercises external control over the functioning of the Belgian judiciary, including through considering complaints against it. The HCJ consists of 44 members. It is divided in two colleges: a French-speaking college and a Dutch-speaking college each made of 22 members. Half of the members are magistrates and the other half are non-magistrates. The magistrate members are elected by direct and secret ballot by an election college of magistrates divided linguistically as indicated above. The non-magistrate members are elected by the Senate by a qualified majority.

Pursuant to Article 151, § 3 of the Constitution, the HCJ has the following authority:

1. Proposes nomination of candidates to be appointed justices of the peace, judges in first-instance courts, members of judicial panels and prosecutors;
2. Proposes the nomination of the First President of the Court of Cassation, the first presidents of courts, presidents of first-instance tribunals and heads of prosecutor’s offices;
3. Holds admission examinations for judges and prosecutors;
4. Trains judges and prosecutors;
5. Prepares opinions about the appointments under item 2;
6. Prepares opinions and proposals related to the overall functioning of the judiciary;
7. Exercises overall control and creates mechanisms of internal monitoring;
8. Accepts complaints and takes part in investigations related to the functioning of the judiciary.

The first four items of authority fall within the competence of the Nomination and Appointment Commission with the HCJ. The last four, including the overall control and the creation of mechanisms of internal monitoring and acceptance of complaints related to the functioning of the judiciary, lie within the competence of Advisory and Investigation Commission with the HCJ.

It must be taken into account that no Code of Ethics for magistrates has been elaborated in Belgium. Article 404 of the Judicial Code provides for the general case of a disciplinary offence in accordance with which, “Whoever infringes upon their professional duties or undermines the profession’s reputation with their conduct may be penalised with a disciplinary sanction.” Pursuant to the same provision, a disciplinary sanction under the Judicial Code may be imposed on anyone for negligent performance of their official duties or for action which breaches the functioning of the judiciary or the trust in the institution.

Translation from Bulgarian
As it has been stated above, the HCJ is competent to review all complaints related to the functioning of the judiciary. In accordance with Article 259 bis-15, § 3 of the Judicial Code, the following complaints are not subject to consideration by the HCJ:

1. Complaints related to the criminal or disciplinary competence of other bodies;
2. Complaints related to the content of a judgment issued;
3. Complaints which may be reviewed in another procedure;
4. Complaints which have already been reviewed and do not contain any new facts or circumstances;
5. Complaints which are not understandable.

A complaint to the HCJ may be lodged by any stakeholder and the HCJ considers whether it is admissible. To be admissible, a complaint must be made in writing, it must be dated and signed and it must not be anonymous. When a complaint does not fall within the competence of the HCJ, it is forwarded to the competent authority which must inform the HCJ about its movement. When it falls within its competence, the HCJ reviews it. In this regard, the HCJ may hear the stakeholders, require explanations and clarifications about the complaint and the consideration of its admissibility. When a complaint is substantiated, the HCJ makes a proposal to the competent authority to resolve the problem and, in certain cases, it makes a recommendation for the improvement of the overall functioning of the judiciary.

If a complaint is not substantiated, the procedure is terminated with a reasoned decision and the complainant is notified about it.

Article 410 and Article 412 of the Judicial Code set out the competent authorities which may initiate disciplinary proceedings and impose disciplinary sanctions. There is a differentiation between them on the basis of the offender, the offender’s rank and the gravity of the misconduct – a judge or a judicial assistant from the Court of Cassation; judicial staff from the Prosecutor’s Office; judicial secretaries or staff of the courts and the prosecutor’s offices.

Article 405 lays down the various disciplinary sanctions which the Judicial Code classifies as graver and lighter as follows: notice, reprimand, reduction in payment, temporary suspension from office, deprivation of the right to occupy certain positions, retirement, deprivation of rights (Article 58 b), disciplinary dismissal.
Chapter 7

France

The status of magistrates in France is provided for in the Constitution of the Republic of France of 1958, the Status of Magistracy Act (SMA) (Ordonnance n°58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature) and the Superior Council of the Magistracy Act (SCMA) (Loi organique n°94-100 du 5 février 1994 sur le Conseil supérieur de la magistrature).

The Constitution of the Fifth Republic adopted on 5 October 1958 sets out the overall institutional framework of the judiciary and proclaims the principle of separation of powers. Pursuant to Article 64, the President of the Republic is a guarantor of the independence of the judiciary. In this capacity, the President is assisted by the Superior Council of the Magistracy (SCM). The same text lays down the irremovability of judges. The Constitution describes in detail the structure, composition and activities of the SCM. In accordance with Article 65 of the fundamental law, the President of the Republic chairs the SCM by right while the Minister of Justice is respectively the only Deputy Chair of the Council by right, too.

Pursuant to Article 1 of the SMA, the French judiciary consists of the judges, prosecutors and auditors of justice.

At present, stakeholders may lodge complaints against the action of a certain jurisdiction or the conduct of a given magistrate with the presidents of the courts of appeal. Should the latter decide that an action constitutes a disciplinary offence under the SMA, they may refer the matter to the SCM.

With respect to the magistrates’ disciplinary liability, the constitutional norm (Article 65 of the Constitution) provides for two separate colleges within the SCM – one competent with respect to the judges and one competent with respect to the prosecutors. Disciplinary liability is sought for any breach of the magistrates’ professional duties and, at present, these are set out in several main norms.

Article 43 of the SMA provides that, “A disciplinary offence is an infringement upon the magistrate’s official duties, upon the honour, dignity or decency.”

That is why, in its 2003 Report, the Ethics Commission recommends the elaboration of a collection of ethical principles and the development of specialised training in ethics and deontology for the magistrates.

Thus, Article 18 of the Selection, Training and Liability of Magistrates Act of 5 March 2007 amends Article 20 of the SCMA assigning it to the SCM to elaborate and publish Rules of Ethics for Magistrates. According to the SCM, deontology means the totality of principles and professional values which allow the magistrates to attain excellence in their profession.

The comparative analysis made by the Institute of Higher Judicial Studies confirms the three fundamental principles which must be present in judicial deontology, namely independence, impartiality and objectivity. These three values aim to build and maintain the public trust in the judiciary. That is why, understanding that a professional culture is based on the building of such values, the SCM believes that the elaboration of deontological rules for the
magistrates would be a tool of professional improvement. The creation of a Code of Ethics would strengthen the trust in the judiciary and help the citizens when they complain about breaches of the professional ethics on the part of magistrates.

Article 45 of the SMA lays down the disciplinary sanctions which may be imposed on magistrates:

- Reprimand recorded in a magistrate’s personal file;
- Transfer to another judicial region;
- Deprivation of certain rights;
- Prohibition to be elected or appointed a judge for a period of 5 years;
- Reduction in payment;
- Temporary suspension for up to one year, with or without a reduction in payment;
- Demotion in rank or position;
- Coercive retirement, dismissal with or without the right to pension.

Disciplinary sanctions are imposed on judges by the SCM and on the prosecutors and magistrates from the central administration – by the Minister of Justice and Keeper of the Seal.

The start of disciplinary proceedings may be initiated by the Minister of Justice or the presidents of the courts of appeal in the cases provided for by law who refer the matter to the respective competent SCM colleges.

With respect to the judges, the SCM imposes disciplinary sanctions after conducting disciplinary proceedings and investigating the facts and circumstances in the case. The proceedings are led by one or more rapporteurs assigned by the president of the Court of Cassation from among all SCM members. The rapporteur hears the magistrate and carries out all necessary action in relation to the lawful conducting of the disciplinary proceedings. At the end, the rapporteur prepares a report and presents it at a meeting of the competent SCM college which renders a reasoned opinion on it.

With respect to the prosecutors and magistrates from the central administration, the Minister of Justice and Keeper of the Seal is competent to impose disciplinary sanctions but only after an opinion has been drawn up by the SCM under the conditions applied to judges, by one or more rapporteurs assigned by the Prosecutor General with the Court of Cassation. Pursuant to Article 59 of the SMA, no disciplinary sanction may be imposed on a magistrate from the prosecutor’s office or the central administration without the opinion of the competent SCM college.

Outside any disciplinary proceedings, the Chief Inspector of the judiciary, the court presidents, the heads of the respective prosecutor’s offices and the directors and heads of the respective units of the central administration have the authority to issue notices to the magistrates who are subordinate to them. A notice is deleted automatically from their personal files in 3 years if no other disciplinary sanction has been imposed in the period or if no other notice has been issued.
REPORT

THE SYSTEM OF COMPLAINTS AND SIGNALS AGAINST JUDICIAL MISCONDUCT IN THE COURTS

ANALYSIS OF THE SITUATION IN BULGARIA
REVIEW OF BEST PRACTICES IN EUROPE

Program for the Development of the Judicial System (PDJS)
5 Stara Planina St, floor 8
Sofia 1000
(+359) 889 888 905
office@prss-bg.org
www.prss-bg.org
The Program for the Development of the Judicial System (PDJS) was set up in 2007 by a team of consultants who had been working for more than eight years to promote the rule of law and improve the quality of the administration of justice in Bulgaria. The main activities of the PDJS are implemented through elaboration and implementation of effective management tools in the courts.

Since its creation, the PDJS has completed successfully initiatives at the national and local levels aimed at supporting the building of capacity of the judicial bodies, the improvement of their organisation of their work, the boosting and increasing of the public awareness of and trust in their work. The team works to disseminate the good practices in all the courts in the country and to ensure sustainability and continuity of the experience gained. As a result of many years of cooperation, lasting partnership relations have been established with all institutions which relate directly to the functioning of the judicial bodies. A wide network of courts which accept the reforms as part of their everyday work has also been set up.

In the next years, the PDJS experts will continue to encourage changes and will contribute to the irreversibility of the reforms in the Bulgarian courts.

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