

## Bulgarian Judges Association

Dear Sir,

This letter is in response to the questionnaire on “disguised” disciplinary actions or procedures against judges by Diego García-Sayán UN Special Rapporteur on the independence of judges and lawyers.

1. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to disciplinary proceedings in the last ten years. How many of them were found guilty of disciplinary misconduct? How many of them were removed from office?

The following disciplinary sanctions may be imposed on a judge in Bulgaria /Art. 308, par.1 of the Judicial System Act/:

1. reprimand;
2. reduction of the basic labour remuneration by 10 to 20 per cent for a period of six months to one year;
3. demotion in rank for a period of six months to one year;
4. demotion in position for a period of six months to one year;
5. release from office as an administrative head or deputy administrative head;
6. release from office on disciplinary grounds.

With the amendment of the Constitution of the Republic of Bulgaria from 18.12.2015. The Supreme Judicial Council is divided into a College of judges and a College of prosecutors. The imposition of disciplinary sanctions on judges is a responsibility of the College of judges. The actual separation of the two colleges was done on 14.04.2016. Within the Judicial College since 19.05.2016 functions a commission "Disciplinary activity and interaction with the Inspectorate at the Supreme Judicial Council".

The 2019 year

4 new disciplinary proceedings have been started.

14 disciplinary proceedings from previous periods have been completed with the following results: - sanction "reprimand" - 6; sanction "disciplinary dismissal" -

1; discontinued proceedings - 4; no disciplinary sanction has been imposed in one case; 2 disciplinary proceedings have been completed and no decision has been made to impose a disciplinary sanction due to the results of the voting.

#### The 2018 year

10 new disciplinary proceedings have been started.

7 disciplinary proceedings from previous periods have been completed with the following results: sanction "reprimand" - 2; no penalty has been imposed in 1 case; discontinued disciplinary proceedings 4.

#### The 2017 year

39 new disciplinary proceedings have been started.

13 disciplinary proceedings have been completed with the following results: sanction "reprimand" - 2; sanction "reduction of wages from 10 to 25 per cent for a period of six months to two years" - 1; sanction "demotion in the same body of the judiciary for a period of one to three years" - 1; sanction "disciplinary dismissal" - 3; completed disciplinary proceedings for which no disciplinary sanction has been imposed - 5; 1 disciplinary proceeding was terminated. /Note: the sanctions are named after previous versions of the Judicial System Act /

#### The 2016 year

8 disciplinary proceedings have been started.

19 disciplinary proceedings have been completed with the following results: sanction "reprimand" - 2; sanction "reduction of wages from 10 to 25 per cent for a period of six months to two years" - 4; sanction "demotion in the same body of the judiciary for a period of one to three years" - 2; completed disciplinary proceedings for which no disciplinary sanction has been imposed - 10; 1 disciplinary proceeding was terminated.

Before 2016 / before the division of the Supreme Judicial Council into judicial and prosecutorial colleges / The Commission for Disciplinary Proceedings of the Supreme Judicial Council reports the disciplinary proceedings in general for judges, prosecutors and investigators. For this reason, we cannot provide accurate data on disciplinary proceedings against judges for the period 2010-2015. Data on the dynamics of this process concerning judges is contained in the Summary Report on the activity of the disciplinary proceedings in the period 3.10.2012. - 25.09.2017. From 3.10.2012 to 14.04.2016 /the division into two colleges/ a total of 138 disciplinary proceedings were instituted. 86 disciplinary proceedings have been completed with the following results: sanction

"reprimand" -10; sanction "reprobation" /no longer existing in the law/ - 16; sanction "reduction of wages from 10 to 25 per cent for a period of 6 months to 2 years - 13; sanction "demotion in rank or position in the same body of the judiciary for a period of 1 to 3 years - 6; sanction "dismissal from office as administrative head or deputy" - 5; sanction "disciplinary dismissal" - 10; discontinued proceedings - 3; completed proceedings without the imposition of a disciplinary sanction - 23.

2. Has any judge belonging to your association been subjected to any form of sanctions that were not previously established by law or that were imposed through a procedure that did not meet the procedural requirements established by the law? If yes, please provide information on the case(s).

From a formal point of view, there is no judge, a member of the Bulgarian Judges Association, who has been punished with a sanction not provided by law or in violation of the prescribed procedure.

Here, however, we are obliged to point out cases of disciplinary proceedings against leaders in our organization, caused not because of real faults in their work as judges, but because of their activities in the judges' association and their prominent civil position. Our organization is the largest professional association of judges in Bulgaria, which for years has been fighting without compromise for the independence of judges and strengthening their self-government. This position is often opposed by members of the Supreme Judicial Council, the Minister of Justice, the Government, parties in parliament. Disciplinary proceedings against members of our governing bodies have been initiated on purpose as malicious attacks against the Bulgarian Judges Association.

As a deviation from the sense and legal purpose of disciplinary measures, we point out the following bad practices:

A prosecutor is not authorized to propose disciplinary proceedings against a judge, but in practice, through a signal to the Inspectorate at the Supreme Judicial Council, prosecutors, including the Prosecutor General of the Republic, initiate disciplinary proceedings against judges. Having in mind that the prosecutor is a party to the criminal proceedings (public prosecutor), this approach is used to intimidate judges and affect their independence in resolving cases. The opposite case - a judge to report to the Inspectorate a disciplinary offence against a prosecutor - is extremely rare. This situation shows the abnormally large influence of the Prosecution Office in the Bulgarian judicial system.

According to Art. 310, para 2 of the Judiciary Act, the disciplinary proceedings must be completed within three months from its initiation, and in complex cases within six months. Often these deadlines are not met and disciplinary proceedings continue before the penal authority for years. This puts the judge concerned in a state of anxious uncertainty, and in the meantime, he continues to administer justice.

The main portion of the disciplinary proceedings against judges deal with non-observance of the instructive procedural deadlines. The inspections of the Inspectorate of the Supreme Judicial Council do not help to identify problems in the organization of the courts but are reduced to the arithmetic calculation of deadlines, without taking into account the complexity and nature of judicial work, including as an immanent feature the need for continuous professional development. The initiated disciplinary proceedings against judges for systematic non-compliance with the procedural deadlines are not considered and decided on the basis of established objective criteria, which determines the contradictory and inconsistent disciplinary activity of the Supreme Judicial Council.

The following are specific examples of “disguised” disciplinary proceedings against members of our organization.

Judge Miroslava Todorova - Judge at the Sofia City Court, former Chairman of the Management Board. A disciplinary case has been pending against Judge Todorova since the end of 2016, which has not yet been completed but is being transferred between the Supreme Judicial Council and the Supreme Administrative Court. The initial signal to the Inspectorate was submitted by the Prosecutor General regarding the delay in ruling on the request of the Prosecutor's Office for disclosure of bank secrecy. The Inspectorate of the Supreme Judicial Council decided to inspect the overall activity of the judge for a period of two years. This is the third disciplinary case against Judge Miroslava Todorova. In a previous disciplinary case, she was dismissed, but the punishment was overturned by the Supreme Administrative Court. The case before the Supreme Administrative Court was monitored by international magistrates' organizations. Judge Todorova is known in the public for her criticism of attempts to subordinate the court to political and economic interests. This is the real reason for the repression against her, which is taking on more and more ugly forms. In 2019 The Inspectorate of the Supreme Judicial Council published her declaration of property without deleting the personal data of the judge and her family members, including the personal data of a minor son. The organization "Judges for Judges" from the Netherlands informs us that since 2014 training programs, which include the new Dutch judges, contain information about the

case "Miroslava Todorova". In the context of this case, the "toxic combination" of external pressure (political and media) and internal pressure within the judiciary (Supreme Judicial Council) is discussed, pointing at the arbitrary application of performance and quality criteria to judges with critical positions. For the fourth time, the Judicial College of the Supreme Judicial Council refused to approve the periodical attestation of Judge Miroslava Todorova. Her work was evaluated by the Commission for Attestation and Competitions with the maximum score "very good" (94 out of 100 points). The President of the Supreme Court of Cassation Lozan Panov made the following statement before the Judicial College: "A magistrate does not deserve such an attitude by the Judicial College, the lack of attestation, which hinders career growth, also shows an attitude towards this magistrate - not only by this one but also by the previous two bodies of the Supreme Judicial Council. Judge Todorova's problems began because of her active position as a magistrate and member of the Bulgarian Judges Association. It is also difficult for me to accept that it was by chance that her personal data leaked from the Inspectorate to the SJC. She deserves to receive her attestation, I don't remember in our practice so far a magistrate having faced such an impossibility to receive an attestation."

Judge Petko Petkov - Judge at the Sofia District Court, a current member of the Management Board. Judge Petko Petkov was twice ranked first by a competition commission for a lecturer of junior judges at the National Institute of Justice and twice rejected by the Management Board of the National Institute of Justice due to inspection by the Inspectorate for delayed judicial acts in 2012-2013. These acts had already been written at the time of his application for the post. The signal was given by the Prosecutor General and was motivated by the criticism against the uncontrolled power of the Prosecutor General and the lack of reforms in the Prosecution Office, made by Petko Petkov as Deputy Minister of Justice - Deputy of Minister of Justice Hristo Ivanov known for major judicial reforms.

Judge Emil Dechev - Judge at the Sofia City Court, a current member of the Management Board. In 2017 the judge was punished with a "reprimand" for delaying for several days to sign a record of a court hearing. Judge Dechev` objections that he had been busy at that time with training abroad and other court hearings were not upheld. The imposing of the sanction was announced in media and coincided with Judge Dechev's campaign to run for an elected member of the Supreme Judicial Council and the presentation before Bulgarian judges of his reformist concept. Judge Dechev, as a member of the Management Board of the Bulgarian Judges Association, takes part in many television and radio broadcasts in which he defends the independence of the court.

Judge Atanas Atanasov - Judge at the Sofia City Court, former Chairman of the Management Board of the Bulgarian Judges Association. On November 9, 2018, one day before the annual general meeting of the Bulgarian Judges Association, where a new board of directors was to be elected, the press centre of the prosecutor's office sent information to all media that the Prosecutor General has submitted a signal to the Inspector for delayed reasons for a verdict of the Sofia City Court. The sentence was passed on June 26, 2018, and the term for the preparation of the reasons is two months, i.e. at the time of the alert, the delay was less than two and a half months. The judge against whom the signal was filed by the Prosecutor General was the then chairman of the Bulgarian Judges Association in Bulgaria, Atanas Atanasov. The press release of the prosecutor's office states that the delay in the motives for the acquittal at first instance "is an obstacle for the prosecution to continue seeking criminal responsibility from the defendant at the next court instance". The inspector, who carried out the inspection, concluded that there were no grounds for bringing the disciplinary responsibility of Judge Atanas Atanasov, as the delay allowed by him was justified because of the legal and factual complexity of the case, its volume of 15101 / fifteen thousand one hundred and one / typewritten pages, the circumstances that after the announcement of the sentence, in the period from 26.06 to 21.11.2018 Judge Atanas Atanasov took part in 181 open and closed court hearings, and ruled over 50 court acts on other cases. Apart from that, at the same time, Judge Atanasov was sent to administer justice in the Sofia Court of Appeal. The protest of the prosecution against the acquittal was disregarded by the second instance court and the prosecutor's office did not protest this decision before the Supreme Court of Cassation.

Judges at the Sofia Court of Appeal Kalin Kalpakchiev, Vesislava Ivanova and Violeta Magdalicheva. Judge Kalin Kalpakchiev is the current Chairman of the Management Board of the Bulgarian Judges Association and a former member of the Supreme Judicial Council. Judge Vesislava Ivanova is a former executive secretary of the BJA. The Chief Inspector ordered on September 27, 2019. the three judges to be investigated for a conflict of interest, which has not been declared and which has influenced the resolution of a particular case. On 19.09.2019 the three judges as a panel of the Sofia Court of Appeal unanimously ordered the early parole of Australian citizen Jock Paulfreeman to serve the remainder of his sentence, amounting to six years, six months and twenty-five days of the sentence of twenty years' imprisonment for murder. The signal was submitted by a youth section of a parliamentary party, which contained allegations but no facts. At the same time, the Prosecutor General submitted a

request to the Supreme Court of Cassation to resume the proceedings in this case for the convict to remain in prison and to effectively serve the remainder of his sentence. The Supreme Court of Cassation ruled that the request of the Prosecutor General was inadmissible, which was undisputed among lawyers at the time of the request for reopening. The inspection was suspended until the ruling of the Supreme Court of Cassation due to the coincidence of the issues to be examined in the two proceedings. For months, the three judges of the Sofia Court of Appeals and especially the chairman of the panel, Kalin Kalpakchiev, have been subjected to terror: street rallies with photos of judges and threats of lynching, defamation in the media. Unfortunately, the Judicial College of the Supreme Judicial Council issued a statement declaring that the judicial act of the three judges violated the "balance between law and justice", by which the Judicial College took the side of the street pressure over the court. Following a petition in defence of the judges concerned, the Judicial College adjusted its position. The judges concerned personally suffered severe psycho-trauma in connection with the conscientious exercise of their official duties. Following the ruling of the Supreme Court of Cassation, the disciplinary proceedings against the three judges will be resumed. We hope that it will be finally terminated with the appropriate rehabilitation of the professional dignity of judges.

3. Apart from disciplinary proceedings, are there any other measures that may be used to interfere with the capacity of a judge to adjudicate cases before him or her in full independence? Are you aware of any case in which a judge has been promoted, transferred to another court, forced to take a training course, vacation or medical leave, or coerced or pressured in similar ways to abandon a case pending before him or her? If yes, please provide information on the case(s).

Before initiating disciplinary proceedings, the Inspectorate at the Supreme Judicial Council checks the signals and when it finds them unfounded, determines that there is insufficient evidence of a disciplinary violation. Judges who have been the subject of such inspections express dissatisfaction with such wording. Subjects of such inspections without actual disciplinary proceedings were, for example, the members of the BJA: Vladislava Tsarigradska - a judge in the Lukovit District Court and current chairman of the Supervisory Board of the BJA, Nikolay Gunchev a judge in the Supreme Administrative Court and a former member of the Managing Board of the Bulgarian Judges Association. In these cases, the signals to the Inspectorate were with the sole purpose of

removing the judges from considering specific cases. At the same time, defamation campaigns against judges in the media were ordered.

We point out a specific case of seizure of a case from a judge before a decision is made, which received a wide public response. The judge from the Commercial Division of the Sofia Court of Appeal Milen Vassilev in a public application in 2017 reported that a commercial case with a material interest of over BGN 102 million (EUR 51 million) had been randomly assigned to him, but had been seized by order of the President of the Court Daniela Doncheva together with all the cases of his court panel. Judge Vassilev openly accused court chairwoman Doncheva of acting "with a strong scent of corruption." Judge Doncheva subsequently tried Judge Vassilev for libel, but the case was dropped. The special commission, composed of three judges from the Supreme Court of Cassation, held that the issuance of that order by the President of the Sofia Court of Appeal had violated the principle of random distribution of cases. The Judicial College of the Supreme Judicial Council refused to initiate disciplinary proceedings against Judge Daniela Doncheva - President of the Sofia Court of Appeal because the statute of limitations of 6 months from the commission of the violations had expired. The refusal to initiate disciplinary proceedings against the President of the Sofia Court of Appeal was confirmed by the Supreme Administrative Court.

4. What measures have been put in place in your country to enable judges to decide matters before them impartially and without any pressure or interference?

Art. 117, para 2 of the Constitution proclaims that the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.

The main guarantee for the individual independence of the judge is the irremovability. It is acquired under two conditions: completion of five years of service as a judge and a positive assessment of the attestation.

In one case with a judge - our active member, the Supreme Judicial Council has shown that this guarantee is not absolute. Judge Krassimir Mazgalov - member of the Management Board of the BJA - in 2015 received the maximum very good grade from the attestation /96 out of 100 points/. At the first vote, the Supreme Judicial Council refused the status of irremovability of the judge without reason. After a critical statement by Judge Kalin Kalpakchiev - then a member of the Supreme Judicial Council, that this vote violated the law and punished a judge - a



member of the BJA for expressed positions, followed a second vote, which finally recognized Judge Mazgalov's irremovability.

Another important guarantee for the independence of the judge is his functional immunity, regulated in Art. 132 of the Constitution: Upon exercise of judicial power, judges, prosecutors and investigating magistrates shall not incur criminal and civil liability for the official actions thereof and the acts decreed thereby, save where what is done shall be a premeditated offence at public law.

In 2017 a serious attempt was made to break through the functional immunity with the provision of Art. 230, para 1 of the Judiciary Act, which provided that when a judge is brought under criminal charges, the Judicial College of the Supreme Judicial Council temporarily removes him from office until the end of the criminal proceedings without discretion. The danger stemmed from the fact that bringing charges by the Prosecution Office is not subject to judicial review, and the provision made it possible for a judge to be removed from office indefinitely by bringing an unfounded charge. The Constitutional Court with Decision № 2 of 2019 declared this norm unconstitutional. The Judicial College can now hear the judge concerned and has the right to decide whether to remove him from office until the end of the criminal proceedings or not.

The presidents of the courts, as well as the Inspectorate of the Supreme Judicial Council, cannot interfere in the formation of the internal conviction of the judge and the resolution of a specific case.