



Strasbourg, 15 March 2024

**CDL-AD(2024)005**

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 PROSECUTORS AND  
INVESTIGATORS**

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

**on the basis of comments by**

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## 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 Prosecutors and Investigators (“the Code”) ([CDL-REF\(2024\)005](#)). 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, the Association of Prosecutors in Bulgaria 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, 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.<sup>1</sup> 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,<sup>2</sup> the Bulgarian authorities have committed to implementing a comprehensive “reform for accessible, effective,

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<sup>1</sup> 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.

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

and predictable justice”.<sup>3</sup> 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.<sup>4</sup> This controversy was seen as a hindrance to its acceptance and internalization within the judicial branch.<sup>5</sup>

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 25 October 2023, the Prosecutorial Chamber of the SJC adopted the Code of Ethical Conduct for Prosecutors and Investigators (referred in the Code as “magistrates”). 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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”.<sup>9</sup>

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

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

<sup>4</sup> As regards the investigating magistrates, the Law on the Judiciary refers to the investigators working in the National Investigation Service and the district investigative departments of the district prosecutor's offices (Article 148). The National Investigation Service is headed by the Prosecutor General directly or through the Director, who is also the Deputy Prosecutor General for Investigation (Article 150).

<sup>5</sup> 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.

<sup>6</sup> See Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution.

<sup>7</sup> See [Bulgaria's Parliament conclusively adopted the changes in the Constitution](#)

<sup>8</sup> 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.

<sup>9</sup> See Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, para. 42 with further reference.

such, leaving a substantial margin of appreciation to the bodies developing and adopting the codes of ethical conduct.<sup>10</sup> The Commission therefore recommended supplementing the Law with 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. The primary role of the codes of ethical conduct is to provide guidance to the prosecutors and investigators on ensuring that their behaviour corresponds to the highest ethical standards, both on duty and off, which allows confidence in justice by society.<sup>11</sup> A question arises then how such codes should interact with the disciplinary framework applicable to the prosecutors and investigators.

16. When dealing with ethical codes for judges, the Venice Commission has previously observed that in many European countries such codes are self-regulatory instruments developed by the judiciary itself and distinct from the disciplinary framework.<sup>12</sup> This practice corresponds to the approach that has been maintained by the Council of Europe bodies, including the Venice Commission. In view of their aspirational purpose setting out general principles of conduct, such codes often include provisions drafted in broad and vague terms which make them unfit for direct application in disciplinary proceedings. These provisions allow for an unjustified discretion, which could be abused, potentially leading to arbitrary decisions.<sup>13</sup>

17. Moreover, where laws provided for disciplinary offences in general terms, making references to codes of ethics, such as “judicial ethics rules that undermine the authority of justice”,<sup>14</sup> “regular violations of or grave violation by the judge of the Code of Conduct”,<sup>15</sup> “disreputable offence contrary to the judicial ethics”<sup>16</sup> or “violation of the rules of the Code of Ethics”,<sup>17</sup> the Commission deemed such provisions inappropriate due to their lack of clarity and foreseeability.

18. While violations of ethical norms may also imply fault and acts of negligence that may lead to disciplinary measure, the latter must be based on explicit and clear provisions in the statutory law.<sup>18</sup> The Commission has therefore advised enumerating in the statutory law an exhaustive list of specific disciplinary offences, rather than giving a general definition of disciplinary offence which may lack clarity and foreseeability.<sup>19</sup>

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<sup>10</sup> 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.

<sup>11</sup> Consultative Council of European Prosecutors (CCPE), [Opinion 2018\(2\)](#) on independence, accountability and ethics of prosecutors, para. 51

<sup>12</sup> See e.g. Venice Commission, [CDL-AD\(2016\)013](#), Kazakhstan – Opinion on the draft code of judicial ethics, para. 6.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> See Venice Commission, [CDL-AD\(2016\)013](#), Kazakhstan – Opinion on the draft code of judicial ethics, paras. 10 and 23.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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.

19. The above considerations are equally pertinent to the ethical codes for prosecutors and investigators.

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

20. 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 candidates applying for the positions of prosecutors or investigators. 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 prosecutors and investigators (Article 162, para. 3). Additionally, the oral examination conducted for candidate prosecutors or candidate investigators must incorporate questions regarding the Code of Ethical Conduct (Article 184, para. 6).

21. In view of the considerations in the previous Section, the Commission and DGI consider that the direct integration of the Code into the disciplinary system in such a way is problematic as it poses an issue of clarity and foreseeability of grounds for disciplinary liability. The issue is 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 prosecutor or investigator. 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, 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.

22. 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 prosecutors and investigators in the Law on the Judiciary.<sup>20</sup> Presently, this Law contains only certain rules on the ethical conduct of prosecutors and investigators, 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.

23. The above concerns regarding the lack of clarity and foreseeability of grounds for disciplinary liability are further aggravated by the fact that, according to the recently amended Constitution, the Supreme Prosecutorial Council, which is responsible for the career of prosecutors and investigators, consists of ten members and only three of them are elected by the prosecutors and investigators.<sup>21</sup> However, the Venice Commission has recommended a fairer representation of the elected prosecutors in the Council to exclude the control of this institution by the political majority of the day.<sup>22</sup>

24. In their written comments, the Bulgarian authorities highlighted that Article 130a (para. 3) of the Constitution provides for the independence and political neutrality of the members of the Supreme Prosecutorial Council. They argued that further amendments to the Law on Judiciary were under way to establish fair procedures for selecting and appointing lay members of the

<sup>20</sup> 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.

<sup>21</sup> Article 130a of the Constitution, as amended in December 2023, provides that the Supreme Prosecutorial Council shall be composed of ten members and shall include the Prosecutor General, who shall be a member thereof *ex officio*, two members elected directly by the prosecutors, one member elected directly by the investigators, and six members elected by the National Assembly.

<sup>22</sup> See Venice Commission, [CDL-AD\(2023\)039](#), Bulgaria - Opinion on the draft amendments to the Constitution, para. 71.

Council. While these efforts are welcome, their effectiveness in ensuring the election by Parliament of independent and politically neutral members remains to be seen. Meanwhile, it remains crucial to ensure that elected prosecutors and investigators maintain a fairer representation in the Council.<sup>23</sup> The Council should preserve its characteristics as a body of prosecutorial self-governance, serving not only as a guarantor of the independence and autonomy of the prosecution services but also as an institution able to decide effectively upon specialised issues.

25. The Commission and DGI consider that, following the incorporation of relevant provisions into the Law on the Judiciary as proposed above, the Code should retain its significance as a vital self-regulatory tool within the judiciary, ensuring that prosecutors and investigators conduct themselves in a manner that upholds public trust in their profession. Equipped with its implementation mechanisms (discussed below), the Code should be considered and function as a source of guidance exemplifying best practices for ethical conduct of the prosecutors and investigators. Thus, it would preserve its distinct but complementary character vis-à-vis statutory legislation concerning professional discipline.

### C. Drafting methodology of the Code

26. In Bulgaria, prosecutors and investigators are classified as a part of the judicial branch. Consequently, due to the shared ethical principles guiding the conduct of judges, prosecutors, and investigators, it is not unreasonable, as a starting point, that the present Code has been modelled in a similar way as the Code of Ethical Conduct for Judges.<sup>24</sup> Nonetheless, it is imperative to recognise and appropriately address the functional disparities between judges and prosecutors/investigators. Where these roles diverge, such distinctions must be duly acknowledged and factored into the Code.

27. The title of the present Code appropriately references the term "conduct", aligning itself with the overarching emphasis of the Code on providing guidance regarding ethical considerations within the daily activities and behaviour of prosecutors and investigators. 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. Specific references to international soft law on ethical principles and rules are consequently possible,<sup>25</sup> given that such references would guide the interpretation and application of the Code.

28. Section I of the Code sets out the basic principles of ethical conduct: independence, impartiality, fairness and transparency, courtesy and tolerance, integrity and decency, loyalty, competence and qualification, and confidentiality. While certain clarifications may be required as regards the meaning of those principles, as discussed below, these widely recognised ethical values should serve as guiding principles for the conduct of prosecutors and investigators.<sup>26</sup>

29. 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

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<sup>23</sup> See in this regard, CCPE, Opinion [No. 18 \(2023\)](#) "On Councils of Prosecutors as key bodies of prosecutorial self-governance", which provides in para. 46 as follows: "*In Councils with mixed composition, it would be preferable that prosecutor members constitute the majority, elected by their peers...*".

<sup>24</sup> See [CDL-REF\(2024\)004](#), Code of Ethical Conduct for Bulgarian Judges.

<sup>25</sup> See, for example, the UN [Guidelines](#) on the Role of Prosecutors (Havana Guidelines), 1990; [Budapest guidelines](#) - European guidelines on ethics and conduct for public prosecutors (2005), adopted by the Conference of Prosecutors General of Europe; CCPE, [Opinion No. 9](#) (2014) on European norms and principles concerning prosecutors (Rome Charter), [Opinion No. 12](#) (2017) on the role of prosecutors in relation to the rights of victims and witnesses in criminal proceedings, [Opinion No. 13](#) (2018): Independence, accountability and ethics of prosecutors; [Opinion No. 14](#) (2019): The role of prosecutors in fighting corruption and related economic and financial crime; [Opinion No. 18](#) (2023) on Councils of Prosecutors as key bodies of prosecutorial self-governance, as well as other instruments mentioned in the present Opinion.

<sup>26</sup> See, for example, [Standards of professional responsibility and statement of the essential duties and rights of prosecutors](#), adopted by the International Association of Prosecutors on the twenty third day of April 1999; [Budapest guidelines](#) - European guidelines on ethics and conduct for public prosecutors (2005), Chapter II "Professional Conduct in general".

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, in developing the principle of courtesy and tolerance, Rule 4.1 states that “[a] magistrate’s conduct in public should be based on good manners and good behaviour. ...”; Rule 4.2 prescribes that “[a] magistrate must be honest, fair and courteous, both in his work and in his private life, and must treat people with respect, respecting their rights and freedoms”, and Rule 4.3 states that “[c]ollegial relations between magistrates 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 reputation 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.

30. Furthermore, the principle of integrity in Section I appears to be narrowly defined by stating that a prosecutor or investigator must “not accept material or immaterial benefits ... outside the framework of the law.” This fails to fully encapsulate the overarching principle of integrity. As to the decency which is defined as “abstention from any action that could compromise the honour of the magistrate in the profession and in society”, the relevant rules go even further in their generalities. For example: Rule 5.6 states that “a magistrate should refrain from any action which might compromise the honour of his profession and the public”; Rule 5.7 then provides that “a magistrate must have an impeccable reputation”; and Rule 5.8 concludes that “a magistrate must be consistent and firm in observing legal and ethical standards”. These rules are in fact worded in terms which are broader than the underlying principle.

31. 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.

32. 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***

33. Under the title “Applicable Field” in the introductory part, the Code states that it applies to all prosecutors, investigators and members of the Prosecutorial Chamber of the SJC, all of them referred to as “magistrates”. In view of the constitutional change reforming the SJC and establishing a separate Supreme Prosecutorial Council (see paragraph 10 above), this provision would require an update.

34. The Code presently does not apply to former prosecutors and investigators. However, it might be appropriate to consider in respect of certain specific areas expanding the application of the Code to the prosecutors and investigators who have ceased to hold their offices, to the extent that their behaviour may still affect the image of the magistrates in the society. The requirements for former prosecutors and investigators cannot be the same as for those in office. The involvement in the public life is probably one of the areas where the limitations for the former prosecutors and investigators should not be necessarily the same as for the serving



magistrates.<sup>27</sup> Restrictions on freedom of expression, political activities, legal practice must be less stringent with regard to the individuals once they cease to hold the magistrate office or after certain cooling-off period since the termination of their 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.

## 2. Regulation *ratione materiae*

### - Professional and Personal Activities

35. The Code is designed to regulate the conduct of prosecutors and investigators 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 magistrate in and outside the office they hold*”. It is entirely reasonable to expect that prosecutors and investigators uphold high ethical standards not only while on duty, but also in their personal and family lives. This naturally entails certain limitations on their 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 prosecutors' and investigators' 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 prosecutors and investigators during the performance of their duties.

### - Independence

36. When defining the principle of independence, the Code prescribes that the prosecutors and investigators must be guided solely by their “*inner conviction and by the law*”, and that they must not “*succumb to pressure, threats, incentives, direct or indirect influence from representatives of any other authority, physical and legal persons or organisations*”. Apparently, reference to “other authority” does not include superiors within the prosecutorial service who may exercise hierarchical control.

37. In this regard, it does not appear that the Code gives clear guidance as to how a prosecutor or investigator should respond to pressure, threats, incentives or influence from superiors within the prosecutorial system. On the one hand, Rule 1.3 generally provides that “[i]n making decisions, the magistrate shall be independent and shall not be influenced by the opinion of his colleagues, but shall not take any action which would prejudice their independence.” On the other hand, under the principle of loyalty the prosecutors and investigators are obliged to show respect for the opinions of their colleagues. This rule may therefore necessitate not only greater precision but also clarification, particularly because “being influenced by the opinions of colleagues” is an integral aspect of professional collaboration and, where appropriate, subordination. However, a legitimate exchange of opinions should not be confused with pressure and instructions coming from the colleagues or given to them, especially in the context of hierarchical inequality.

38. In this regard, it is recalled that under the Committee of Ministers Recommendation Rec(2000)19, in cases where prosecutors are faced with instructions which they believe to be wrong or illegal there should exist guarantees for the interests of the prosecutors and the public. In particular, all public prosecutors enjoy the right to request that instructions addressed to them

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

be put in writing; if they believe that an instruction is either illegal or runs counter to their conscience, an adequate internal procedure should be available which may lead to their eventual replacement.<sup>28</sup> They should also have the freedom to present legal arguments of their choosing to the court, even when they are obligated to reflect in writing the instructions received from higher authorities. The rules of the Code could be elaborated accordingly.

- *Impartiality*

39. In describing the principle of impartiality, Section I of the Code provides, among other things, that a prosecutor or investigator “*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 prosecutor and investigator 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.

40. Rule 2.6 of the Code prohibits a prosecutor and investigator 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 prosecutor and investigator from commenting on legal matters in various legitimate contexts in his/her procedural roles and also in communications with colleagues, family members, during scientific events, and within professional organisations. Providing more guidance in this regard would enhance the rule.

- *Fairness and transparency*

41. The Code articulates the principle of 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. It should be noted that the professional activities of prosecutors and investigators may not demand the same degree of publicity and transparency as the procedural duties of a judge. In numerous instances, disclosing the material obtained during the investigation may be deemed inappropriate due to concerns of potential prejudice to justice, reputational harm, or unwarranted intrusion into privacy. Moreover, modern investigations may uncover extensive volumes of data, much of which may lack any public interest for disclosure.

42. In this context, Rule 3.5 provides that “*in cases of high public interest, the magistrate shall state the reasons for his or her decisions to the public, in accordance with the law*”. Apparently, this rule has been introduced to deal with the legitimate concerns about the reasoning of the relevant decisions. However, this rule must duly consider and refer to the duty of reserve<sup>29</sup> which the prosecutors and investigators must observe when making any public statements. Lack of reserve on the part of the prosecutors and investigators may impair, in particular, the administration of justice. The premature giving of information by the investigator or the prosecutor outside the context of properly produced evidence in a trial may have a prejudicial effect in the subsequent decision on guilt or innocence. Where an accused is subsequently acquitted,

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<sup>28</sup> See CM, Recommendation [Rec\(2000\)19](#) on the role of public prosecution in the criminal justice system, para. 10.

<sup>29</sup> See CM, Recommendation [Rec\(2000\)19](#) on the role of public prosecution in the criminal justice system, para. 6. See also CCPE, [Opinion \(2013\) No 8](#), on Relations between Prosecutors and the Media, para. 19.

statements by the prosecutor before or outside the proceedings in the trial may leave an unfair impression that the accused was in reality guilty despite the acquittal. Such public statements can also put unfair pressure on the trial judge and bring the system of justice into disrepute. While the Code addresses the duty of discretion and professional secrecy within the section dedicated to the principle of confidentiality (Rules 8.1 and 8.3), it could be advantageous to elaborate this obligation also within the framework of the transparency rules.

43. Similarly, Rule 3.4 asserts that *“within the framework of the law, a magistrate shall ensure the publicity of his actions and decisions, while taking care not to prejudice the legitimate rights and interests of participants in the proceedings”*. However, it would be appropriate to provide clarity to the terms “publicity” and “the legitimate rights and interests”. The Consultative Council of European Prosecutors (CCPE) has observed that when prosecutors’ mission authorises them to make statements or communications in cases with which they are familiar, prosecutors should ensure that they do not jeopardise the life or physical integrity of those involved in the proceedings (namely victims and witnesses) or the work of investigators by revealing on-going investigations, that they do not violate the principle of the presumption of innocence and do not unduly damage the honour and reputation of others on mere assumptions.<sup>30</sup> It has to be emphasised that, regardless of whether a trial proceeds, the interests of victims and witnesses must be considered. In certain instances, revealing or producing a witness may pose genuine risks to the safety or even the life of that individual, especially in cases involving terrorism or organised crime. Additionally, the rules on transparency could specify the way of action when prosecutors or investigators have been subjected to unfair criticism, and the institutional duty on the professional associations, the prosecutorial council, and/or the head of the relevant office to clarify the facts to preserve the image of the prosecutors (investigators) in public debates.<sup>31</sup>

44. At the same time, while preserving the duty of reserve, the importance of transparency cannot be diminished. Prosecutors and investigators should establish clear procedures that enable lawyers and individuals concerned to easily find out the current status of the relevant proceedings and have access to further information that can be disclosed at that stage. While it is the responsibility of prosecutors to formulate the prosecution strategy and submit relevant and admissible evidence for trial, they are also obligated to disclose any material that could potentially support the defence's case, even if they consider it unreliable.

#### - *Courtesy and tolerance*

45. As it has been observed, the Rules 4.1 – 4.3, 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.

46. At the same time, there is no rule which elaborates the standard of tolerance as presented in Section I (a prosecutor and investigator 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 prosecutors and investigators to uphold neutrality and ensure unbiased conduct. The drafters emphasise here the duty of prosecutor and investigator to actively listen and understand the perspectives of all involved in the proceedings. This implies creating conditions which allow for diverse viewpoints to be expressed before reaching a decision. 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.

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<sup>30</sup> CCPE, [Opinion 2018\(2\)](#) on independence, accountability and ethics of prosecutors, para. 62.

<sup>31</sup> See also CCPE, Opinion (2013) No 8, on Relations between Prosecutors and the Media, para. 45.

- *Integrity and decency*

47. As discussed above, the concept of integrity is narrowly described in Section I (see paragraph 30); it should not refer exclusively to receiving unlawfully benefits or reproduce the criminal law provisions. Also, Rule 5.1 (prohibition against receiving benefits in exchange for the performance of professional duties) and Rule 5.4 (prohibition against using official position for personal gain) describe forms of behaviour which would fall under the jurisdiction of criminal law. In a broader context of integrity and decency, Rule 5.9 provides that a prosecutor or investigator should not use his/her personal contacts for career advancement – an exhortatory and aspirational standard, – and then it vaguely adds that s/he 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.

48. Rule 5.2 provides that an “*honest magistrate does not denounce or intrigue against his colleagues and officials, but openly expresses his position*”. When it comes to the managing positions in the investigating and prosecutorial hierarchy, 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 magistrate 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.

- *Loyalty*

49. The principle of loyalty obliges the prosecutors and investigators to behave “*in a manner aimed at establishing and improving the authority and reputation of the institution, expressed in a fair and honest attitude towards colleagues and respect for their opinions and privacy*.” Rules 6.1 and 6.2 developed under this principle provide for the duty of “*fair and honest attitude towards colleagues and institution*” and the duty of “*respecting the opinion and privacy of [the] colleagues*”. However, these are broadly worded duties that do not provide clear guidance to prosecutors and investigators.

50. Furthermore, employing the principle of loyalty to develop an obligation to respect colleagues’ opinion may lead to various interpretations, potentially compromising the independence and autonomy of prosecutors and investigators. Such provisions could pose further difficulties for prosecutors and investigators attempting to resolve issues arising from disagreement with hierarchical instructions, as discussed above under the principle of independence.

51. In light of the principles already outlined in the Code, it raises the question of whether the principle of loyalty warrants a separate formulation at all. This is because the values encompassed by loyalty, such as how one treats colleagues and maintains professional behaviour, are inherently addressed by other existing principles within the Code, including the principles of fairness and transparency, courtesy, integrity and decency. However, should the principle of loyalty be retained within the Code, this section necessitates further elaboration, emphasising that loyalty should primarily be to the institutional values and the rule of law rather than to the hierarchy or colleagues. It should prioritise the institutional faithfulness over personal relationships and should not be used to cultivate favouritism and corporatism.

- *Timely administration of justice*

52. Rule 9.3 provides that prosecutors and investigators holding managerial positions must take care of the organisation and operation of the office in such a way as to achieve the best results. Rule 9.5 provides that such managers must ensure that the acts of their colleagues, administrative staff and officials are drawn up in a timely manner. In this regard, the interlocutors expressed concerns about the duty of prosecutors and investigators to handle a particular

workload and to do so in a timely manner. This is apparently a frequent cause of disciplinary complaints against magistrates in Bulgaria and there have been allegations that the system can be abused.

53. While imposing a duty to deal with one's workload, there should be a regulatory system establishing a fair quota of work for each magistrate, including an assessment of the difficulty and weight of particular items of work, a mechanism for the individual magistrate to challenge an unfair work allocation. Also, it is advisable to establish a mechanism enabling prosecutors and investigators to warn about any need to request reallocation of work in order to avoid missing mandatory deadlines, as well as the possible grounds on which they would be entitled to defend the reasonableness of their requests.

*- Other issues*

54. In addition, there are areas that merit more attention in the Code. The document could provide more guidance on the interaction of prosecutors and investigators 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 magistrates' rights to outside work such as teaching, lecturing, publications, joining trade unions and professional associations, and attending and speaking at conferences.<sup>32</sup> The incorporation of these elements would further enhance the Code's comprehensiveness.

#### **E. Implementation of the Code**

55. The final paragraphs of the Code refer to the professional ethics committee in the prosecutorial system of Bulgaria. 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 prosecutors and investigators as being the main guarantors of the implementation of the ethical principles and rules.

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

57. 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 to help prosecutors and investigators apply ethical rules in their daily work.<sup>33</sup> The bodies providing ethical advice should be distinct and well differentiated from the disciplinary organs. The opinions obtained through these mechanisms should serve as confidential recommendations. While adherence to such advisory opinions is not mandatory, it might be viewed as indicative of acting in good faith. 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.

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<sup>32</sup> Recommendation REC(2000)19 refers in paragraph 7 to the right of prosecutors to receive training, in particular concerning ethical duties and human rights.

<sup>33</sup> See CCPE, [Opinion 2018\(2\)](#) on independence, accountability and ethics of prosecutors, para. 64.

## F. Procedure for the adoption of the Code

58. 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 governing their conduct.<sup>34</sup> The Commission considered that it was essential that the leading role in drafting the code of ethical conduct remain within the magistrates and that a comprehensive and inclusive approach to decision-making be ensured.

59. During the meeting with the SJC, the Venice Commission and DGI delegation was informed that the j community of prosecutors and investigators had been involved in the discussion of the Code. Requests for contributions were disseminated to the domestic prosecutor's offices and investigation departments within those offices, providing prosecutors and investigators with access to pertinent details. Although a formal engagement with professional associations did not occur, it was highlighted that prosecutors and investigators 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.

60. The Venice Commission and DGI welcome that the SJC reached out to the prosecutors and investigators, allowing for their participation and for the diverse perspectives 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

61. At the request of the Minister of Justice of Bulgaria, the Venice Commission and DGI have assessed the Code of Ethical Conduct for Bulgarian Prosecutors and Investigators, 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, its Prosecutorial Chamber and with representatives of the prosecutorial system of Bulgaria.

62. The Venice Commission and DGI welcome the fact that the present Code was adopted by the Supreme Judicial Council and that, in doing so, the Council and its Prosecutorial Chamber collaborated with the community of prosecutors and investigators. This aligns with the earlier recommendations of the Venice Commission provided to the Bulgarian authorities.

63. 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 ethical values. 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. Furthermore, the Code could give greater consideration to the distinct procedural roles of prosecutors and investigators, which differ from those of judges. Some recommendations for improving the provisions of the Code in that regard have been given in the text of the Opinion.

64. The assessment of the Code's impact on the prosecutorial system, including its capacity to strengthen the system or, conversely, introduce risks to independence and autonomy of prosecutors and investigators, depends on the role prescribed to the Code by the Law on the

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<sup>34</sup> 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.

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 magistrates, which should guide the preparation of the codes of ethics. Furthermore, the Law on the Judiciary should not refer to the provisions of the 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.

65. 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 prosecutors and investigators and provide grounds for disciplinary liability in a manner that ensures clarity and foreseeability. In any case, it is important to ensure a fair representation of elected prosecutors in the Supreme Prosecutorial Council, as previously recommended by the Venice Commission, to prevent the control of this institution by the political majority of the day.

66. 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 prosecutorial system, offering guidance and exemplifying best practices for ethical conduct, and preserving at the same time its distinct but complementary character vis-à-vis provisions concerning professional discipline contained in the Law on the Judiciary.

67. 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 prosecutors and investigators and set out the grounds for disciplinary liability distinctly from the code of ethical conduct and in a manner that ensures clarity and foreseeability;
- (b) consider further constitutional and legislative amendments to ensure a substantial representation of elected prosecutors in the Supreme Prosecutorial Council.

To the Supreme Judicial Council and, once established, the Supreme Prosecutorial Council:

- (c) The Code requires additional elaboration to fully address ethical issues concerning fairness and transparency that are specific to prosecutors and investigators, as discussed in this Opinion. Further improvements of the Code should include a number of issues, such as: (i) rules of conduct for prosecutors and investigators who are faced with hierarchical instructions which they believe to be wrong or illegal; (ii) adding age, sexual orientation, disability into the list of prohibited grounds for unequal treatment; (iii) either removing the loyalty as a separate principle, or substantively reformulating it, emphasising institutional fidelity over personal relationships and ensuring that loyalty does not foster favouritism and corporatism; (iv) 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 (v) addressing the external activities of prosecutors and investigators, such as lectures, seminars, publications, involvement in trade unions and professional associations.

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