

At a Snail's Pace: How EU Bureaucracy Undermines Fundamental Rights

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The EU Commission has recently launched an infringement procedure against Bulgaria in view of its breaches of Directive 2016/343 on the presumption of innocence and on grounds I have been raising in formal complaints to EU institutions since 2018. My 5-year long disillusioning experience of raising concerns about Bulgaria's deliberate breaches of EU law before the EU Parliament and the EU Commission may serve as a case study providing some food for thought about the value of fundamental rights in the eyes of these EU institutions, as well as their handling of reasoned citizen complaints.

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By 1 April 2018, EU members had to transpose [Directive \(EU\) 2016/343](#) on 'the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings'. Bulgaria has not fully transposed it to this day. Moreover, it continues to breach it, including by adopting legislation which undermines the result which the Directive seeks. What would you do if you noticed that an EU Member State had *not* only not transposed a Directive concerning fundamental rights, but also persistently violated it?

As early as I saw Bulgaria's deliberate breaches of EU law in 2018, I decided to put my knowledge to practice and try to do something in addition to ringing the alarm in an [article](#) – I petitioned the EU Parliament to take a stand and I submitted a claim against a breach of EU law to the EU Commission. Now, according to a [recent press release](#) on infringement decisions, the EU Commission has finally sent a letter of formal notice to Bulgaria in view of its breaches of Directive 2016/343. The timing is disappointing, however, considering my attempts to draw attention to this issue since 2018. Every one of my attempts was rejected and closed by the EU institutions, including as late as 2022 by the EU Commission. My 5-year long disillusioning experience with the EU Parliament and the EU Commission may serve as a case study providing some food for thought about the value of fundamental rights in the eyes of these EU institutions, as well as their handling of reasoned citizen complaints.

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Bulgaria – A Persistent Abuser of the Right to a Fair Trial

Bulgaria's lack of transposition of Directive 2016/343 is symptomatic of a much more profound issue – Bulgaria has a long record of violating the presumption of innocence and the right to a fair trial, which can be linked back to the country's politicized Prosecutor's Office with excessive powers that are not subjected to checks and balances (see [here](#), [here](#), and [here](#)). According to the [2021 Annual Report](#) of the European Court of Human Rights (ECtHR), which provides historical statistics on judgments, by 2021 Bulgaria had been found in 309 violations of Article 6 (right to a fair trial) of the European Convention on Human rights (ECHR). This is notable, considering that Bulgaria ratified the ECHR only in 1992 and given the country's population (compare with Czechia, which was found in 151 violations of Article 6 per the same table, while it has a much bigger population and a seemingly more alert legal profession). According to the [2022 Annual Report of the ECtHR](#), in 2022 alone, Bulgaria was found in 4 violations of Article 6 of the ECHR.

To this end, it is important to note that Bulgaria's politicized Prosecutor's Office closely collaborates with media to assert the guilt of non-indicted and/or non-convicted persons to manipulate public opinion, especially in high-profile [cases](#). It is also common for politicians to make unmeasured assertions, echoing the PR campaigns of the [Prosecutor's Office](#). Often the victims of such media trials do not get convicted in court because of the lack of proof – in fact, Bulgaria has a record of [framing](#) innocent people and abusing criminal proceedings for political reasons or for the personal gain of magistrates (see the [Eight Dwarfs](#) investigation).

The former controversial General Prosecutor of Bulgaria, Sotir Tsatsarov (2012-2019), went as far as [saying](#) that “Bulgaria's Prosecution applies Bulgarian law according to which the guilty ones become accused and that is the purpose of criminal proceedings”. Such statements incarnating a presumption of guilt clearly show a lack of care about Article 6 of the ECHR and Article 48(1) of the EU Charter (“Everyone who has been charged shall be presumed innocent until proved guilty according to law”). Moreover, they violate Bulgarian law, as the presumption of innocence is enshrined in Article 16 of Bulgaria's [Code of Criminal Procedure](#) and Article 31(3) of Bulgaria's Constitution.

The fact that one of the three highest-ranking magistrates in the country confidently makes such statements before the media further demonstrates the severity of the problem. Unsurprisingly, there is a plethora of recent condemning ECtHR judgments concerning media trials orchestrated by the Prosecutor's Office and politicians – for instance, [Stoyanov v Bulgaria](#) (2016), [Maslarova v Bulgaria](#) (2019), [Lolov v Bulgaria](#) (2019), [Banevi v Bulgaria](#) (2022), etc.

Finally, after the entry into force of Directive 2016/343 in 2016, Bulgaria adopted legislation further weakening the right to a fair trial, which, one may argue, amounts to undermining the result sought by the Directive. Namely, in 2017, Bulgaria introduced a series of controversial provisions to its Code of Criminal Procedure – one of them enshrines the notion of the ‘eternally accused person’. In essence, the prosecution can investigate an accused person *in perpetuity* without the latter *ever* being indicted in court. However, because of his/her status as an accused party, the same person can be subjected to an array of repressive measures – detention in custody for excessive periods, freezing of property in perpetuity, permanent restrictions on the freedom of movement, etc (see [here](#)).

A 5-Year Wait to Receive a Long-Overdue Update from the EU Parliament

Pursuant to Article 44 of the EU Charter of Fundamental Rights, “[a]ny citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament” (see also Articles 20, 24, and 227 TFEU). In May 2018, I submitted a petition (see [Petition No 0464/2018](#)) inviting the EU Parliament to take a stand about Bulgaria’s *systemic* violations of the presumption of innocence and to liaise with the EU Commission to force Bulgaria to fully transpose Directive 2016/343.

My petition was deemed admissible in October 2018. On 6 October 2023, five and a half years after I submitted the petition and 5 years after it had been deemed admissible, I heard from the Committee on Petitions (PETI) for the first time. Bizarrely, the PETI Committee had sent me a ‘Notice to Members’ dated December 2018 from the 2014-2019 EU Parliament, which assured its addressees that the EU Commission was closely monitoring “the effective application of Directive 2016/343 in all Member States, including Bulgaria”.

The timing of this communication is not just disappointing – it amply demonstrates that *in practice* the right to petition does not entail the right to be heard. It took the PETI Committee 5 years to update me on actions they undertook in 2018. Moreover, their email indirectly shows that the PETI Committee has not done any work concerning this petition in the 2019-2024 legislative period. Furthermore, while MEPs may feel reassured that the EU Commission is closely monitoring the effective application of Directive 2016/343, I have my reservations, as explained below.

The EU Commission’s Generic Responses and Empty Assurances

In May 2018, I also decided to alert the EU Commission about Bulgaria’s breaches of Directive 2016/343 via its [complaint form for breach of EU law](#), which is accessible to all citizens. A year and a half later, in November 2019, I received a ‘pre-closure reply’, informing me that my complaint would be closed because it did not concern “a wider principle [of EU law]”. This was a cliché-ridden response I had seen before – the EU Commission had previously informed me that it closed another [complaint](#) I lodged against Bulgaria’s breaches of Directive 2013/48/EU ‘on the right of access to a lawyer in criminal proceedings’ with an identical statement. Even worse, considering that Directive 2016/343 evidently pertains to fundamental rights, and given that my complaint provided evidence of systemic breaches of both the Directive and Articles 47 and 48 of the EU Charter, and that fundamental rights are general principles of EU law (Article 6(3) TEU), it was baffling how my complaint could be dismissed as not concerning a wider principle of EU law.

I sent a letter vehemently protesting the reasoning in their pre-closure reply, while also wondering how many citizens who had received such clichéd responses had felt discouraged to alert the EU Commission of breaches of EU law in the future. The EU Commission must have left my complaint open because I received a reply in December 2021, two years after my protest. This

time I was informed that my complaint would be closed because the EU Commission had sent a reasoned opinion to Bulgaria in October 2020 and because it was analyzing Bulgaria's reply. In its reply to me, the EU Commission also referred to its [press release](#) of October 2020 announcing its reasoned opinion, which states, among other arguments, that the Commission "has identified shortcomings in relation to public references to guilt, for example, when public authorities refer to a person as being guilty in public statements, and the availability of appropriate measures if this happens" in the case of Bulgaria. At the time, this looked like a partial victory because sending a reasoned opinion to a violating EU Member State is the last step which the EU Commission undertakes before taking it to the Court of Justice of the European Union (CJEU). Yet, my enthusiasm quickly melted when I learned that the EU Commission had decided to close case INFR(2018)0110 in May 2022 from the [public database of infringement decisions](#). This was bewildering because nothing had changed in Bulgaria in relation to the matter in the meantime – neither institutional practice, nor legislation. What assurances could Bulgaria have given to mislead the EU Commission that it had taken measures to comply with the Directive and deter it from taking it to court?

However, the bureaucratic mystery does not end here. In its [press release](#) of 28 September 2023 announcing infringement decisions, the EU Commission informs the general public that it has sent a letter of formal notice to Bulgaria (INFR(2023)2093). One of its concerns is that "[...]certain national transposition measures notified [...]fall short of the requirements of the Directive, in particular those concerning public references to guilt". Essentially, the EU Commission has started a new infringement procedure against Bulgaria. This, of course, begs the questions why the EU Commission had closed the earlier case against Bulgaria in 2022 – why did Bulgaria check the 'compliant' box over inappropriate references to guilt in 2022, but not in 2023, considering neither the relevant legislation has changed, nor institutional practice in the meantime? From the [Commission's website](#), one learns that "[m]ost cases are settled before being referred to the court". Yet, one cannot help but wonder if in 2022 the Commission turned a blind eye in the case of Bulgaria's breaches and accepted its assurances at face value for political reasons.

Bureaucratic Tricks Undermine Fundamental Rights

If you are a scholar researching the decay of the rule of law in the EU, you may feel tempted to do something instead of observing assaults on the rule of law as an officious bystander. Sadly, my experience shows that Bulgaria's failure to transpose Directive 2016/343, as well as its systemic breaches of fundamental rights, are not possible just because of its bad faith – the lenience bordering on complicity of EU institutions has also taken its toll. The disinterest of these institutions in actively protecting fundamental rights is, of course, hidden behind an array of unimpressive bureaucratic tricks – from endless delays in responding to citizen complaints, through empty hypocritical assurances of close monitoring, to actively seeking to smother complaints by citizens with dubious legal reasoning and, in my view, without due care. Coupled with the bigger picture of the [political murder](#) of Bulgaria's Cooperation and Verification Mechanism that was supposed to help Bulgaria achieve the rule of law, this lenience raises concerns that the EU exists as a community of values on paper, but not in practice. Even more depressingly, those whose fundamental rights, such as the right to be presumed innocent, have been wronged in Bulgaria can only resort to an application before the ECtHR – yet this was also the only way forward to fighting human rights abuses before Bulgaria joined the EU anyway.

