



Strasbourg, 15 March 2024

CDL-AD(2024)004

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW
(DGI)

BULGARIA

JOINT OPINION

ON

THE CODE OF ETHICAL CONDUCT FOR JUDGES

**Adopted by the Venice Commission
at its 138th Plenary Session
(Venice, 15-16 March 2024)**

on the basis of comments by

**Mr Lauri MÄLKSOO (Member, Estonia)
Mr James HAMILTON (Former Member, Expert, Ireland)
Mr Jørgen Steen SØRENSEN (Member, Denmark)
Mr Gerhard REISSNER (Expert, DGI)**

Table of Contents

I. Introduction	3
II. Background	3
III. Analysis	4
A. Interplay of the ethical guidelines with the disciplinary framework	5
B. Assessment of the role of the Code in the Bulgarian legal system	6
C. Drafting methodology of the Code	6
D. Scope of application of the Code	8
1. Regulation <i>ratione personae</i>	8
2. Regulation <i>ratione materiae</i>	9
E. Implementation of the Code	12
F. Procedure for the adoption of the Code	13
IV. Conclusions.....	13

I. Introduction

1. By letter of 18 December 2023, the Minister of Justice of Bulgaria requested an opinion on the Code of Ethical Conduct for Bulgarian Judges (“the Code”) ([CDL-REF\(2024\)004](#)). The Venice Commission, in line with its practice, decided to prepare this opinion jointly with the Directorate General of Human Rights and Rule of Law (DGI).
2. Mr James Hamilton, Mr Lauri Mälksoo, and Mr Jørgen Steen Sørensen acted as rapporteurs on behalf of the Venice Commission. Mr Gerhard Reissner acted as rapporteur on behalf of DGI.
3. On 26 January 2024, the delegation of the Venice Commission and DGI travelled to Sofia and held meetings with representatives of the Ministry of Justice, the Supreme Judicial Council, Deputy Prosecutor General and members of the Ethics Committee at the Supreme Prosecutor’s Office, Judges of the Supreme Court of Cassation and the Supreme Administrative Court, Chief Inspector of the Judicial Inspectorate as well as with representatives of civil society organisations. The Commission and DGI are grateful to the Ministry of Justice for the excellent co-operation and organisation of this visit.
4. This joint opinion was prepared in reliance on the English translation of the Code. The translation may not accurately reflect the original version on all points.
5. This joint opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 26 January 2024. Following an exchange of views with Deputy Minister of Justice of Bulgaria, it was adopted by the Venice Commission at its 138th Plenary Session (Venice, 15 and 16 March 2024).

II. Background

6. Since 1999, the Venice Commission has been assisting the Bulgarian authorities in their efforts to reform the judicial and prosecutorial systems, and, more generally, the domestic constitutional framework.¹ Among other things, these reforms have been addressing the issues of organised crime, high-level corruption, and systemic inefficiencies within the judiciary. A number of these initiatives have been prompted by recommendations from international partners, including the European Union.
7. One of the objectives of the reforms in the judiciary has been to establish and maintain high integrity standards among Bulgarian judges, prosecutors, and investigators. In line with the National Recovery and Resilience Plan endorsed by the European Commission,² the Bulgarian authorities have committed to implementing a comprehensive “reform for accessible, effective,

¹ See Venice Commission, [CDL-INF\(1999\)005](#), Opinion on the reform of the judiciary in Bulgaria; [CDL-AD\(2002\)015](#), Opinion on the Draft Law on Amendments to the Judicial System Act of Bulgaria; [CDL-AD\(2003\)016](#), Opinion on the Constitutional Amendments Reforming the Judicial System in Bulgaria; [CDL-AD\(2008\)009](#), Opinion on the Constitution of Bulgaria; [CDL-AD\(2009\)011](#), Opinion on the Draft Law amending and supplementing the Law on Judicial Power; [CDL-AD\(2010\)041](#), Opinion on the Draft Law amending the Law on Judicial Power and the Draft Law amending the Criminal Procedure Code of Bulgaria; [CDL-AD\(2015\)022](#), Opinion on the Draft Act to amend and supplement the Constitution (in the field of Judiciary) of the Republic of Bulgaria; [CDL-AD\(2017\)018](#), Opinion on the Judicial System Act; [CDL-AD\(2019\)031](#), Opinion on the draft amendments to the Criminal Procedure Code and the Judicial System Act concerning criminal investigations against top magistrates; [CDL-AD\(2020\)035](#), Urgent Interim Opinion on the draft new Constitution; [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council; [CDL-AD\(2022\)032](#), Bulgaria - Opinion on the draft amendments to the Criminal Procedure Code and the Judicial System Act; [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution.

² See [Press Release](#) of the EU Commission of 7 April 2022.

and predictable justice”.³ This commitment extends to the revision of ethical guidelines for magistrates.

8. In 2009, the Supreme Judicial Council (“the SJC”) approved the Code of Ethics of Bulgarian Magistrates which was applicable to judges, prosecutors and investigating magistrates. Reportedly, the implementation of this code faced certain controversy, particularly concerning its extension to prosecutors and investigating magistrates. This controversy was seen as a hindrance to its acceptance and internalization within the judicial branch.⁴

9. With the amendments to the Law on the Judiciary of 6 October 2023, the SJC was explicitly vested with the authority to adopt separate codes of ethical conduct for judges and for the other magistrates (prosecutors and investigators) (Article 30, para. 23). According to the transitional provisions of the Law of 6 October 2023, the separate codes had to be adopted within short deadlines. Subsequently, on 24 October 2023, the Judicial Chamber of the SJC adopted the Code of Ethical Conduct for Judges. The Code received formal approval from the Plenary SJC on 30 October 2023.

10. On 22 December 2023, the Bulgarian Parliament adopted amendments to the Constitution, which were assessed by the Venice Commission in October 2023.⁵ These amendments concerned, *inter alia*, the structural reform of the SJC which was divided into two separate councils: the Supreme Judicial Council having competence over the career of judges and the Supreme Prosecutorial Council with powers over the career of prosecutors and investigators.⁶

11. The Law on the Judiciary is in the process of being amended to incorporate these recent constitutional amendments pertaining to institutional changes in the self-governing bodies of the judicial and prosecutorial systems: the authorities are encouraged to implement the recommendations provided by the Venice Commission in its current and prior opinions.

III. Analysis

12. In its previous Opinion adopted in October 2022, the Venice Commission welcomed the draft amendment to the Law on the Judiciary establishing the explicit competence of the Chambers of the SJC to adopt the codes of ethical conduct for judges, prosecutors and investigators.⁷ It is positive that this amendment was subsequently adopted. Now, in view of the constitutional reform, further amendments to the Law on the Judiciary are pending and it is expected that the competence for adoption of such codes will rest with the new Supreme Judicial and Prosecutorial Councils. In its opinion on the constitution reform in Bulgaria, the Venice Commission further considered that “institutional reforms should go hand-in-hand with and not replace a long-term effort aiming to improve the professionalism, transparency and ethics within the judiciary as well as building a culture of respect for judicial independence among other state powers”.⁸

13. In the October 2022 Opinion, the Venice Commission expressed concern that the Law on the Judiciary did not contain substantive provisions regarding the ethical behaviour of magistrates as such, leaving a substantial margin of appreciation to the bodies developing and adopting the codes of ethical conduct.⁹ The Commission therefore recommended supplementing the Law with

³ Detailed information about the National Recovery and Resilience Plan of Bulgaria is available at: [Recovery and resilience plan for Bulgaria | European Commission \(europa.eu\)](#) and at: [Национален план за възстановяване и устойчивост \(nextgeneration.bg\)](#)

⁴ See in this regard GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, [Eval IV Rep \(2014\) 7E](#), para. 101.

⁵ See Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution.

⁶ See [Bulgaria's Parliament conclusively adopted the changes in the Constitution](#)

⁷ See Venice Commission, [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, para. 30.

⁸ See Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, para. 42 with further reference.

⁹ See Venice Commission, [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, para. 31.

such provisions. While the Law has not yet been amended to address this recommendation, in October 2023 the SCJ developed and adopted the present Code.

14. In consideration of this context, the Venice Commission and DGI will first elaborate on the general correlation between the Law on the Judiciary and the code of ethical conduct. Subsequently, they will provide recommendations pertaining to both the Law and the present Code.

A. Interplay of the ethical guidelines with the disciplinary framework

15. As previously observed by the Venice Commission, in many European countries the codes of ethical conduct are self-regulatory instruments developed by the judiciary itself and distinct from the disciplinary framework.¹⁰ This practice corresponds to the approach that has been maintained by the Council of Europe bodies, including the Venice Commission.

16. According to the Consultative Council of European Judges (CCJE), the principles of professional conduct primarily should enable judges to overcome the difficulties they are faced with as regards their independence and impartiality; these principles therefore should be separated from the judges' disciplinary system.¹¹ In its Recommendation CM/Rec(2010)12, the Committee of Ministers indicates that the ethical guidelines should not only include duties that may be sanctioned by disciplinary measures, but also offer guidance to judges on how to conduct themselves; these principles should inspire public confidence in judges and the judiciary.¹² The Committee of Ministers thus admitted the existence of a certain overlap of ethical principles with disciplinary rules, but insisted on the aspirational role of codes of ethics. The Explanatory Memorandum to the Recommendation states that while disciplinary regimes are essentially meant to sanction failures in the accomplishment of duties, the ethical standards aim at achieving, in an optimal manner, the best professional practices.¹³

17. In a similar vein, the Venice Commission has voiced a preference for a model in which codes of ethical conduct take on the form of recommendations, rather than being directly applicable in disciplinary proceedings.¹⁴ This distinction is significant, because using aspirational and exhortative codes of ethical conduct, which often include provisions drafted in broad and vague terms, for initiating disciplinary proceedings may adversely affect judicial independence. Such provisions allow for discretion, which could be abused, potentially leading to arbitrary decisions.¹⁵

18. At the same time, serious violations of ethical norms could also imply fault and acts of negligence that may lead to disciplinary sanctions. However, such disciplinary sanctions must be based on explicit and clear provisions in the law and should be applied in a proportionate manner in response to recurring, unethical judicial practice.¹⁶ For this reason, the Venice Commission has seen it necessary that the law on the Judiciary enumerate an exhaustive list of specific disciplinary offences, rather than giving a general definition of disciplinary offence which may lack clarity and foreseeability¹⁷.

¹⁰ See e.g. Venice Commission, [CDL-AD\(2016\)013](#), Kazakhstan – Opinion on the draft code of judicial ethics, para. 6.

¹¹ See CCJE, Opinion [no. 3 \(2002\)](#) on ethics and liability of judges, para. 49.

¹² Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, paras. 72 and 73.

¹³ Explanatory Memorandum to Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, para. 71.

¹⁴ See Venice Commission, [CDL-AD\(2013\)035](#), Opinion on the draft Code on Judicial Ethics of the Republic of Tajikistan, para. 16.

¹⁵ See Venice Commission, [CDL-AD\(2014\)018](#), Joint Opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic, para. 28.

¹⁶ See Venice Commission, [CDL-AD\(2013\)035](#), Opinion on the draft Code on Judicial Ethics of the Republic of Tajikistan, para. 31.; [CDL-AD\(2014\)018](#), Joint Opinion on the draft amendments to the legal framework on the disciplinary responsibility of judges in the Kyrgyz Republic, para. 28.

¹⁷ See Venice Commission, [CDL-AD\(2014\)006](#), Joint Opinion on the draft Law on disciplinary liability of Judges of the Republic of Moldova, para. 15; [CDL-AD\(2016\)013](#), Kazakhstan – Opinion on the draft code of judicial ethics, para. 8.

B. Assessment of the role of the Code in the Bulgarian legal system

19. Under the Bulgarian Law on the Judiciary, a violation of the Code constitutes one of the grounds for disciplinary liability: the Law provides that a disciplinary offence is “*an act or omission, including a violation of the Code of Ethical Conduct for Bulgarian Judges or the Code of Ethical Conduct for Bulgarian Prosecutors and Investigators, which undermines the prestige of the judiciary*” (Article 307, para. 3(3)). Furthermore, the Code serves as a basis for assessing candidate judges. The Law on the Judiciary provides that moral integrity and professional standing in compliance with the Code are an eligibility requirement for the appointment of judges (Article 162, para. 3). Additionally, the oral examination conducted for candidate judges must incorporate questions regarding the Code of Ethical Conduct (Article 184, para. 6).

20. In its previous opinions, the Venice Commission noted instances where laws provided for disciplinary offenses in general terms, such as “judicial ethics rules that undermine the authority of justice”¹⁸, “regular violations of or grave violation by the judge of the Code of Conduct”¹⁹, “disreputable offence contrary to the judicial ethics”²⁰ or “violation of the rules of the Code of Ethics”²¹. The Commission deemed such provisions inappropriate due to their lack of clarity and foreseeability in application. The Bulgarian Law on the Judiciary contains a similar vague provision (Article 307, para. 3(3)). The direct integration of the Code into the disciplinary system is further complicated by the absence of safeguards preventing any provision of the Code, even those that are very general and vague, from being used to initiate disciplinary proceedings against a judge. Consequently, the Venice Commission and DGI recommend a review of this part of the Law, emphasising the importance of determining clear grounds for disciplinary liability within statutory legislation. Furthermore, in their submitted comments, the Bulgarian authorities noted that in the proposed amendments to the Law on the Judiciary, a disciplinary offence would be defined as a significant violation of the Code. However, this proposed solution fails to adequately address the ongoing concerns regarding legal foreseeability, as previously discussed.

21. In this context, it is noted once again that in October 2022 the Venice Commission advised the Bulgarian authorities to incorporate the main substantive principles of ethical behaviour of judges in the Law on the Judiciary.²² Presently, this Law contains only certain rules on the ethical conduct of judges, for example, with regard to the conflict of interest (Section Ib), requirements of confidentiality (Article 211), limitations on the freedom of speech (Article 212), prohibition of giving legal advice (Article 213). However, a more comprehensive approach would be necessary.

22. The Commission and DGI consider that the Code should retain its significance as a vital self-regulatory tool within the judiciary, ensuring that judges conduct themselves in a manner that upholds public trust in the judiciary in a democratic society. Equipped with its implementation mechanisms (discussed below), the Code should be considered and function as a source of guidance exemplifying best practices for judges’ ethical conduct. Thus, it would preserve its distinct but complementary character vis-à-vis statutory legislation concerning judicial discipline.

C. Drafting methodology of the Code

23. On the whole, the Code is well conceived and coherent. The title of the Code appropriately references the term “conduct”, aligning itself with the overarching emphasis of the Code on

¹⁸ See Venice Commission, [CDL-AD\(2015\)007](#), Joint opinion on the Law on the Judiciary and the Status of Judges and amendments to the Law on the High Council of Justice of Ukraine, para. 50.

¹⁹ See Venice Commission, [CDL-AD\(2014\)007](#), Joint opinion on the draft Law amending and supplementing the Judicial Code (evaluation system for judges) of Armenia, para. 111.

²⁰ See Venice Commission, [CDL-AD\(2016\)013](#), Kazakhstan – Opinion on the draft code of judicial ethics, paras. 10 and 23.

²¹ See Venice Commission, [CDL-AD\(2018\)033](#), “The former Yugoslav Republic of Macedonia” - Opinion on the draft amendments to the Law on Courts, para. 58.

²² See Venice Commission, [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, para. 46.

providing guidance regarding ethical considerations within the daily activities and behaviour of judges. In the introductory section of the Code titled "Sources", it asserts that the document has been formulated in line with specific national and international instruments and makes reference to some of these instruments. References to international soft law on ethical principles and rules are welcome and are expected to guide the interpretation and application of the Code. The list of international instruments therefore could be expanded to the extent that they deal with relevant aspects of ethical conduct.²³

24. Section I of the Code sets out the basic principles of ethical conduct: independence, impartiality, justice, integrity,²⁴ decency, courtesy, tolerance, competence, qualification and confidentiality. These principles are widely recognised standards of ethical conduct, and they remain within the tenets of the fundamental values identified in the Bangalore principles of judicial conduct, namely: independence, impartiality, integrity, propriety, equality, competence and diligence.²⁵

25. The subsequent Sections of the Code aim to articulate rules derived from the foundational principles. This approach suggests that the rules of conduct should offer more specificity and detail compared to the basic principles outlined in Section I. While this approach is generally adhered to in the text, there are instances where the rules are not necessarily more precise or concrete than the principles they are meant to elaborate upon, and indeed where the rules just repeat the principles. For example, Rule 1.3 developed under the principle of independence provides that *"in making decisions, the judge shall be independent and shall not be influenced by the opinion of his colleagues, but he shall not take any action which would impair their independence"*. This rule does not in fact provide additional tangible guidance further to the preceding basic principle, which stipulates that *"in the performance of his duties, [a judge] is guided solely by his inner conviction and the law, and is not subject to pressure, threats, incentives, direct or indirect influences from representatives of any other authority - internal or external to the judiciary..."*.

26. Similarly, in developing the principle of courtesy and tolerance, Rule 6.1 states that *"[a] judge's conduct in society should be based on good manners and good behaviour. ..."*; Rule 6.2 prescribes that *"a judge must treat people with respect, respecting their rights and freedoms"*, and Rule 6.3 states that *"[c]ollegial relations between judges and judicial officials, regardless of their place in the hierarchy, must be based on mutual respect and tolerance by refraining from any conduct that damages the prestige of the judiciary."* These rules do not add anything more specific to preceding basic principle of Section I, which expresses similar ideas in comparable terms. There are also other examples where the basic principles are merely restated in subsequent rules.

27. Furthermore, the principle of integrity²⁶ (*почтеном*) in Section I appears to be narrowly defined by stating that a judge must *"not accept, outside the limits of the law, material or immaterial benefits."* This fails to fully encapsulate the overarching principle of integrity. Conversely, Rule 4.1 regarding the above principle of integrity broadly asserts that a *"judge must*

²³ In addition to those mentioned in the Code see: the UN Basic principles on the independence of the Judiciary (1985); IAJ, the Universal Charter of the Judge (1997, updated in 2017); IBA, Minimum Standards of Judicial Independence (1982); CM, Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities; CCJE, Magna Carta of Judges (2010); Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System. Part I: The Independence of Judges.

²⁴ The principle has also been translated as "honour" (*"почтеном"* in Bulgarian).

²⁵ See [Bangalore principles of judicial conduct](#), adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002.

²⁶ The term "integrity" is elaborated in the Commentary to the Bangalore Principles of Judicial Conduct (para. 101): *"Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character. There are no degrees of integrity. Integrity is absolute. In the judiciary, integrity is more than a virtue, it is a necessity."*

set an example of high morality and integrity by his or her personal conduct and sense of responsibility in official and non-official activities."

28. Overall, a clearer distinction between principles and rules could be achieved by adopting a methodology under which basic principles articulate general values, while rules of conduct offer specific guidance for ethical behaviour.

29. Moreover, certain provisions within the Code delve into matters that intricately intertwine with legislation, particularly within the realm of criminal law. For instance, restrictions on accepting benefits from third parties, as discussed below, or prohibitions against the improper use or disclosure of confidential information may intersect with criminal law provisions. However, it is worth noting that restating every potential criminal offence in the codes of ethical conduct might be redundant, as criminal misconduct inherently implies unethical behaviour.

D. Scope of application of the Code

1. Regulation *ratione personae*

30. Under the title "Applicable Field" in the introductory part, the Code states that it applies to all judges and members of the Judicial Chamber of the SJC. In view of the constitutional change reforming the SJC and its Chambers (see paragraph 10 above), this provision would require an update. Furthermore, considering the significant impact of the Inspectorate on the judiciary, it could be deemed appropriate to expand the application of the Code to include the Inspectors.

31. The Code presently does not apply to former judges. However, it might be appropriate to consider in respect of certain specific areas expanding the application of the Code to judges who have ceased to hold their offices, to the extent that their behaviour may still affect the image of the judiciary. The requirements for a former judge cannot be the same as for a judge in office, but the Code should continue to apply to former judges where relevant, for instance in respecting the secrecy of deliberations or maintaining confidentiality. The involvement in the public life is probably one of the areas where the limitations for the former judges should not be necessarily the same as for the serving judges.²⁷ Restrictions on freedom of expression, political activities, legal practice must be less stringent with regard to the individuals once they cease to hold the judicial office or after certain cooling-off period since the termination of their judicial service. In terms of freedom of speech, the general approach should be that no restrictions apply unless carefully justified by the necessity of preserving the reputation of the judiciary, the confidentiality of the proceedings and the rights of those involved in the proceedings.

32. In this context, it is noted that the Resolution on Judicial Ethics of the ECtHR provides that the duties of discretion and confidentiality and, in so far as relevant, the limitations on the freedom of expression and social contacts, shall apply to Former Judges of the ECtHR (Article XI).²⁸ Former Judges of the ECtHR shall not represent any party before the Court relating to an application lodged before the date on which they ceased to hold office or, as regards applications lodged subsequently, for a period of two years after they ceased to hold office (*ibid.*). Likewise, Article 9 of the Code of conduct for Members and former Members of the Court of Justice of the European Union provides for a range of duties of the former Members of this Court.²⁹

²⁷ See Venice Commission, [CDL-AD\(2016\)013](#), Opinion on the Draft Code of Judicial Ethic of the Republic of Kazakhstan, para. 42.

²⁸ see ECtHR, [Resolution on Judicial Ethics](#), adopted by the Plenary Court on 21 June 2021.

²⁹ see CJEU, [Code of conduct](#) for Members and former Members of the Court of Justice of the European Union, Document C2021/397/01, 30 September 2021.

2. Regulation *ratione materiae*

- Professional and Personal Activities

33. The Code is designed to regulate the conduct of judges not only while they are performing their duties, but also in their personal and family lives. This follows from the preamble to the Code as well as Section I which states under the title “Basic Principles” that they “*set the standards and outline the framework for regulating the conduct of judges in and outside the office they hold*”. It is entirely reasonable to expect that judges uphold high ethical standards not only while on duty, but also in their personal and family lives. This naturally entails certain limitations on judges' social and personal activities, as will be discussed in the relevant sections below. Ethical issues that may only arise during off-duty activities (for example, in various social and private events, during communication with media, in the scientific or teaching assignments) should be determined on case-by-case basis with reference, as much as relevant, to the ethical standards determined in the Code, within reasonable limits. Ethical regulation of judges' private activities should be approached prudently and with restraint to avoid undue restrictions on their personal rights and freedoms while still serving its intended purpose. On the other hand, it is evident that majority of the rules deal with the conduct of judges during the performance of their duties.

- Independence

34. Rule 1.3 pertaining to the principle of independence provides that “[i]n making decisions, the judge shall be independent and shall not be influenced by the opinion of his colleagues, but he shall not take any action which would impair their independence.” This rule may necessitate not only greater precision but also clarification, particularly because “being influenced by the opinions of colleagues” is an integral aspect of judicial collaboration within panels and chambers. However, a legitimate exchange of opinions should not be confused with pressure and instructions coming from internal or external pressures, especially in the context of hierarchical inequality.

- Impartiality

35. In describing the principle of impartiality, Section I of the Code provides, among other things, that the judge “*creates the conditions of equality between parties and their legal representatives*”. This phrase refers to the concept of equality, another core value in the ethical framework which implies a duty of a judge to be aware of, and understand, diversity in society and differences arising from various sources. To reflect this value, the Code proscribes bias or prejudice on various grounds, including race, origin, ethnicity, gender, religion, education, beliefs, political affiliation, personal and social status or property (see Section I “Impartiality” and the corresponding Rule 2.1 in Section II). However, such grounds as age, sexual orientation, disability have not been expressly mentioned. The Venice Commission and DGI recommend correcting this omission, by adding explicitly these grounds of impermissible difference in treatment.

36. Rule 2.6 of the Code prohibits a judge from giving advice on legal matters. This prohibition could be further clarified by establishing specific criteria for defining what constitutes “advice”. As the rule currently stands, it may be interpreted too strictly, preventing a judge from commenting on legal matters in various legitimate contexts in his/her procedural roles and also in communications with colleagues, family members, during scientific and academic events, and within professional organisations. Providing more guidance in this regard would enhance the rule.

- Justice (fairness)

37. The Code articulates the principle of justice (fairness) with an emphasis on its association with transparency, which is welcome. Transparency is not merely about the perception of

fairness; it is inseparable from the very essence of fairness itself. In situations where justice is carried out secretly or lacks transparency, resulting, for instance, in the absence of key witnesses from the trial without a valid reason, the trial is not only perceived as unfair but inherently becomes unfair.

38. However, concerns arise when considering the rules formulated under this principle. Rule 3.3 mandates that a judge “*shall state to the public, in person or through the media, the reasons for his or her decisions in cases of public interest*”. Apparently, this rule has been introduced to deal with the legitimate concerns about poor quality of reasoning in court decisions. However, the way such concerns have been addressed does not appear justified. Firstly, it is a widely accepted principle that the judiciary communicates through their decisions and through the institutional channels designed for this purpose within the judiciary. This principle implies that court decisions must be thoroughly reasoned, and judges bear the ethical and legal obligations to furnish such reasoning. Secondly, it is a well-established approach of the ECtHR that judges are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges. The dissemination of even accurate information must be carried out with moderation and propriety.³⁰ The Commentary to the Bangalore principles of judicial conduct suggests that it is generally inappropriate for a judge to defend judicial reasons publicly.³¹ According to CCJE, when judges or their judgments are unfairly criticised, the associations of judges, the council for the judiciary and/or the court president have an institutional duty to clarify the facts to preserve the image of an authoritative and independent judiciary also in public debates;³² under no circumstances may judges be forced to explain publicly the reasons for their judgments as delivered.³³ The Venice Commission and DGI share this view and recommend amending the provision as it stands to give effect to the foregoing principles.

39. Similarly, Rule 3.4 asserts that “*within the limits of the law, the judge shall ensure the publicity of his actions and decisions*”, but further clarity may be needed. At the same time, while preserving the duty of reserve, the importance of transparency cannot be diminished. Judges should establish clear processes that enable lawyers and individuals involved in judicial proceedings to easily find out the current status of court cases. Judges should apply well-known procedures that allow lawyers or individuals representing themselves to inquire about decisions that seem excessively delayed.³⁴

- Integrity

40. As discussed above (see paragraph 27), the principle of integrity is narrowly described in Section I and it should not refer exclusively to the unlawful receiving of benefits or rephrase the criminal law provisions. Also, Rule 4.2 (prohibition against receiving benefits in exchange for the performance of professional duties) and Rule 4.3 (prohibition against using official position for personal gain) provide descriptions of behaviour which would fall under the jurisdiction of criminal law. In a broader context of judicial integrity, Rule 4.4 provides that a judge should not use his/her personal contacts for career advancement – an exhortatory and aspirational standard, – and then it vaguely adds that a judge should not “*take actions that undermine his/her dignity*”, a phrase which duly refers to dignity, but it needs more details in order for the rule to be clear and foreseeable.

- Decency

41. According to Rule 5.2, a judge must “*accept personal restrictions that might be seen as oppressive by the ordinary citizen, and should do so freely and willingly*”. The requirement to

³⁰ ECtHR, *Baka v. Hungary*, [GC], no. 20261/12, § 164, 23 June 2016.

³¹ Commentary to the Bangalore principles of judicial conduct, para. 74.

³² CCJE, Opinion [No. 25 \(2022\)](#) on freedom of expression of judges para. 42.

³³ *Ibid.*, para. 44.

³⁴ Commentary to the Bangalore principles of judicial conduct, para. 210.

accept certain limitations on personal rights and freedoms "freely and willingly" is obviously inspired by international soft-law standards.³⁵ It might be relevant to clarify that, by virtue of that requirement, judges are expected to acknowledge these limitations without coercion or begrudging; instead, it signifies a voluntary and conscious acceptance of the constraints inherent in their professional role.

42. Rule 5.3 provides that a *"judge does not denounce or intrigue against his colleagues and officials, but openly expresses his position"*. When it comes to the court presidents or other managing judges, the Code requires that such managers must make efforts to be informed about everything that is happening in the court and that, in doing so, the managing judge should not tolerate "snitching and scheming" (Rule 9.4). However, these rules should also acknowledge a duty to denounce a crime, a legitimate act of filing complaints about misconduct, and whistleblowing which requires special safeguards for confidential treatment.

43. Rule 5.4 provides that a judge must not allow the use of the court premises for meetings between representatives of other legal professions with the parties and other participants in the court proceedings. While there may be reasons to discourage this practice (for instance, avoiding an impression that deals may be unduly negotiated in the courthouses rather than justice served), it remains unclear why lawyers and their clients as well as prosecutors, experts or witnesses should be absolutely prohibited from meeting in courthouses.

- *Courtesy and tolerance*

44. As it has been observed (see paragraph 26 above), the Rules 6.1 – 6.3, devoted to the principle of courtesy and tolerance, are quite broad and do not provide more details as compared to the description of this principle in Section I.

45. At the same time, there is no rule which elaborates the standard of a judge's tolerance as presented in Section I (a judge must be *"open and patient to hearing and accepting new or different arguments, opinions and points of view"*). Nevertheless, it is crucial to elucidate a distinct value of this standard through the refinement of relevant rules. This consideration must acknowledge the existing requirements set forth by the principle of impartiality, which mandates judges to uphold neutrality and ensure unbiased conduct. The drafters emphasise here the duty of judge to actively listen and understand the perspectives of all parties. This involves creating conditions which allow for diverse viewpoints to be expressed before reaching a judgment. While promoting such inclusivity and a welcoming atmosphere, it is imperative to ensure that these efforts do not compromise the efficient and timely administration of justice or encroach upon the rights of others.

- *Timely administration of justice*

46. Rule 7.1 refers to the duty of timely administration of justice. In a related context, Rules 9.3 dictate that judges holding managerial positions should ensure that the courts operate in a way which will "achieve the best results". In this regard, the interlocutors expressed concerns about the duty of judges to handle a particular workload and to do so in a timely manner. This is apparently a frequent cause of disciplinary complaints against judges in Bulgaria and there have been allegations that the system can be abused.

47. While imposing a duty to deal with one's workload, there should be a regulatory system establishing a fair quota of work for each judge, including an assessment of the difficulty and weight of particular items of work, a mechanism for the individual judge to challenge an unfair work allocation. Also, it is advisable to establish a mechanism enabling a judge to warn about any need to request reallocation of work in order to avoid missing mandatory deadlines which

³⁵ See Article 4.2 of the Bangalore principles of judicial conduct.

might prejudice a litigant or party to a case, as well as the possible grounds on which the judge would be entitled to defend the reasonableness of his or her request.

- *Confidentiality*

48. This section addresses rules regarding the preservation of confidentiality concerning information acquired by judges in the course of their duties. However, Rule 8.6 resembles more of a general principle as it broadly asserts a judge's freedom "to express his or her personal opinion in the mass media and social networks on matters for which there is no explicit legal prohibition. In expressing a personal opinion, a judge is bound to comply with the principles and rules in this Code." This raises the question of what exactly is meant by adhering to "the principles and rules in this Code." It may be advisable to further develop the rule to offer explicit guidance, particularly in relation to the aforementioned duty of reserve when exercising freedom of expression.

- *Other issues*

49. In addition, there are areas that merit more attention in the Code. The document could provide more guidance on the interaction of judges with the legislature, government, police, lawyers, media, CSOs, and political parties. Some codes of ethical conduct also include specific references to the rights of victims of crime or accused persons and the appropriate treatment they should receive. Likewise, the Code could address the judges' rights to outside work such as teaching, lecturing, publications, joining trade unions and professional associations, and attending and speaking at conferences. The incorporation of these elements would further enhance the Code's comprehensiveness.

E. Implementation of the Code

50. The final paragraphs of the Code refer to the professional ethics committee at the SJC and similar committees of the courts. These bodies are given the task to exercise direct and immediate control over the implementation of and compliance with the Code. The Code also refers to the judges as being the main guarantors of the implementation of the ethical principles and rules.

51. In this context, it would be fitting to highlight the importance of implementing a comprehensive training system for judges throughout their careers. Such training programs are crucial for enhancing their awareness and cultivating essential skills for analysing ethical dilemmas.

52. Furthermore, it is important to expressly specify in the Code and then secure in practice the availability of formal and informal guidance and consultation mechanisms within the judiciary to help judges apply ethical rules in their daily work.³⁶ The bodies providing ethical advice should be distinct and well differentiated from the disciplinary organs.³⁷ The opinions obtained through these mechanisms should serve as confidential recommendations to judges. While adherence to such advisory opinions is not mandatory, it might be viewed as indicative of acting in good faith.³⁸ In their written comments, the Bulgarian authorities have submitted that the draft amendments to the Law on Judiciary would grant relevant powers to the professional ethics committee. While this is a positive step, these powers should be accompanied by sufficient procedural safeguards and clear institutional separation from the disciplinary bodies.

³⁶ See CM, Recommendation 12 (2010) on judges: independence, efficiency and responsibilities, para. 74.

³⁷ See CM, Explanatory Memorandum to Recommendation 12 (2010) on judges: independence, efficiency and responsibilities, para. 72.

³⁸ See Judicial Integrity Group, [Measures](#) for the effective implementation of the Bangalore principles of judicial conduct, footnote to para. 2.1.

F. Procedure for the adoption of the Code

53. In its October 2022 Opinion, the Venice Commission recommended that magistrates and their professional associations be involved in the development and updating of ethical guidelines of judges.³⁹ The Commission considered that it was essential that the leading role in drafting the code on ethical conduct remain within the judiciary and that a comprehensive and inclusive approach to decision-making be ensured.⁴⁰

54. During the meeting with the SJC, the Venice Commission and DGI delegation was informed that the judicial community had been involved in the discussion of the Code. Requests for contributions were disseminated to all domestic courts, providing judges with access to pertinent details. Although a formal engagement with professional judicial associations did not occur, it was highlighted that judges themselves were given ample opportunity to offer their perspectives and suggestions on the content of the Code. Certain interlocutors noted, however, that the elaboration of the Code had taken place within a month, which was a limited period of time.

55. The Venice Commission and DGI welcome that the SJC reached out to the members of the judiciary, allowing for their participation and for the diverse perspectives within the judicial community to be considered during the elaboration of the Code. Nonetheless, the process could have gained if engagement with judicial and prosecutorial associations had been pursued and more time had been offered for this exchange by the transitional provisions of the Law of 6 October 2023 amending the Law on the Judiciary.

IV. Conclusions

56. At the request of the Minister of Justice of Bulgaria, the Venice Commission and DGI have assessed the Code of Ethical Conduct for Bulgarian Judges, which was adopted by the Supreme Judicial Council on 30 October 2023. The Venice Commission and DGI have conducted this assessment in close dialogue with the Supreme Judicial Council and with representatives of the judiciary of Bulgaria.

57. The Venice Commission and DGI recall that codes of ethical conduct are typically self-regulatory tools developed by the judiciary to offer guidance to judges on ethical matters. It is commendable, therefore, that the present Code was adopted by the Supreme Judicial Council and that, in doing so, the Council collaborated with the judicial community. This aligns with the earlier recommendations of the Venice Commission provided to the Bulgarian authorities.

58. The Venice Commission and DGI observe that the present Code is well-conceived and internally coherent. The Code commences by establishing basic principles of ethical conduct, which align with widely recognised values of judicial ethics. The principles are then expanded upon in specific rules. In the view of the Commission and DGI, this methodology could be applied more rigorously to ensure that the rules consistently provide guidelines which are more specific than the preceding, underlying principles. Some recommendations for improving the provisions of the Code have been given in the text of the Opinion.

59. The assessment of the Code's impact on the Judiciary, including its capacity to strengthen the Judiciary or, conversely, introduce risks to judges' independence, depends on the role prescribed to the Code by the Law on the Judiciary. The Venice Commission has previously recommended to the authorities of Bulgaria that the Law on the Judiciary should include provisions regarding the ethical conduct of judges, which should guide the preparation of the codes of ethics. Furthermore, the Law on the Judiciary should not refer to the provisions of the

³⁹ See, Venice Commission, [CDL-AD\(2022\)022](#), Bulgaria - Opinion on the draft amendments to the Judicial System Act concerning the Inspectorate to the Supreme Judicial Council, para. 34.

⁴⁰ See also CM, Recommendation 12 (2010) on judges: independence, efficiency and responsibilities, para. 73; Commentary on the Bangalore principles of judicial conduct, September 2007, paragraph 16.

code of ethics in general as grounds for disciplinary procedures, because the codes of ethical conduct contain broad and aspirational provisions that are unsuitable for direct application as disciplinary rules.

60. The Venice Commission and DGI note that the Law on the Judiciary has not yet been amended in this regard. The Law still refers to the code of ethical conduct as such in the evaluative and disciplinary procedures. In particular, the Law provides that a violation of the code is one of the grounds for disciplinary liability. This approach should be reviewed to ensure that the Law itself include the main substantive rules on ethical behaviour for judges and provide grounds for disciplinary liability in a manner that ensures clarity and foreseeability.

61. With the adoption of such amendments to the Law on the Judiciary, the present Code should retain its significance as a vital self-regulatory tool within the judiciary, offering guidance and exemplifying best practices for judges' ethical conduct, and preserving at the same time its distinct but complementary character vis-à-vis provisions concerning judicial discipline contained in the Law on the Judiciary.

62. In conclusion, the Venice Commission and DGI make the following key recommendations:

To the authorities of Bulgaria:

(a) the Law on the Judiciary should be amended to provide main substantive rules of ethical behaviour for judges and set out the grounds for disciplinary liability distinctly from the code of ethical conduct and in a manner that ensures clarity and foreseeability;

To the Supreme Judicial Council:

(b) further improvements of the Code should include a number of issues, such as: (i) adding age, sexual orientation, disability into the list of prohibited grounds for unequal treatment; (ii) elaborating a duty of judicial associations, council for the judiciary and/or the court president to address the public and clarify the facts in response to the public criticism of a judge or his/her judgment; (iii) setting out the rules on whistleblowing and disclosure of workplace misconduct as well as the confidentiality requirements that should be available during such disclosure; and (iv) addressing the judges' external activities, such as lectures, seminars, publications, involvement in trade unions and professional associations.

63. The Venice Commission remains at the disposal of the Bulgarian authorities and of the Supreme Judicial Council for further assistance in this matter.