

Strasbourg, 29 January 2020

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

### Questionnaire for the preparation of the CCJE Opinion No. 23 (2020):

#### “The role of the Associations of Judges in supporting the judicial independence”

#### Replies from Bulgaria

*Please in your answers do not send extracts of your legislation  
but describe the situation in brief and concise manner.*

#### General

1. How many Associations of Judges (please note that they can have different names) exist in your country?
  - a) For judges of all jurisdictions and all court levels - **2**
  - b) For judges of certain jurisdictions only - **1** (Association of Bulgarian Administrative Judges)
  - c) For judges of certain court levels only - **0**
  - d) Are there Associations of Judges on some other criteria (i.e. women judges) - **no**

Total number of all types of Associations of Judges – **3**

Other objectives - There are also associations of public enforcement agents and of recording judges (Association of public enforcement agents and Bulgarian association of recording judges) – but the public enforcement agents and the recording judges are officers, appointed by the Minister of justice (not by the Supreme Judicial Council (SJC)), not magistrates/judges within the meaning of the Judiciary System Act; therefore they are not touched upon.

#### Membership

2. What are the requirements for membership in the Associations of Judges?

Members of judges associations shall be acting or former judges who share the associations' objectives and pay their membership fee.

3. Are prosecutors members of the Associations of Judges? - **no**

**Legal framework / objectives**

4. Which is the legal framework of the Association of Judges? Are there specific legal regulations (law, by-laws) which deal with the Associations of Judges in your country?

- Statutes, adopted by the constituent bodies of each association

- Judiciary System Act (JSA) (proclaiming the freedom of association and membership in judges associations, the obligation of all newly appointed judges to submit to the Supreme Judicial Council Judges college a declaration on all activities thereof and memberships of organisations, including secret and/or informal organisations and societies, non-profit legal entities and in civil-law companies or associations - respectively lack of obligation for serving judges (as of February 2020) to declare their membership in judges associations)

- Non-profit Organisations Law (containing general rules regarding non-profit organisations – foundation, registration, etc.)

- Ordinance on the Organization of the Partnership Council to the SJC

5. According to their statutes, what are the main objectives of the Associations of Judges? (please mark yes or no and indicate by "1", "2" and "3" the three most important objectives)

Defending and fostering the independence of judges and the judiciary	<input type="radio"/> <b>yes</b> <input type="radio"/> no 1
Defending and fostering the rule of law	<input type="radio"/> <b>yes</b> <input type="radio"/> no 2
Fighting for economic safeguards of judges	<input type="radio"/> <b>yes</b> <input type="radio"/> no 1
Fighting for social and physical security of judges	<input type="radio"/> <b>yes</b> <input type="radio"/> no 1
Contribution to the development of the law	<input type="radio"/> <b>yes</b> <input type="radio"/> no
Training of judges	<input type="radio"/> <b>yes</b> <input type="radio"/> no 3
Ethics and accountability of judges	<input type="radio"/> <b>yes</b> <input type="radio"/> no
Involvement in judicial self-government, especially influencing the election of officers of self-government	<input type="radio"/> yes <input type="radio"/> <b>no</b>
Media work	<input type="radio"/> <b>yes</b> <input type="radio"/> no
Organising conferences	<input type="radio"/> <b>yes</b> <input type="radio"/> no
International contacts and networking	<input type="radio"/> <b>yes</b> <input type="radio"/> no
Other objectives (which) to strengthen the professional and public prestige of the courts .....	<input type="radio"/> <b>yes</b> <input type="radio"/> no

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## Support of individual judges

6. a) How do the Associations of Judges interact with individual judges?

Members can: participate in the work of the General Assembly, elect and be elected in the governing body of the association, participate in the association activities, lodge proposals and projects regarding the development of the activity of the association, address the association and its organs seeking support to defend their rights (ex. personal and labour rights; in cases of undue comments in media, pressure, etc.)

b) Can judges get assistance from the Association (which kind)?

Yes. They can seek assistance for protection of their labour and personal rights, including in cases of undue comments in media, pressure, etc.; judges associations often address different state authorities (ex. Supreme Judicial Council, Parliament) or international bodies, make declarations (ex. in cases of malicious media attacks against individual judges/entire courts with regard to pending proceedings/decisions or judgements in specific cases).

c) Do the Associations of judges defend individual judges (against what)?

Yes – for example by declarations/letters in cases of malicious media attacks against individual judges/entire courts, including with regard to pending proceedings/decisions or judgements in specific cases.

The associations react in cases they find that the independence of the judiciary or of a particular judge has been endangered - because of a newly introduced legislation, draft laws, which have not yet been adopted or undue actions or practices. They submit opinions, declarations, letters with different authorities (Supreme Judicial Council, Parliament, President of the Republic, etc.) and address international bodies (international judges associations, CCJE /CCJE has been twice addressed by Bulgarian judges association – in 2008 - with regard to magistrates' code of ethics, and in 2017 – when to its attention were brought two provisions, recently introduced by 2017 amendments of Bulgarian Judiciary System Act (provision requiring judges and prosecutors to declare their membership in professional organisations – repealed in February 2020; provision calling for removal of judges and prosecutors from their office following a public criminal charge against them concerning premeditated crime - by Constitutional Court decision N.2/21.02.2019, issued upon Supreme Court of Cassation request, the provision prescribing automatic suspension and removal was declared contrary to the Constitution and is no longer applicable)/.

7. If there is an infringement of the independence of a judge or of the judiciary, by what means do the Associations of Judges react? – declarations, opinions, open letters to media, Supreme Judicial Council, other state institutions, international organisations and bodies (see answer to question N.6)

8. Is there any influence of the Associations of judges on appointment or promotion of judges? - **no**

9. Is there any influence of the Associations of Judges in disciplinary procedures? - **no**

10. Is there any influence of the Associations of Judges on training? **yes** – the associations themselves organise trainings, seminars, conferences.

## Resources

11. Are there membership fees? - **yes**

12. What other resources are available for the Associations of Judges? – according to their statutes - donations, wills, published editions, incomes from principal/additional connected to principal activity, other incomes, prescribed by law

### **Administration of the Associations of Judges**

12. How are the governing bodies, the secretariat and officers of the Associations of Judges selected? What is their term of office?

The governing bodies of the associations are Managing Board, Control Board, President, Vice President/Executive Secretary (the President and the Vice President/Executive Secretary shall be elected within the Managing board members). In two of the associations all governing bodies shall be elected by the General Assembly; in the third the Managing Board and the Control Board shall be elected by the General Assembly and the President and the Executive Secretary - by the Managing Board. The term of office is three years.

13. Are there restrictions as regards the number of terms of office for members of the governing bodies of the Associations of Judges, and if yes, how many terms and for how long?

The mandate is 3 years with possible re-election (two successive mandates).

14. Are there restrictions to become an officer of an Association of Judges? - **no**

### **Interactions with state institutions and political parties**

15. How do the Associations of Judges interact with the parliament?

Are Associations of Judges involved in the process of law-making?

If yes, how (is this formal or informal)?

The associations elaborate reasoned proposals for amendment of legislation (especially concerning the judiciary system) and lodge them with the authorities competent to initiate legislative procedure. They also submit opinions on draft laws, organise round tables and discussions and make statements/declaration containing comments on laws or draft laws.

16. How do the Associations of Judges interact with the government, especially with the ministry of justice?

The associations elaborate reasoned proposals for amendment of legislation (especially concerning the judiciary system)/opinions on draft laws and lodge them with the authorities competent to initiate legislative procedure-including Ministry of Justice. Besides in 2016 Council on the Implementation of the Updated Strategy for Continuing Judicial Reform - an advisory body to the Council of Ministers was constituted. It is presided by the Minister of Justice and representatives of all judges associations are within its members. The council shall: coordinate the implementation of policies for the implementation of the Strategy; discuss and make proposals for the adoption by the Council of Ministers of Roadmaps for the fulfillment of the strategic goals and, if necessary, changes thereto; monitor the implementation of the strategic objectives of the Strategy, adopting interim reports and an annual progress report; discuss proposals for changes in the regulations related to the implementation of the Strategy; require, collect and analyze information on the implementation of the Strategy and Roadmaps, etc.

16. a) How do the Associations of Judges interact with political parties?

The Associations of judges don't interact with political parties. According to law (Art.195 Judiciary System Act) judges shall not be members of political parties or coalitions, of organisations pursuing political purposes, carry out political activity, as well as be a member of any organisations or carry out any activities interfering with his or her independence.

b) Are certain Associations of Judges connected with certain political parties? - **no**

c) Is there an influence of party politics within the Associations of Judges? - **no**

17. a) How do the Associations of Judges interact with the Council for the Judiciary?

In 2012 Civil Council to the Supreme Judicial Council was constituted. The members of the council are civil associations (19 as of 2019) dealing with judicial system matters – including judges associations. The aim of the council is, through participation of civil and professional organisations, to improve the judicial system, to ensure objective civil monitoring over its functioning and the application of law, thus guaranteeing the rule of law. This is the most long lasting (without interruption) public structure (council) in the judicial system field in the form of civil participation in the process of forming and control over the execution of judicial system policy.

At present - following 2017 amendment of Judiciary system (Article 217) - there is another body - Partnership Council to the Supreme Judicial Council. It consists of three elective members of the Supreme Judicial Council, designated by the Plenary, of representatives of each of the organisations which protect the professional interests of judges, prosecutors and investigating magistrates whereof the membership is not less than 5 per cent of the respective number of judges, prosecutors and investigating magistrates, as well as of representatives of the judges, prosecutors and investigating magistrates who are not members of any such organisations. The Council implements dialogue on all matters related to the professional interests of judges, prosecutors and investigating magistrates. The organisation and operation of the Partnership Council is regulated by an ordinance of the Plenary of the Supreme Judicial Council. According to it the council takes part in discussions of questions related to the professional interests of judges, prosecutors and investigating magistrates, including organisation of their qualification, judicial map reform, remuneration, career, evaluation; elaborates recommendations and proposals about SJC activities; prepares opinions within the framework of conciliation procedures when discussing amendment of legislation affecting the judiciary; assists the SJC in the development and implementation of policies, programs and projects; performs other activities related to the protection of the professional interests of judges, prosecutors and investigators.

Besides the associations often address SJC by declarations, letters, opinions on certain matters or documents adopted by it (ex. in 2016 Bulgarian administrative judges association, following an inquiry and a discussion within its members, lodges with the Supreme Judicial Council a reasoned opinion on Rules on Judges Workload Evaluation, claiming their review).

b) What is the role, if any, of the Associations of Judges in the selection of members of the Council for the Judiciary and/or presidents of courts and judges (please describe)?

Supreme Judicial Councils consists of 25 members - 3 ex officio (President of the Supreme Court of Cassation, President of the Supreme Administrative Court and Prosecutor General) and 22 "lawyers of high professional and moral integrity who have practised law for at least 15 years"- who shall be elected as follows: 11 by Parliament (6 for Judges' and 5 for Prosecutors' college) and 11 by the judicial authorities-6 by judges, 4 by prosecutors and 1 by investigating magistrates. According to the procedural rules regulating the election of SJC members by the Parliament - following the publication of the concepts of the candidates and the documents and declarations requested by law and not later than seven days prior to their hearing, non-profit legal entities registered for the pursuit of public benefit activities (as well as higher educational establishments and scientific organisations) may submit opinions about a candidate, including questions to be put to the said candidate; the opinions and the questions

shall be published on the website of the National Assembly within three days from the submission thereof.

Similar possibility for the association of judges as non-profit legal entities exists in the procedure for election of SJC members by the judicial authorities - judges, prosecutors, investigating magistrates, non-profit legal entities designated for the pursuit of public benefit activities may address opinions on the candidates and questions to them to the respective chamber of the Supreme Judicial Council not later than 14 days before the date of the general assembly for their hearing. The opinions and questions shall be published on the website of the Supreme Judicial Council within three days from their submission. The members of the general assembly and of the relevant commission in charge may address questions to the candidates, including on the basis of the opinions abovementioned; the commission shall be bound to ask all questions received (Art.29i JSA). Observers, who shall be expressly authorised representatives of non-profit legal entities designated for the pursuit of public benefit activities and shall be registered by the respective chamber of the Supreme Judicial Council until the election day, may be present at all stages of the election process.

As far as the election of President of Supreme Court of Cassation and President of Supreme Administrative Court is concerned, the law also prescribes that not later than seven days prior to their hearing, non-profit legal entities designated for the pursuit of public benefit activities, the professional organisations of judges, prosecutors and investigating magistrates, higher educational establishments and scientific organisations may submit opinions about a candidate to the Supreme Judicial Council, including questions to be put to the said candidate; the opinions and questions as submitted shall be published on the website of the Supreme Judicial Council within three days from the date of submission thereof (Art.173 JSA). The same possibility for submitting opinions and questions is provided within the framework of the procedure for election of administrative heads of other courts. The opinions and the questions shall be submitted before the hearing of the candidates by the general assembly of the court concerned and before the interview at the Judicial College of the SJC-during which questions on the basis of the opinions may be asked (Art.194b JSA). Besides a nomination for the appointment of an administrative head of a court - with the exception of a nomination for President of the Supreme Court of Cassation and President of the Supreme Administrative Court - may be made by the general assembly of the judges of the respective court (as well as by the Minister of Justice and the candidate to occupy the position).

18. How do the Associations of Judges interact with the court administration and what, if any, are the problems in these relations?

Forms of interaction (formal or informal) depend on the occasion. The questions about the workload of the judges and its proper evaluation have always been subject to discussions within the judges associations. Bulgarian judges association has issued a Handbook on court administration - which deals with different aspects of court administration aiming to identify the existing problems and possible solutions. Administrative judges association has submitted with the Supreme Judicial Council an opinion on adopted by it Rules on Judges Workload Evaluation seeking their review.

### **Interactions with other organisations**

19. a) If there is more than one Association of Judges, how do they interact with each other?

Each Association's statute contains provisions declaring that it shall interact with other judges associations in order to provide wider unity. The associations elaborate common declarations, open letters, opinions, take part in civil councils, which gather on regular basis (see answer to question N.18a)

b) If there is more than one Association of Judges, how other stakeholders deal with this fact?

The existence of several associations is perceived as a normal fact; all professional associations take part in civil councils.

20. How do the Associations of Judges interact with NGOs? – through the organisation of trainings, round tables, conferences, common declarations, publications, projects
21. How do the Associations of Judges interact with foreign or international organisations?

The associations of judges are members of international organisation (Association of Bulgarian Administrative Judges is a member of European Association of Administrative Judges, Bulgarian Judges Association is a member of International Association of Judges, MEDEL), take part in meetings and events (conferences, trainings, etc), organised by them, organize themselves such and invite international organizations' representatives, work on common projects, declarations, etc., manifest support, empathy and solidarity.

22. Is there a trade union, in which judges can be members? If so, what are the relations between this trade union and the association of judges? - **no**

### **Ethical standards**

23. Is there any influence of the Associations of Judges in establishing ethical standards?  
No. Before 2009 amendment of Judiciary System Act the ethical rules were adopted by the professional organisations of the judges, prosecutors and investigators and affirmed by the Supreme Judicial Council. Following the 2009 amendment the competence to adopt such rules belongs entirely to the Supreme Judicial Council – which, in 2009, adopted Code of Ethics for the Behaviour of Bulgarian Magistrates.

24. Do the Associations of judges contribute to a further improvement of the justice system?  
How?  
Yes. The associations elaborate opinions on essential issues connected with the development of the judiciary system, the status, rights and obligations of judges and their professional development; they submit comments on draft laws regarding the judicial system; organise trainings, conferences, round tables; participate as members in civil councils.

### **Perception**

25. How does the public at large see the Associations of Judges?  
The attitude towards the associations of judges is not unambiguous. There are extreme views. Some people have positive, others – negative attitude. In October 2019 a group of members of parliament even proposed an amendment (not adopted) of Judiciary system act stating that judges, prosecutors and investigators shall not be allowed to establish and be members of professional and non-governmental organisations. As a whole the judges associations are active, known and take part in different civil councils.