The role of presidents in court work organisation. A balance between a manageable workload for judges and citizens' interest in high-quality justice administration within reasonable time limits. Relationship between court presidents and the general assemblies of judges. Distortions in disciplinary action against judges handling excessive workloads and impact on independence

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The report sets out the personal observations of a provincial court judge gained over the course of twenty years on matters pertaining to the problems mentioned in the title. An attempt has been made to examine how the principles set out in Opinion No 19 (2016) of the Consultative Council of European Judges (CCJE) on the role of court presidents are applied in practice in Bulgaria. It should firstly be noted that the provisions of the Judiciary Act are fully in line with these principles. The legal framework is worded precisely and leans towards overregulation. However, distortions are evident in the practical application of the relevant legal norms, meaning that in Bulgaria these have broader implications for the domain of public relations under consideration.

The role of the chief justice or court president is defined succinctly and clearly in Opinion No 19 (2016) of the CCJE: *to represent the court and his or her fellow judges; to ensure the effective functioning of the court and thus improve service to the public*. The primary duty of a court president that permeates all other functions they perform is to act as guardian of the independence and impartiality of judges and the court as a whole. The court president is first among equals (*primus inter pares*) in his/her relations with other judges. He/She is the head of the court in administrative terms. However, the court president is not superior to their fellow judges. The chief justice must stand firm by the principles of professionalism and impeccable moral integrity and have sound managerial skills. They must also be recognised as an authority figure by other judges and lead by example, following a long-term vision for the development of the court. The success of the tenure of a court president can only be assured if their fellow judges take an interest in and share in the responsibility for the functioning of the court as a whole and the process of finding solutions to management problems as they arise. This cannot be achieved where the judges regard the court present as an imposed figure that does not command the requisite authority. The above warrants the conclusion is that the court president must satisfy the following requirements: (1) Be a judge of the same court; (2) have an impeccable professional record; (3) be one of the most senior ranking judges in terms of length of service in the court and enjoy the respect of all judges.

The self-governing body of judges is the general assembly of the court. The expansion of the powers vested in the general assemblies of judges by the Law on Judicial Self-governance (SG No 62/2016) is a democratic achievement in the regulation of court management. The decisions of the general assembly of judges are not only obligatory for the court president who must comply with the will of his peers — they also guide the court president in better performing their administrative duties as court manager. In fact, the general assembly of judges is the forum where judges can be motivated to take active part in decision-making at

management level. However, it can equally serve as a forum destroying judges motivation to do so.

According to Opinion No 19(2016) of the CCJE, the judges of each court may participate in the **election, selection, and appointment of court presidents.** A model with an advisory or even mandatory vote can be introduced. The Bulgarian lawmaker elected to give the general assembly of judges an advisory vote: the general assembly can make proposals for the appointment of a president of the respective court and conduct hearings of applicants for the position. The president of a court is appointed by a decision of the College of Judges of the Supreme Judicial Council. There are many positive examples of candidates for the position of court president who received the staunch support of their colleagues in the general assemblies of the respective courts and were subsequently appointed by the Chamber of Judges of the Supreme Judicial Council. Some of the examples include Judge Marinov — second-term President of the Varna Provincial Court and Judge Arakelyan — second-term President of the Varna Court of Appeals. Regrettably, there are also examples of to the contrary: candidates for the position of court president who received the overwhelming support of their fellow judges are subsequently rejected by the Chamber of Judges of the Supreme Judicial Council without justification. Each of the two examples below is a case in point.

Justice Nelly Kutzkova ran for President of the Sofia Court of Appeals in 2015, with 40 out of 58 judges sitting on that court supporting her nomination in an open letter. The Supreme Judicial Council rejected her candidacy without stating any reasons for its decision or making a statement that challenged her professional competence and moral integrity for the benefit of those who were involved in the election and had put forth her nomination. This gave grounds to the Supreme Administrative Court (SAC) to uphold Justice Kutzkova's appeal and annul the decision of the Supreme Judicial Council (SJC). The subsequent election was again unsuccessful for Justice Kutzkova, and this time a statement against her by then Prime Minister Boyko Borissov influenced the Council's decision. In a subsequent procedure, Justice Daniela Doncheva was elected as the preferred candidate for the position. The actual, though undisclosed motive for the Council's refusal to appoint Justice Kutzkova as president of the Sofia Court of Appeal, was her critical public stance, as former chair and an active member of the Bulgarian Judges Association, against developments that undermine court independence. The episode clearly demonstrated that the decisions of the Supreme Judicial Council were influenced by political considerations. The first 'nay' vote for Judge Kutzkova showed how urgent the subsequent division of the Supreme Judicial Council into two chambers—of judges and prosecutors, respective—was in order to curb the influence of prosecutors on the career development of judges, as well as the abolition of secret ballot and abstention votes that served to conceal backroom deals.

The second case involves the election of a candidate as president of the Sofia City Court — the largest district court in Bulgaria — in November 2018. The General Assembly of Judges of the Sofia City Court, voting by secret ballot, gave its overwhelming support to a candidate from the same court. Judge Evgeni Georgiev received 56 votes against 25 votes for the other candidate Judge Alexei Trifonov. The Chamber of Judges of the Supreme Judicial Council elected Alexey Trifonov as President of the Sofia City Court, voting 9 to 4 in favour of the

nomination. During the hearing of the elected judge it became evident that he had a discussion with a current SJC member who 'encouraged' him to run. The event was reported to have taken place before said member joined the SJC. Justice Tsvetinka Pashkunova, a member of the Chamber of Judges who voted for Evgeni Georgiev's nomination, gave the following reasons for her vote: '*The nomination is clearly in line with the principle of judicial self-government, which this Chamber has always respected*'. Another member of the Chamber of Judges, Justice Olga Kerelska, pointed out the following: '*We have to give decisive, structurally decisive reasons as to why a candidate who is external [to the Sofia City Court] should be chosen'*.

In the case of the election of an external candidate as Chief Justice of the Sofia City Court, as in other similar cases, no substantive reasons for preferring the chosen candidate can be inferred from the statements of the members of the Chamber of Judges, meaning that the body in question failed to demonstrate how the external candidate was superior to the judge whose nomination was put forward by their fellow judges and why the Council went against the stated preference of the majority of judges.

Article 169(1) of the Judiciary Act stipulates that a judge from the same or a superior court shall be appointed as court president and, by way of exception, a judge from a lower court may be appointed. This means that the Bulgarian legislature is not at all an advocate of the principle upheld here that a candidate from the same court who possesses the highest qualifications and satisfies the requirements for integrity, ability and efficiency should be elected as court president. On the contrary, a judge from another court, from the same court, from a higher court, or even, exceptionally, from a lower court, may be elected as President. The last exception is particularly disturbing. It constitutes a circumvention of the competition for promotion to a higher court. Why should an aspiring judge have to compete for promotion as a judge of a higher court when he can compete directly for the presidency of the higher court.

In 2019, Metodi Lalov, a former judge and chief justice of the Sofia District Court, the largest district court in Bulgaria, stated at a conference that his election as president became possible after a meeting with the then chief justice of the Supreme Administrative Court (SAC) Georgi Kolev, organised by the then chief justice of the Sofia City Court Vladimira Yaneva. The meeting took place in a restaurant. However, a 'well-known corpulent politician' happened to show up during the conversation with whom Georgi Kolev disclosed who Judge Lalov was as well as the reason for the meeting. The President of the SAC explained to the politician that they had met so that he could apprise Metodi Lalov of his concept and gain support at the SAC for his nomination for the position of chief justice of the Sofia District Court. The corpulent politician in question advised that the best course of action would be to ensure that [Judge Lalov] is not passed over, as another judge, a former chief justice of the Sofia Court of Appeal, had been, although the politician had personally introduced them to the leader of one of the major political parties. The Bulgarian Judges Association called on the Supreme Judicial Council to conduct an inquiry into the matter, but none followed. regrettably, there are numerous cases in which the election of court presidents leaves suspicion of political

influence or prior agreement being reached by SJC members of the Supreme Judicial Council who attend the election hearings with a predetermined candidate in mind.

The journalist Mirela Veselinova in the article entitled *The High Stakes in the Battle for New Chief Justice of the Sofia City Court*, published in the Capital Weekly on 27.9.2021 wrote: 'The major manifestation of behind-the-scenes staffing in the judiciary is the appointment of court presidents who perform administrative managerial functions and are expected to 'return the favour' by putting pressure on their fellow judges to obtain the 'correct' judgment in important cases for the benefit of public authorities and certain businesses. This undermines the authority of courts and the very idea of justice in society. The importance of the choice of the Chief Justice is multi-layered. On the one hand, the president derives strength from their professional authority and leads by example. If they are a consummate professional of proven integrity, they will then expect the same from their fellow judges. If they are involved in corruption and illicit lobbying, then all judges on the court will feel free to do the same. The public statements of court presidents are important as a guide to the problems and prevalent attitudes in the court. On the other hand, although court presidents are not superior to their fellow judges (unlike in the system of the prosecution), they have considerable administrative leverage which they can use to secure the desired results in certain cases, including on matters relating to court staffing and the secondment of judges to other courts.'

The distortions evident to judges in the election of some presidents, especially of larger courts, have long been visible to the public as well. The same applies to the suspicion that the election of *compliant* presidents channels undue external influence on the work of courts thereby undermining their independence.

Article 169(1) of the Judiciary Act should be amended to remove the possibility for a judge from a lower court to be elected as the president of a superior court, and the opinion of the general assembly of judges should be elevated to playing the role of a decisive factor in elections. The general assemblies of judges currently have the right to make proposals for the appointment of a court present and to hear candidates who have put forward their nominations. Despite this, for the Chamber of Judges of the SJC the decision of the general assembly on candidates running for president remains advisory, i.e. not it is not binding. In some EU Member States, court presidents are not selected and/or appointed, but elected by their peers, i.e. the judges of the same court. This is clearly stated in Opinion No 19 (2016) of the CCJE. The solution may sound radical given the prevailing conditions in Bulgaria, but is in fact the best model.

The term of office of court presidents is 5 years. Article 167(5) of the Judiciary Act stipulates that the tenure of chief justices is limited to two consecutive terms as president of the same court.

This provision satisfies the standard set out in Opinion No 19(2016) of the CCJE according to which the term of office should of court presidents be sufficiently long to enable the incumbents to gain experience and implement their concept for improvement of the services provided to court users. On the other hand, the tenure should not be excessively long as the incumbent may lapse into routine which hinders the process of new ideas being introduced

and taking root. The most disconcerting aspect of the provision laid down in national law is that the limitation applies to serving as president of a particular court. In other words, the same judge can serve two consecutive terms as president of a trial court, two terms as president of a provincial court, and two terms as president of a court of appeal. For example, Justice Vanuhi Arakelyan is currently serving a second term as President of the Varna Court of Appeal, having previously served two terms as President of the Varna Regional Court. When she was elected for a second term as Chief Justice of the Varna Court of Appeal, SJC members supported her with statements such as: '*She has the talent of a leader — she could have been chief justice not for 20 years but her entire life*'. While we recognise that there are indeed people who are undeniably talented leaders, the meaning of tenure is quite different.

Paragraph 13 of Opinion No 19(2016) of the CJEU articulates essential principles in the **relationship between the Chief Justice and other judges of the court** and the work of the Chief Justice in this context. Internal judicial independence requires that individual judges be free from guidance or pressure from the Chief Justice when deciding cases. Presidents of courts, as guardians of the independence, impartiality and efficiency of the court, must themselves respect the internal independence of judges in their courts. Article 212 of the Judiciary Act prohibits any judge from expressing an opinion in a case that has not been allocated to them. This prohibition applies in particular to the Chief Justice. If a presiding judge were to presume to express an opinion on a case before the reporting judge, the latter will invariably interpret this as an attempt to influence their internal conviction. This would be seen as unacceptable interference in the individual independence of the judge. Such practices are widely considered unacceptable among judges. Having said this, such cases do exist. On the rare occasions of judges deciding to publicly disclose attempts to influence their internal conviction in a pending case, the judge typically does so without naming the culprit, fearing that the attempt is unprovable. Former SJC member Galina Karagyozova, a justice at the Supreme Administrative Court, said the following in an interview on 9 July 2015: 'But I have encountered attempts on the part of chief justices to exert pressure over judges. Court presidents wield enormous power, which is why the question of which candidates the SJC ultimately decides to appoint is so important. *Question*: How do bosses influence the system? *Answer*. The influence seeps through, it is impossible to ignore. Sometimes it is on the covert side, and sometimes completely out in the open. The Code of Ethics Bulgarian Magistrates requires judges not to succumb to pressure, threats, incentives, direct or indirect influence, including from within the judiciary. It obliges a judge to inform the judiciary and the public of any attempt to undermine their independence. I am not aware of any case of an attempt by a presiding judge to influence a judge in a particular case that was reported by the judge to the chief justice of the superior court or to the Judicial Council. Such cases are next to impossible to prove, and the judge runs the risk of being accused of defamation. It is potentially possible for the Chief Justice to direct a judge as to the desired outcome in a specific case, hence the relentless pursuit we have occasionally witnessed in imposing the 'right' judge as Chief Justice and ignoring an independent candidate supported by their peers.

Court presidents should set an example and create an environment in which judges feel free to turn to them for support and assistance in relation to the performance of their duties, including

on ethical issues. Judges may feel that a certain gap exists between them and the president of the respective court. Bridging this 'gap' is important. It can be achieved if a chief justice develops places the work of the court at the centre of their relationship with their fellow judges and if judges have an interest in, and feel a certain responsibility for, the functioning of the court (Opinion No 19 (2016) of the CJEU paragraphs 18 and 20). This principle can be summarized as follows: the president should be accessible to the judges, the door to their office should be open to any judge who wants to share a problem they have encountered in their work or make a suggestion to improve the organisation and functioning of the court. Moreover, court presidents should themselves seek similar contact with the judges that are from formality. A situation in which the chief justice and a fellow judge have not spoken for years can hardly be described as normal.

The main function of the court president is to ensure that **judicial work is properly organised** and make arrangements for the seamless hearing of cases. The chief justice represents the court before external bodies and individuals, and oversees the financial affairs of the court. In these—let us call them technical functions—they are assisted or directly substituted by the court administrator. The main task of the court president is to focus on the organisation of judicial caseload and matters pertaining to justice administration. This can be best achieved if the chief justice continues to hear cases and work as a judge. The CCJE, in paragraph 15 of Opinion No 19 (2016), identifies it as critical that court presidents, once appointed, continue to serve as judges. Continued practice is important not only to enable chief justices to maintain their professionalism and continued contact with fellow judges in accordance with the principle of *primus inter pares*, but to also best fulfil their organisational role through direct knowledge of the issues that arise in day-to-day practice. The workload of the court presidents can be reduced to take into account their management tasks. There have regrettably been cases where court presidents have been in a situation of handling excessive workloads while at the same time performing additional managerial functions relating to court administration. This situation cannot be achieved without the tacit complicity of judges as the general assembly of each court has the power to adopt rules on the workload of the chief justice. Another provision of the Judiciary Act that is typically disregarded is that the court president should preside over panels of all divisions. Normally, the President sticks to the branch of law in which they specialise and participates in hearings as panel president only in cases on the record of the division in which they served before being appointed president.

The functions of the chief justice in the organisation of judicial work will be considered here in relation to the powers of general assemblies of judges.

The establishment of divisions in the court requires a decision of the general assembly of judges. The General Assembly determines the number and composition of the divisions, as well as their area of substantive competence. The court president, together with their deputies, proposes to the General Assembly the allocation of judges to the divisions. Thus, the president may not directly order a judge to work at a particular division and specialise in a specific area of law, but must comply with the decision of the general assembly of judges. The delicate question here is whether the majority in the General Assembly can impose its will on the minority of judges who disagree with the proposed division and specialty

allocation, particularly where judges in the minority are personally affected. Here, the role of the Chief Justice is important in justifying the proposed distribution seen to serve the general interest of the court overall and the need for justice administration of a high order, and convincing the general assembly of judges.

Paragraph 21 of Opinion No 19 (2016) establishes important principles in the **allocation of cases among judges**: 'Cases must be allocated to judges in accordance with objective criteria established in advance. They should not be taken away from a particular judge without good reasons. Decisions to withdraw cases should be taken only on the basis of predetermined criteria and after a transparent procedure. According to paragraph 10 'When presiding judges are involved in the allocation of cases among members of the court, these principles must be respected'.

In Bulgaria, the principle of random allocation of cases among judges is established in Article 9(1) of the Judiciary Act, which stipulates as follows: 'The distribution of cases and files in the judiciary shall be carried out in accordance with the principle of random selection by means of a single electronic system according to the order of filing […]'. Presidents now assign cases to rapporteurs and, more recently, to the members of Chambers, through a centralised electronic system. Allocation records are publicly available. However, the word 'even' [allocation] has only been added by the amendment to the law published in the State Gazette No 11/2020. The principle of random selection in the allocation of cases in the courts is applied within each chamber or division. Hence the danger that judges in one court may be asked to handle vastly different workloads, depending on the workload of the division in which they work. Even within a division, the system does not ensure a completely even workload. A difference of ten per cent is accepted as tolerable. Often, however, the differences in workload between judges in a single court are drastic. At the hearing before the Supreme Judicial Council of the candidate for the presidency of Sofia City Court Evgeni Georgiev (not elected) he gave an example of excessive workload: the judge with whom he shared an office, V. M., had 400 cases assigned to him, while he had only 180 cases to be adjudicated at first instance. My aim is to prevent this from happening". The general impression for a lay person is that the case allocation system has been designed with an emphasis on not being able to predict the choice of judge, but that evenness of allocation between judges is not a priority. For the time being, an even workload of judges is not guaranteed either over short periods of 1 to 3 months or over a year. The previous composition of the Supreme Judicial Council introduced a new advanced method of workload calculation based on the time required to complete the individual procedural steps in cases. After summarising the results of a broad survey of judges, burden factors were developed for relevant groups of cases by legal basis, with cases that take longer to complete having a higher burden factor. The hours worked during the calendar year were equated to the sum of 100 of the weightings of the cases heard. When a judge ends the calendar year with a sum of the case load factors greater than 100, it means that he or she is very busy, that he or she must work overtime to complete the case work within a reasonable time. The workload reporting system based on the time taken to complete court work, SINS, has not been abolished and has been integrated into the new Single Electronic System for Courts (SESC) — the new caseload

management software tool. However, the new Chamber of Judges of the Supreme Judicial Council does not trust the results of this way of measuring judicial workload and has ordered that statistical reports and annual reports be compiled on the basis of the number of cases each judge handles — a primitive way of taking into account the difference in the type and factual and legal complexity of cases. The justification for this decision was that the workload measurement system produced strange results. Rather than being improved, it has been virtually abandoned as a criterion for measuring the workload of individual judges and courts and taking the necessary management measures in relation to it. The Supreme Judicial Council has gone so far as to admit that it does not have the administrative capacity to improve the workload measurement system or to develop a new one, but wants to turn to the European Commission for technical assistance - an absurd proposal. This problem has exposed significant shortcomings of the Bulgarian Supreme Judicial Council: lack of continuity between the work of the different chambers, unprincipled repudiation of the work started by the previous chamber, administrative powerlessness in the presence of many busy employees and high overall salary costs - without addressing important issues of the judiciary. The uneven workload of judges within a court is a significant problem. Of course, the random distribution of cases must be strictly observed. On the other hand, judges should no longer have to listen to excuses about how the computer 'got it right', how the computer 'bit' them and assigned them a lot of cases in a short time. Both busier and less busy judges see this problem as an injustice. It is imperative that each President, in conjunction with the Vice-Presidents and the System Administrator, analyse the reasons for the uneven workload and propose to the General Assembly of Judges measures to remedy the problem, such as reducing the percentage workload for a given period of time of the busiest judges or distributing a certain type of case among more judges.

Paragraph 16 of Opinion No. 19 (2016), the CJEU identifies coherent and consistent case-law as an important part of legal certainty. Chief Justices are involved in ensuring the quality, consistency and coherence of judicial decisions. This task can only be fulfilled if court presidents promote consistency in the interpretation and citation of the case law of the Court itself, the superior courts, the Supreme Court and international courts (e.g. by facilitating education and training, including workshops, meetings, providing access to relevant databases, and promoting dialogue and information exchange between different instances, etc.). In Bulgaria, the interpretative decisions of the Supreme Court of Cassation and the Supreme Administrative Court have binding force to overcome contradictory or incorrect practice in the interpretation and application of the law. The law in Bulgaria does not provide for the lower courts - district, circuit and appellate courts - a similar mechanism to unify case law on controversial legal issues on which the supreme courts have not ruled. The Chief Justice has a statutory duty to analyse and summarise the case law of the Court. He may do so in the following ways: to organise the publication of judicial acts for internal use, to assign judges to summarise case-law and identify cases of contradictory case-law, to convene a general meeting of the divisions or of the whole court to discuss cases of contradictory case-law on the same or similar legal issues. In these cases, the way to unify case law is only through persuasion by argument. There is no legal obligation for dissenting judges to adhere to the prevailing legal opinion. The President of the Court is obliged to explain in each such

case, when judges and panels of the same court decide similar cases differently, what negative repercussions this has for the prestige of the court and for the public's sense of legal certainty.

It has already been pointed out that the extension of the powers of the general assemblies of judges is a democratic achievement in the regulation of the administration of justice. Unfortunately, the above assessment is not shared by all. Presidents of courts and members of the Supreme Judicial Council have expressed doubts as to the usefulness of the extended powers of general assemblies of judges. Some opponents of judicial self-government are more direct, others more veiled. The current president of the Varna Court of Appeal, Judge Arakelian, in her hearing before the Judicial College of the Supreme Judicial Council, stated that she supports the idea of 'shared management' because judicial self-government is a narrow concept, which does not include the employees. However, a general assembly of judges and employees is quite different from a general assembly of judges only. Judges are non-removable and much less dependent on the administrative authority of the court president compared to employees. A general assembly of judges and staff would much more easily 'drown out' the voice of judges. In a meeting of the Chamber of Judges of the Supreme Judicial Council held on 23 February 2021, the Supreme Judicial Council member Dragomir Koyadzhikov, a judge at the Specialised Court of Appeal, said the following: '...these minutes of the General Assembly are further proof of the bankruptcy of the problems created by the 2016 amendments to the Judiciary Act, which first introduced this concept of judicial self-government — something that does not work, and will never work. And you know it. And you know that the one who made these changes has bungled the work of the current composition of the Supreme Judicial Council on competitions, on attestations, on career development. It is high time you admitted this, and not to berate the judges for being conformist and not taking an active attitude, because it makes no sense. This judicial autocracy has disempowered the administrative heads and created total chaos through the authorities in the courts as organs of the judiciary. '" This statement is so categorical and one-sided that it needs no comment. Unfortunately, there are people in the management of the Bulgarian judiciary who perceive the presidents as the bosses of the judges and the management of the courts as successful only if the president rules in a one-man authoritarian manner.

The most important role of the president of the court in contacts with **the media** is to protect the individual independence and reputation of a judge affected by media publications. Opinion No. 7 (2005) of the CJEU, para. 55, states that when an individual judge is challenged or attacked by the media (or by political or other public figures through the media) on an issue related to the administration of justice, bearing in mind the duty of judges to exercise judicial restraint, the judge concerned should refrain from reacting through the same channels. It is a truth universally acknowledged that every judge, in deciding a case, finds himself at the centre of a conflict which he must resolve by virtue of his duties. A judge's job is difficult and responsible enough, and it is grossly unfair that a judge who has decided a case in good faith, after weighing the evidence in his or her own judgment and applying the law as he or she understands it, should suffer unfair criticism not based on fact. When a judge is attacked, especially through the media, for his or her performance as a judge, it is the duty of

the Chief Justice to publicly defend the judge by making it clear that the public's understanding of fairness is embodied in the law and that the review of the legality and correctness of judicial acts is done by a higher court, not the street.

According to paragraph 17 of Opinion No 19 (2016) of the CCJE it is necessary to empower court presidents to monitor the length of court proceedings. This is closely related to the reasonable length clause of Article 6 ECHR and the requirements of national law. The monitoring of the length of proceedings and the actions that presiding judges must take to expedite the resolution of cases must be balanced against the impartiality and independence of judges and judicial confidentiality.

The Bulgarian Judiciary Act stipulates an obligation for the President to provide the Inspectorate of the Supreme Judicial Council with a summary of the initiation, progress and completion of first instance and appeal cases, as well as of the final annulled acts of the higher instances, at the end of every six months. There is no doubt that the President of the Court is obliged to monitor the duration of court proceedings and the completion of procedural acts within the legal time limits. He can and should take note of judges who systematically commit unjustified delays. Of course, this must be done with respect for the judge's dignity and without intimidation. The conversation between the President and the judge should be held discreetly, not in public, and its main purpose should be to clarify the reasons for the systematic delay. In general, the President should show concern for fellow judges and a willingness to help, even when the judge's difficulties are in the realm of his or her private life. In extreme cases, the President has what is known as written attention. Pursuant to Article 327 of the Judiciary Act, court presidents may draw judges' attention to irregularities committed by them in initiating proceedings and handling cases or in the organisation of their work. This measure is outside the system of disciplinary penalties, but is important for the career of the judge. Although the order to draw attention is appealable before an administrative court, it is sent to the College of Judges of the SJC and is filed in the judge's personnel file. It is relevant for periodic appraisals and for determining the severity of any subsequent disciplinary sanction. Of the types of disciplinary penalties, the President is only empowered to impose the lightest of them — a 'reprimand'. Again, the final decision lies with the College of Judges, which may confirm or annul the penalty imposed. The more severe penalties are imposed by the College of Judges of the Supreme Judicial Council. In these procedures, the opinion of the immediate administrative superior shall have particular weight. With the 2016 reform amendment to the Judiciary Act, the disciplinary procedures have acquired a more humane character through the possibility to suspend the execution of a disciplinary sanction imposed by the sanctioning authority for a period of up to 6 months upon application of an individual professional development plan, which includes measures to address specific needs and identified deficiencies in the judge's work and training. I am not aware of how often or whether this institute is applied at all. For a start, in Bulgaria, we are far from understanding that when a judge shows systematic weaknesses in his work, especially delays in rulings, we should first look for the causes in the organisation of the court's work, for which the president is responsible, the support measures taken or not taken for busy judges, and only then look for the causes in the judge's individual characteristics - his

ability to work effectively. Indeed, the law provides that, in determining the type and amount of disciplinary sanction, the individual caseload of the judge subject to disciplinary responsibility, as well as the caseload of the judicial authority in which the offence was committed, must be taken into account. In this respect, the findings of the sanctioning authorities are usually formal and do not favour the judge: in the country, most courts have average and below-average caseloads, and there are always excellent judges in the capital and in large cities, so the disciplined judge could have made an effort to do better than those excellent colleagues. It has already been pointed out that the caseload is in fact primitively reported on the basis of numbers of cases rather than on the basis of type and complexity, which makes the assessment even more superficial. The President of a court must judge very responsibly whether to make a proposal to impose a disciplinary sanction more severe than a reprimand on a judge of the court he or she presides over. This act of the president has a significant impact on the career of the judge proposed for punishment and his future motivation, as well as the impact on the motivation of the other judges and the psychological atmosphere in the judicial collective. A President who dutifully punishes and proposes to punish many judges of the court they preside over is certainly not a good chief justice and diverts attention from their own mistakes in court management.

The practice of imposing disciplinary sanctions, the actions of the Inspectorate at the Supreme Judicial Council and the Supreme Judicial Council itself have been repeatedly and for a long time subject to criticism for inconsistency, lack of clear criteria, purposeful "hitting" of judges who have become inconvenient because of their public critical positions, on the one hand, and ‘pardoning’ of the transgressing but ‘obedient’ judges, on the other hand. Active members of the Union of Judges in Bulgaria have been subjected to such disciplinary attacks, which have not been aimed at improving their work, but at intimidation for edification. Here I will translate just one vivid example with Judge Miroslava Todorova - a judge at Sofia City Court, former chair of the Board of the Union of Bulgarian Judges. The last disciplinary proceedings against Judge Todorova started at the end of 2016 and ended only recently with a light punishment. The initial report of misconduct to the Inspectorate was filed by the Prosecutor General regarding a delay in ruling on a request by the Prosecutor's Office to disclose bank secrecy. I note here that a prosecutor is not empowered to make a proposal to initiate disciplinary proceedings against a judge, but in practice, by means of a signal to the Inspectorate of the Supreme Judicial Council, prosecutors, including the Prosecutor General of the Republic, put disciplinary proceedings against judges in motion. Given that the prosecutor is a party to the criminal proceedings /state prosecutor/, this approach is used to intimidate judges and affect their independence in deciding cases. The opposite case — a judge reporting a disciplinary offence against a prosecutor to the Inspectorate - is extremely rare. This situation shows the abnormal situation in the Bulgarian judiciary in which the Prosecution Service has enormous and disproportionate influence. On the occasion of this signal, the Inspectorate of the Supreme Judicial Council decided to check the overall activity of the judge over a period of two years. This is the third disciplinary proceeding against Judge Miroslava Todorova. In a previous disciplinary case she was dismissed, but the most severe punishment was annulled by the Supreme Administrative Court. The case before the Supreme Administrative Court was monitored by international

judicial organisations. Judge Todorova is known in society for her criticism of attempts to subordinate the court to political and economic processes. This is the real reason for the repression against her, which has taken very ugly forms. In 2019, the Inspectorate of the Supreme Judicial Council allegedly accidentally published her declaration of assets without deleting the personal data of the judge and her family members, including the personal data of her minor son. The organisation Judges for Judges from the Netherlands informs us that since 2014, training programmes in which new Dutch judges are enrolled contain information about the case of Miroslava Todorova. In the context of this case, the "toxic combination" of external pressure (political and media) and internal pressure within the judiciary (High Judicial Council) aimed at arbitrarily applying performance and quality criteria to judges with critical positions is discussed. More recently, the European Court of Human Rights (ECtHR) ruled in Miroslava Todorova v. Bulgaria (Case No 40072/13; Judgment of 19.10.2021) that the authorities had violated Judge Todorova's right to freely express her opinion under Article 10 of the ECHR, and further violated Article 18 of the Convention against her, which prohibits the use of lawful procedures to achieve objectives other than the stated ones, the so-called parallel objectives. The main purpose of the disciplinary proceedings against Todorova was not to ensure that the cases were completed in time, but to sanction her for her criticism of the Supreme Judicial Council and the executive. The court further concluded that the repression of Todorova and her dismissal had a deterrent effect on judges and discouraged them from criticising the BCC and expressing their opinions on issues related to judicial independence. It should be noted that in the long-standing repression of Judge Miroslava Todorova, she received support from ordinary judges, but not from the president of her court or the president of the higher court.

The chilling effect of parallel disciplinary proceedings on judges' freedom of speech has indeed led to obfuscation and passivity among judges. And the practice of the Chamber of Judges of the Supreme Judicial Council in the election of presidents, as discussed above, has also led to an apparent exodus of those willing to run for the position of chief justice. Some courts have stood without titular presidents for years. This negative change in the attitude of judges towards court management issues is not analysed and no measures are taken. The reason for this is that the people at the top of the judiciary, who have brought things to this sorry state of affairs, think that it will be easier to manage a mass of disunited and demotivated judges.