

Bulgaria's Kafkaesque Prosecutor's Office

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Framing and Raiding

In early June 2021, Bulgaria's Prosecutor's Office raided the Ministry of Interior and raised charges against a senior employee. According to the Minister of Interior Boyko Rashkov, the goal of the Prosecutor's Office is to sabotage an inquiry into illegal wiretapping. The senior employee who was charged indeed participated in the inquiry. A similar raid against the Bulgarian Presidency in July 2020 during which two of the President's advisors were arrested sparked mass protests demanding the resignation of both Borissov's government and General Prosecutor Ivan Geshev which lasted for months. Bulgaria's Prosecutor's Office is a Kafkaesque institution rather than a mere threat against the rule of law. Its crushing yet unrestrained authority is used as a weapon against the opponents of the status quo and a laundry detergent for corrupt politicians.

Wiretapping the Opposition

In democracies, wiretapping may be authorized under strict conditions to help investigate serious crime. The Law on Special Intelligence Means (LSIM) provides detailed instructions about the relevant procedures. However, the law in the books and the law in action severely differ. From the Yaneva Gate scandal which shook Bulgaria in 2015, citizens learned that judges authorized wiretapping without even reading the case materials and satisfied all whims of the Prosecutor's Office.

In the current controversy, Minister of Interior Boyko Rashkov confirmed that many opposition politicians, including the current Prime Minister Stefan Yanev, had been illegally wiretapped after the start of the mass protests last year. He also disclosed that he had received information that DANS (Bulgaria's secret services) were destroying proof related to these severe breaches of the law. Rashkov is a longstanding critic of Boyko Borissov and Ivan Geshev. He is an academic specialized in criminal procedure. Throughout his career, he has also worked as an investigator at the Prosecutor's Office and as a Head of the National Bureau for the Control of Special Intelligence Means – the independent state body responsible for overseeing the compliance with the procedures set forth in the LSIM. A person with Rashkov's background and expertise in the procedural intricacies of wiretapping is certainly an inconvenient opponent to Borissov's Frankenstate.

Rashkov, in his capacity as Minister of Interior, ordered an internal inquiry into this wiretapping controversy. It has the potential to expose criminal activity by the Prosecutor's Office, which may shed light on the motivation behind the prosecutorial raid

against the ministry. In turn, the motivation of Ivan Geshev to seek the wiretapping of the opposition during the protests is also easily discernable as the protests were aimed against him.

Sadly, no matter what Rashkov's inquiry exposes about the criminal activity of the Prosecutor's Office, the only institution competent to raise charges is the Prosecutor's Office. In other words, we have a classic catch-22.

Much ink has been spilled to describe the vertical Soviet structure of Bulgaria's Prosecutor's Office introduced in 1947 and its excessive powers which were enhanced by Borissov's regime. In the current system, a General Prosecutor cannot be investigated for crimes he committed in or out of office. In addition, because of the structure of the Supreme Judicial Council (SJC), the General Prosecutor traditionally chooses his heir. This means that a former General Prosecutor is technically immune from investigations, too. For instance, Ivan Geshev advanced in his career under the wing of former General Prosecutor Sotir Tsatsarov who proposed him for Vice General Prosecutor and, subsequently, for General Prosecutor. Even though civil society has similar concerns about Tsatsarov to the ones it has about Geshev, in the current system investigating Tsatsarov is impossible despite the fact that he is no longer a prosecutor.

That is why, civil society members not only demand Ivan Geshev's resignation, but also an overhaul of the SJC and the Prosecutor's Office, introducing checks and balances, so that abuses are curtailed. An abstract commentary, however, may not provide the full picture to a Western reader who cannot even begin to imagine the misuses of law which are possible in Bulgaria. By providing several examples, I will illustrate three common practices – framing, criminalizing facts which cannot constitute crimes, and raiding. The latter two flourished under Ivan Geshev's guidance.

The Impunity of General Prosecutors and the Framing of the Innocent

As shocking as it may sound, framing is a long-established practice of Bulgaria's Prosecutor's Office. *Kolevi v Bulgaria*, the pivotal judgment by the European Court of Human Rights (ECtHR) with which Bulgaria still has not complied, provides a good illustration. It concerns the alleged criminal activities of former General Prosecutor Nikola Filchev who the current General Prosecutor Ivan Geshev invited as his advisor.

The facts of the case are striking. Prosecutor Kolev worried that Filchev was framing innocent people and exposed his practices to the public. He was concerned that as a revenge Filchev would frame him too by planting drugs on him, so he warned many institutions which took no action. Kolev's fears materialized — he was framed for drug possession and excessively kept in custody. After a long court battle, Kolev was released. This is when he started a private inquiry into the alleged criminal activities of Filchev with a friend from the anti-terrorist department. This is also when he started fearing for his life and informed institutions about his worries. Again, no action was taken. A year later, Kolev was brutally murdered in front of his home and so was his friend.

In the *Kolevi* judgement, the ECtHR held that in the Bulgarian legal system the General Prosecutor is 'essentially immune from criminal prosecution and is virtually irremovable by means of impeachment for other misconduct'. The Council of Europe has not only called for a reform of the Prosecutor's Office, but also an objective investigation into Filchev's alleged implication in Kolev's murder which never materialized.

Related to *Kolevi*, we find another horror story from which we learn that one may be framed for a crime allegedly committed by the General Prosecutor as well. In 2011, the Queen's Bench refused the extradition of Dimitrinka Kalaidjieva who was accused of the murder of Nadezhda Georgieva ([2011] EWHC 2335 (Admin)). Both women were secretaries of General Prosecutor Nikola Filchev. Bulgaria's Prosecutor's Office claimed that Kalaidjieva, her husband, Prosecutor Kolev (the same one who was murdered) and another person had conspired to murder Georgieva.

The witness statements which Kalaidjieva gave before the English court are truly extraordinary – Kalaidjieva had seen Filchev threaten Prosecutor Kolev, she had been threatened by Filchev with a gun, too (para 4). Kalaidjieva also claimed that Filchev started harassing her after she provided evidence to authorities that he was involved in Georgieva's murder (para 5).

By relying on *Kolevi* and some of the remarkable evidence provided by Kalaidjieva, the Queen's Bench expressed great concern about the alarming state of Bulgaria's justice system and held: 'None of the later events which we have described provides any reassurance either that the prosecution is being conducted in good faith or that a fair trial is now possible' (para 35).

Needless to say, there has been no objective investigation into the murder of Georgieva or the likely links between her murder and the murders of Prosecutor Kolev and his colleague.

Ivan Geshev's Raids and Misuses of Criminal Law

A decade after the *Kolevi* judgment and the decision by the Queen's Bench, the state of Bulgaria's justice system is even more alarming. In addition to framing and conducting investigations in bad faith, Bulgaria's Prosecutor's Office now engages in criminalizing facts which cannot constitute a crime and in raiding.

In 2019, for instance, the Prosecutor's Office raised charges of terrorism against IT experts. Evgeniya Stankova, head of the Anti-Terrorism Division at the Prosecutor's Office, decided to provide evidence of these people's guilt to the public – she said that the IT experts had plans to hack the irrigation system of the Parliament's garden and activate it when foreign delegations visit. She further argued: 'In the prosecution, we have concluded that this would lead to instability, which would destabilize the whole political system'. Hacking the sprinklers in a garden certainly does not fulfill the necessary criteria in Article 108a of the Criminal Code to be defined as terrorism. How the political system of a country can be destabilized if one hacks the irrigation system of a rather tiny garden is also unclear. What is further shocking is that Free Europe Bulgaria inquired before

Parliament and established that it had no irrigation system – the gardens are watered manually. In other words, the Prosecutor's Office invents evidence to support the bombastic charges it presses.

In another striking case, a famous anticorruption journalist, his lawyer, and a businessman who is a government critic face charges for being an organized criminal group for treason. The President of the Union of Pharmacists in Bulgaria who is a professor of pharmaceuticals faced charges for causing panic which entails a two-year prison sentence under Article 326 of the Criminal Code just because she shared public data from the World Health Organization in an interview.

The most violent practice of the Prosecutor's Office, however, is raiding. The Prosecutor's Office has raided many businesses to help politicians to acquire them. The practice was discussed during the hearings of the committee investigating Borissov's corruption in the 45th Bulgarian National Assembly. There are public testimonies of people who have been racketeered, too. The usual scheme is as follows: 1) businessmen are racketeered by politicians and threatened with the Prosecutor's Office; 2) if they do not comply, their business is raided and they get arrested; 3) in custody, they are pressured to transfer assets. From the hearings in the 45th Bulgarian National Assembly, we learned that a businessman was even raped in custody as a form of torture to force him to transfer assets. According to the President of the Supreme Court of Cassation Lozan Panov, Geshev was promoted to General Prosecutor as a 'compensation' for his role in causing the insolvency of a bank.

Of course, as mentioned in the introduction, the Prosecutor's Office also raided the Presidency which, at the time, was the only institution dominated by the opposition. To civil society members this was an attack against President Rumen Radev in an attempt to silence him. The raid against the Ministry of Interior follows in the same footsteps.

Bulgaria's Kafkaesque Reality

According to the Merriam-Webster dictionary, Kafkaesque means 'having a nightmarishly complex, bizarre, or illogical quality'. The adjective pays tribute to Franz Kafka whose surreal fiction exposed the powerlessness of the individual crushed by nonsensical authority. It seems fitting to refer to Bulgaria's Prosecutor's Office which is not just a threat to the rule of law, but a key feature of Borissov's Frankenstate – a weapon against the opponents of the status quo and a laundry detergent for corrupt politicians.

If there is a ray of light in this at all, it lies in the fact that the current caretaker government is committed to exposing the criminal activity of the Prosecutor's Office and Borissov's regime. Minister Rashkov has publicly declared that he would not meet Ivan Geshev, thus clearly challenging his legitimacy. Meanwhile, the reforms needed to restore normality to Bulgaria's justice system can only be implemented by Parliament, which makes the elections scheduled for 11 July 2021 of pivotal importance. This means that Ivan Geshev will get more and more nervous in the meantime. If he is removed from office, he will not merely lose his job – he may face investigations for his abuses of office or other criminal activity he may have engaged in.

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