

The EPPO as a Domesticated Cat: A Perspective from Bulgaria

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The European Public Prosecutor’s Office (EPPO) has just celebrated the third anniversary of the start of its operations. As a country frequently shaken by scandals implicating abuses of EU funds and known for rampant corruption, Bulgaria provides ample opportunities for the EPPO to show its teeth. Sadly, however, this institution has little to boast with in Bulgaria – it seems to have fallen victim to the country’s long-standing challenges in the area of the rule of law. Without implementing changes ensuring less biased appointment procedures for European Delegated Prosecutors from Bulgaria and without resolving Bulgaria’s rule of law challenges first, the EPPO’s legitimacy and work will always be under question.

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The [European Public Prosecutor’s Office \(EPPO\)](#) has just celebrated the third anniversary of the start of its operations. “I am sure you will soon see [the EPPO] is anything but a ‘toothless tiger’”, said Laura Kövesi [in an interview](#) in 2021. Sadly, against the Bulgarian backdrop, the EPPO reminds of a domesticated rather than a fierce wild cat.

As a country frequently shaken by scandals implicating abuses of EU funds and known for rampant corruption, Bulgaria provides ample opportunities for the EPPO to show its teeth. Yet, three years on, the institution has only two successes to boast about. It [has achieved](#) a 6-month suspended sentence and a fine for a person who bribed a public official with 2,500 EUR. It [has also ensured](#) a court-approved fine of 1,500 EUR for someone who submitted forged documents when applying for EU funding.

In the Bulgarian context of grand corruption, these successes look modest to say the least. Bulgaria consistently receives poor scores by reputable indexes, such as the [Corruption Perceptions Index](#) by Transparency International, the [Rule of Law Index](#) by the World Justice Project and the [WorldWide Governance Indicators](#). More importantly, corruption is not just a question of perception. The country’s pressing rule of law challenges have attracted the attention of non-EU anti-corruption programs. In [2021](#) and [2023](#), the US Government sanctioned high-profile public officials for corruption under the Global Magnitsky Act citing “misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery” among others. In 2023, the UK Government, in its

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own words, [sanctioned](#) “notorious figures” citing “offences including abuse of public institution funds” under the Global Anti-Corruption Sanctions Regulations.

One may easily be left with the impression that the EPPO is giving big fish a free pass while wasting time and resources on petty cases that do not make any difference in Bulgaria.

The EPPO as a victim of Bulgaria’s rule of law decay

Regrettably, there is evidence supporting the argument that the EPPO is a victim of Bulgaria’s rule of law decay and, by extension, of the fundamental, yet utopian principle of [mutual trust](#). Even worse, the factors hampering the EPPO’s work are long-standing challenges before Bulgaria’s justice system which were either unresolved or exacerbated by the Cooperation and Verification Mechanism (CVM) under which the EU Commission was supposed to help Bulgaria catch up with other EU members in the area of the rule of law (see, for instance, [here](#), [here](#), and [here](#)). The CVM may have been [formally terminated](#) in September 2023, but the problems linger on.

The main challenges before EPPO’s proper implementation in Bulgaria can be summarized as follows:

The EPPO’s challenge 1: questionable selection of European Delegated Prosecutors (EDPs)

Pursuant to Recital 43 and Article 17(1) of the [EPPO Regulation](#), the College of the EPPO appoints EDPs upon the proposal of the European Chief Prosecutor. However, there is a catch – the EDPs must be nominated by the EU member in which they will serve first. In Bulgaria, the competent body for such nominations is the Prosecutorial College of the Supreme Judicial Council (SJC). Following the December 2023 pseudo constitutional reform, which still has not been implemented, the competent body will be the Supreme Prosecutorial Council. The cosmetic reform of 2023, however, will preserve the main flaws of the current Prosecutorial College – namely, its severe politicization which is possible because of the mechanism for appointment of its members. In practice, the politicization of this body translates into the promotion of magistrates faithful to the establishment, who often have questionable credentials and an uncalibrated moral compass. It also facilitates the harassment of inconvenient magistrates.

The EPPO seems to be aware of this issue, but its hands are tied. In 2021, for example, when the Prosecutorial College nominated ten candidates for EDPs, the EPPO [demanded more information](#) about seven of them, essentially rejecting them. Milan Jaron from the EPPO was [quoted in Bulgarian media](#): “We do not want to enter into a discussion on how to interpret the regulation [on the EPPO]. The European Prosecutor’s letter clearly states that the Bulgarian side must nominate people with relevant experience who meet all the requirements for independence and moral integrity.”

While the EPPO tried to show some teeth, eventually it had to make compromises in the belief that Bulgarian magistrates can learn best practice when taken outside of their toxic environment. It is quite revealing, however, that many Bulgarian EDPs [resigned](#) from the EPPO to return to work

for the Bulgarian Prosecutor's Office where their official salaries are much lower. Hence, there may be doubts as to what the true underlying reasons for their work at the EPPO were.

The EPPO's challenge 2: the toxic culture of the Prosecutor's Office

Assuming that the EPPO has managed to appoint EDPs who indeed fulfill the criteria laid out in Article 17(2) of the EPPO Regulation – “independence beyond doubt” and “necessary qualifications and relevant practical experience of their national legal system” – the EDPs face the challenge of carrying out their work amidst the toxic culture of Bulgaria's Prosecutor's Office.

Much ink has been spilled about the Soviet structure and culture of Bulgaria's Prosecutor's Office, its corruptibility, and the unbound powers of the General Prosecutor whose status the Venice Commission has compared to a monarch who bears neither political nor legal liability for his actions (see, for instance, [here](#) and [here](#)). In an attempt to deceive the Committee of Ministers of the Council of Europe that it has complied with the pivotal [Kolevi judgment](#) of 2009, Bulgaria even implemented a pseudo reform in 2023, which preserved the current state of affairs.

In practice, the EDPs work in the same building as the other Bulgarian prosecutors and share the same administration with them. This means they can easily be monitored, influenced and/or intimidated, and information can be leaked. The European Chief Prosecutor Laura Kövesi seems to be aware of this major challenge because she [personally demanded a separate building](#) for the EDPs when she visited Bulgaria in 2022. However, while Bulgarian authorities promised to take care of this matter, information on whether the changes have been implemented is scarce and inconclusive.

The EPPO's challenge 3: captured courts

Even if the EDPs manage to resist the pressures by the Prosecutor's Office, they have to face Bulgaria's biased courts – ergo, one may speculate that with the blessing of the establishment, some sacrificial lambs will be sentenced while the holy corrupt cows will be acquitted.

It is important to clarify that the heavily politicized SJC ensures that courts remain captured via two main strategies. The first one is promoting convenient magistrates and harassing inconvenient magistrates via [biased procedures](#). The second one is deliberately avoiding organizing competitions for the appointment of judges in courts of strategic importance for the establishment. In this way, court presidents can second judges of their personal (subjective) liking and circumvent the requirements for credentials and professional experience. A shocking example is provided by the Sofia Court of Appeals, the most important appellate court by virtue of its jurisdiction, where the latest reports show that [one-third of the judges have been seconded](#). The same court is frequently shaken by [scandals](#) involving non-random distribution of case files. Yet, the right distribution to the right judge ensures the right result for the establishment.

The gravity of the situation has been summed up by Lozan Panov, President of the Supreme Court of Cassation (2015-2022), who was one of the few magistrates trying to shine a light on the rule

of law challenges in Bulgaria, before [Der Spiegel](#): “...the most important parts of the Bulgarian judiciary are under political influence and are corruptible. All judicial reforms in recent years were just a simulation of reforms.”

The EPPO’s challenge 4: legislative sabotage or the art of the pseudo reform

Throughout the years, but especially thanks to the CVM, Bulgaria has developed the remarkable skill of carrying out pseudo reforms and/or dangerous reforms while deceiving international institutions that it is making progress. From early on, the EPPO has been an easy victim of legislative sabotage and may remain targeted depending on the political context.

For instance, in an attempt to salvage its reputation as the most corrupt EU member, Bulgaria [presented](#) the implementation of the EPPO as a “top priority” of its presidency of the Council of the European Union which it held between January 2018-July 2018. Shortly thereafter, in a rush and in an ironic twist, Bulgarian legislators [amended legislation](#) to ensure that the Specialized Criminal Court had exclusive jurisdiction to examine cases investigated by the EPPO. [This court](#), which was set up by Boyko Borissov’s regime, had many of the features of an extraordinary tribunal and has been referred to as a “kangaroo court”. It was closed for good in 2022 upon the proposal by a short-term reformist government on the grounds that it “created risks for the independence of the judiciary and eroded the rule of law” (see Explanatory Memorandum of Proposed Amendments to the Law on the Judiciary of 28 January 2022).

In other words, while the independence of Bulgarian courts is generally compromised, the establishment wanted to make sure that the EPPO had to plead its cases before the most controversial court in the country. While the closure of the kangaroo court was good news for the rule of law, there are no guarantees that other forms of legislative sabotage will not transpire in the future.

Lessons from Bulgaria: Can a domesticated cat become a tiger?

“A tiger doesn’t proclaim his tigritude, he pounces,” goes a famous quote by Wole Solinka. Yet, it seems that tigritude is conditional on context.

The EPPO can easily be seen as a victim of Bulgaria’s rule of law decay as evidenced by the politicized SJC and Prosecutor’s Office, the captured courts, and the legislators who wanted to tame it. If one digs deeper, one may see that the EPPO found itself in this uninspiring position for tigritude because of diverse factors, including:

—its utopian design embedded in the EPPO Regulation which overly relies on the good faith of EU member states – an approach consistent with the equally utopian, but convenient principle of mutual trust;

—the failed CVM, which wasted fifteen years not to resolve a single major rule of law challenge in Bulgaria;

—the overall complicity of the EU Commission with Bulgaria’s assaults on the rule of law (the Rule of Law reports mechanism has inherited the flaws of the CVM; the Commission has never initiated an infringement procedure against Bulgaria on rule of law grounds).

Without implementing changes ensuring less biased appointment procedures for EDPs and without resolving Bulgaria’s rule of law challenges first, the EPPO’s legitimacy and work in Bulgaria will always be under question.