

# The Unbearable Difficulty of Dismissing a General Prosecutor for Abuses of Office and Other Crimes

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## Impunity

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On 10 March 2022, Bulgaria's Supreme Judicial Council (SJC) decided unanimously to postpone examining two requests for the dismissal of General Prosecutor Ivan Geshev from office until the Committee on Legal Questions at SJC's Plenum prepares procedural rules governing such examination. The requests have been submitted by the current Minister of Justice Nadezhda Yordanova and by the prior caretaker Minister of Justice Yanaki Stoilov. Both ministers argue that Geshev should be dismissed for "serious breaches or systematic failure to perform official duties, as well as actions that undermine the prestige of the judiciary" (Article 129(3), point 5 of Bulgaria's Constitution).

SJC's decision is not merely a procedural trick with questionable legality. It provides further proof that the SJC has unhealthy dependencies and is one of the main reasons why a General Prosecutor of Bulgaria can abuse his office and commit crimes with impunity.

## Bulgaria's Soviet Prosecutor's Office

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Before explaining the dynamics of the latest constitutional drama in Bulgaria, it is important to underline that the vertical structure and the excessive powers of Bulgaria's Prosecutor's Office are long-standing threats to Bulgaria's rule of law. Earlier this month, Peter Obretenov, former judge and member of the Grand National Assembly that adopted Bulgaria's Constitution of 1991, underscored: „The institution of the General Prosecutor [in Bulgaria] is a reoccurrence of the 'Vyshinsky' model of Stalin's Constitution. It appeared in [Bulgaria's] justice system in the late stage of development of totalitarianism and it has no place in the Constitution of an EU member". Indeed, the notion of General Prosecutor was introduced to Bulgaria in 1947 under the influence of Soviet law and was progressively vested with even more excessive powers. Ivan Tatarchev, who served as General Prosecutor in the period 1992-1999, famously summarized his lack of accountability like this: "Only God is above me".

In light of the European Court of Human Rights' case law against Bulgaria – namely Kolevi v Bulgaria from 2009, which concerns alleged serious crimes by Nikola Filchev, General Prosecutor of Bulgaria (1999-2006) – the Council of Europe has been insisting on a reform of this institution to no avail for more than a decade. In Kolevi and in a related

judgment by the English High Court, there are allegations that Filchev has committed several murders and has framed other people for them. However, because of his position, he never faced a proper investigation.

Instead of subjecting the Prosecutor's Office to checks and balances that are necessary in a state governed by the rule of law, Boyko Borissov's regime transformed this institution into the heart of a machine of terror that could harass opponents and whitewash corruption. The influence of the General Prosecutor spills over onto the SJC, which is the body that appoints, promotes, and monitors the ethical standards of all magistrates in the country. The General Prosecutor also overshadows some courts (see, for instance, here, here, and here). In prior work, I have referred to this model of perverse justice as a "FrankenState".

Bulgarian citizens realized the extent of the problem in 2020 when the Prosecutor's Office led by current General Prosecutor Ivan Geshev (elected in 2019) raided Bulgaria's Presidency and arrested two of the President's advisors in an obvious attempt for a mini coup. President Rumen Radev was the only critic of Borissov with a position of importance in the state – while most of his duties are ceremonial, he has visibility which bothered the regime. This triggered mass protests demanding the resignation of both Boyko Borissov's third government and General Prosecutor Ivan Geshev. Borissov pulled every imaginable trick out of his autocratic bag, including a contentious proposal for a new Constitution, to prevent resignation and to avoid a snap election. While Borissov managed to gain time, the subsequent election spiral – Bulgaria faced one regular parliamentary election and two snap parliamentary elections in 2021 – led to his demise. As of 13 December 2021, Bulgaria has a regular government which is a coalition without Borissov's GERB party. Nevertheless, the unsettling issue of having a General Prosecutor who abuses his office and a SJC that turns a blind eye to such law violations has remained.

## **SJC's Shielding of Ivan Geshev**

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Considering the above background, one can better understand why SJC's procedural trick of March 10<sup>th</sup> is just one more sad episode of SJC's shielding of Ivan Geshev from liability and thus deepening Bulgaria's rule of law crisis. It is striking that the SJC has not developed procedural rules for examining requests of such importance for the rule of law, such as the dismissal of a General Prosecutor for actions and omissions in office which undermine the prestige of the judiciary. In fact, the SJC could have relied on other, already existing procedural rules by analogy – for instance, the Rules for the Election of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the General Prosecutor of 2012.

However, SJC's procedural theater is not surprising. Notwithstanding direct and indirect evidence alleging Ivan Geshev's wrongdoings as a prosecutor, such as framing of innocent people and abusing criminal trials for political ends, and despite protests by civil society, the SJC elected him as a General Prosecutor in 2019. They kept backing him, too, ignoring their powers to start proceedings against him when there were obvious

cases of abuse of office, such as the raid against the Presidency with armed force. Following Borissov's fall from power, Yanaki Stoilov, caretaker Minister of Justice (May – October 2021), demonstrated yet again the unhealthy dependencies of the SJC, which are well-known to the public. In 2021, Stoilov submitted the first request for dismissal of Ivan Geshev arguing that his actions and omissions in office fell under the scope of Article 129(3), point 5 of the Constitution. Stoilov's reasoning includes diverse examples of Geshev's violations of the right to a fair trial, exceeding his powers, tampering with the distribution of cases, closing his eyes to obvious crimes and shielding corruption and manipulating the financial accounts of the Bureau for the Protection of Witnesses.

On 22 July 2021, nevertheless, the SJC refused to examine Stoilov's request on the merits arguing that a Minister of Justice does not have legal standing to demand the dismissal of a General Prosecutor. This conclusion appeared to violate the Constitution as the wording of its Article 130(c), point 3 is straightforward: the Minister of Justice "may make proposals for the appointment, promotion, demotion, transfer and dismissal of judges, prosecutors and investigators". Moreover, pursuant to Rule 2 in Section 1 of the Rules for the Election of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the General Prosecutor adopted by the same SJC, a Minister of Justice can nominate a candidate for the office of General Prosecutor – by analogy, this minister should also be able to demand the dismissal of a sitting General Prosecutor. In response to SJC's decision not to examine his request on the merits, Stoilov asked the Council of Ministers to refer the question to Bulgaria's Constitutional Court and appealed SJC's refusal before the Supreme Administrative Court.

## **The Inquiry before Bulgaria's Constitutional Court**

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It should be remembered that the pathways for referring questions to Bulgaria's Constitutional Court are extremely limited. According to Article 150(1) of Bulgaria's Constitution, the Constitutional Court may be approached by one-fifth of the Members of Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the General Prosecutor. It should also be noted that the Constitutional Court is often suspected of political dependencies because of the way its judges are appointed. In this light, it does not seem accidental that the court took its time and only delivered its judgment on 8 February 2022, after Bulgaria had a regular government in office.

The judgment is interesting for several reasons. The inquiry itself is a rare case in which a constitutional court is asked to declare the obvious and interpret the Constitution when there is little or even no room for interpretation. To this end, it is visible that the court was unwilling to overtly admit that the SJC had read the Constitution in bad faith and relied on creativity to produce legal reasoning – it ventured into an historic inquiry into the development of Bulgaria's constitutional culture since the 19<sup>th</sup> century to show that since Bulgaria's first Constitution, the Minister of Justice has always had prerogatives vis-à-vis the functioning of the justice system. While this is true, it is unclear why this overview is necessary to interpret a clear constitutional provision drafted in 1991. It is noteworthy that the General Prosecutor, the Association of Prosecutors and the Chamber of Investigators

submitted opinions in the proceeding arguing that recognizing the prerogative of the Minister of Justice to demand the dismissal of a General Prosecutor threatened the independence of the judiciary and violated the separation of powers. Claiming that asking a body, such as the SJC, which is supposed to be independent, to examine evidence of abuses of office threatens judicial independence is certainly a paradox. What is further important to highlight is that every time there is new evidence of abuses of office by prosecutors, including by Ivan Geshev, the Prosecutor's Office and its satellite professional organizations have tried to portray themselves as victims.

The judgment of the Constitutional Court motivated the current Minister of Justice Nadezhda Yordanova to submit a second request for the dismissal of Ivan Geshev before the SJC. In her request, Yordanova provides further examples and evidence showing abuses of office and even overt criminal activity by the Prosecutor's Office. One of them is the famous 'Eight Dwarfs' investigation by the Anti-Corruption Fund which allegedly shows how the Prosecutor's Office acts like an organized criminal group to racketeer people and expropriate their businesses, so that it can pass in the hands of prosecutors and politicians. As a result, the SJC finds itself in the unusual situation of having to examine two concurrent requests for Ivan Geshev's dismissal.

## **Can You Dismantle a FrankenState?**

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In Bulgaria's Kafkaesque reality, it is possible to have a General Prosecutor who abuses his office and/or is implicated in other criminal activity and who is shielded from any liability. In the current framework, he cannot be investigated because, in practice, he will have control over the investigation. The Prosecutor's Office has an entirely vertical structure where all decisions depend on the General Prosecutor. Meanwhile, the Prosecutor's Office has a complete monopoly on the investigative process. Moreover, when there are serious suspicions of alleged crimes, the General Prosecutor cannot be dismissed because, in practice, he would have to dismiss himself. The General Prosecutor controls the prosecutorial college of the SJC because most of its members are his direct subordinates in the Prosecutor's Office. Moreover, the so-called political quota elected by Parliament have the Borissov-likeability factor and so, together with the prosecutorial quota, provide a solid majority and backing of the General Prosecutor in SJC's Plenum (on SJC's composition and colleges, see here).

Having this in mind, it is clear that Stoilov's and Yordanova's attempts to employ the only available pathway for dismissal of a General Prosecutor have been doomed from the beginning. Knowing the dynamics and practices of the SJC, one can only expect more procedural tricks and creative abuses of law. Meanwhile, the term of a General Prosecutor is excessively long (7 years) which means he has a rather long license to act with impunity.

## **What Can Be Done?**

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Stoilov's and Yordanova's requests before the SJC are a humble appeal to the conscience of Ivan Geshev and the political circle that promoted him as General Prosecutor. Neither Geshev nor this circle have an interest in his dismissal because they fear objective investigations into their alleged abuses of office and crimes. In times like these, it seems wise to have both a short-term and a long-term strategy. A thorough reform of Bulgaria's justice system is long overdue, but it may take years to implement. That is why, in the short run, knowing the terror machine it has to confront, a government elected on an anti-corruption ticket, such as the one currently led by Kiril Petkov, owes it to civil society to defend the rule of law and resort to piecemeal legislative solutions if necessary.

Mihail Ekimdjiev, an attorney who has won more than two-hundred cases against Bulgaria before the European Court of Human Rights, has suggested introducing special investigatory powers for the police, which is under the executive, in the Code of Criminal Procedure. In this way, the SJC will be forced to temporarily remove people like Geshev from office until these investigations last. By analogy, one may envisage bestowing investigatory powers upon the Anti-Corruption Commission, which is supposed to be an independent body, too. Whatever path the current government takes, time is of the essence. The more it tries to play by the rules of Borissov's FrankenState, the more it loses its chance to dismantle it.

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