

BULGARIA

A Call to Protect the Rights of
Bulgarian Citizens from Systematic
Rule of Law Infringements under
European Union Law

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The European Commission's rule of law monitoring mechanism fails to address entrenched, systemic rule of law issues in Bulgaria, and is therefore glaringly ineffective at protecting Bulgarian citizens' rights under Article 2 of the Treaty on European Union and the Charter of Fundamental Rights of the EU.

Core rights, codified by the Charter of Fundamental Rights of the EU, that are endangered due to the incomplete reporting and flawed analysis of Bulgaria's systemic rule of law issues in the Commission's annual Rule of Law Report:

Human Dignity (Art.1)
Right to the integrity of the person (Art. 3)
Prohibition of torture and inhuman or degrading treatment or punishment (Art. 4)
Right to liberty and security (Art. 6)
Freedom of expression and information (Art. 11)
Freedom to conduct a business (Art. 16)
Right to property (Art. 17)
Equality before the law (Art. 20)
Non-discrimination (Art. 21)
Environmental protection (Art. 37)
Consumer protection (Art. 38)
Right to a good administration (Art. 41)
Right to an effective remedy and to a fair trial (Art. 47)
Presumption of innocence and right of defence (Art. 48)
Principles of legality and proportionality of criminal offences and penalties (Art. 49)

This pamphlet* has two aims: (i) to illustrate the gravity of systemic rule of law deficiencies in Bulgaria and the threat this poses to citizens' fundamental rights (ii) to articulate how the European Commission's new rule of law monitoring mechanism is ineffective at diagnosing and therefore being responsive to these issues.

WHY THE COMMISSION?

The European Commission, in its role as "guardian of the treaties", is responsible for ensuring European law is properly applied across the EU Member States. This includes protecting the values of the EU as stipulated in Article 2 of the Treaty on the European Union (TEU) and the [Charter of Fundamental Rights of the European Union \(CFR\)](#).

* This document draws on the more extensive study *Binding the Guardian: On the European Commission's Failure to Safeguard the Rule of Law*, by Albena Amanova and Bethany Howard (Azmanova, Howard 2021). Digital access to all of these documents can be found online: <https://claredaly.ie/category/rule-of-law-in-bulgaria/>

Article 2 of the TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

In order to enforce Article 2 of the TEU, and specifically the rule of law across the EU, the Commission adopted in 2019 a new strategy entitled *Strengthening the rule of law within the Union: a blueprint for action*—at the centre of which is an annual Rule of Law Report with county chapters surveying the health of the rule of law in all Member States. This mechanism aims to i) promote a rule of law culture in the EU by encouraging open dialogue, and ii) work as a preventative tool by detecting rule of law issues early and stopping them from escalating. So far, two rounds of reporting have been completed—in 2020 and 2021.

OUR TAKE ON IT:

The Commission's Rule of Law Report, instead of serving as a “preventative tool” and effectively diagnosing existing rule of law deficiencies in Bulgaria, has produced a partial, equivocal account of the systemic corruption that continues to infringe the fundamental rights of the Bulgarian people. The vague, diplomatic language used to narrate the state of the rule of law has been interpreted by EU governments in whichever way they see fit. The government of Prime Minister Boyko Borisov (2009-2021), marked by high-level corruption scandals and the narrowing of citizens' fundamental rights and freedoms in a state permeated by an oligarchic mafia - has quoted from the [2020 Rule of Law Report](#), as evidence of the EU's approval and patronage. The Bulgarian people were let down at a moment when they were mobilising themselves, in the summer and autumn of 2020, to end state capture by the mafia.

In our analysis of the 2020 and 2021 annual Rule of Law reports, we argue that by failing on its function as a guardian of the rule of law, the Commission has become complicit in the erosion of the rule of law in Europe and thus in its mandate to protect the fundamental rights of EU citizens.

Below, we survey some of the omissions and misrepresentations in the Reports' chapters on Bulgaria. In particular, we draw upon input submitted by anonymous and public stakeholders in the course of the consultation for the Commission's first 2020 Report. This provides insight into how the Commission chose to include (or ignore) received information during the preparation of the report. We follow the four-part structure of the Commission's Report: (1) justice system, (2) anti-corruption framework, (3) media pluralism, and (4) other institutional issues related to checks and balances. However, we have adjusted this framework to put emphasis on the inclusion of fundamental rights—an issue dealt with sporadically by the Commission.

The safeguarding of fundamental rights is the strongest protection there is against the arbitrary use of power (the core purpose of the rule of law)—infringements of rights and threats to freedoms need to be present prominently in any reporting on the rule of law's health.

I. THE JUSTICE SYSTEM

Our commentary on the justice system below overlaps with commentary on anti-corruption because the two issues are closely related in Bulgaria. The overarching problem is that political forces are using the justice system, including reforms purportedly aiming at fighting corruption, to complete the state capture by the oligarchic mafia.¹

The judicial oversight that Brussels imposed on Bulgaria upon its accession to the Union in 2007 has failed. The legal infrastructure the Commission requested has been largely put in place, but it has remained inefficient: Bulgaria never convicted any top politicians or mafia godfathers, while **EU funding, without effective accountability, is fuelling the mafia-government nexus, thereby facilitating the process of 'state capture' in an EU member state formally bound by Article 2 of the EU Treaty.**

In the opinion of Lozan Panov, President of the Supreme Court of Cassation, "the rule of law and the division of powers are highly compromised and key state institutions have been captured by private interests [...] At the same time real corruption remains unchecked and pervasive. Those who are independent from power are under constant attack. Lists of 'enemies' and 'traitors' are published in newspapers. Xenophobia and hatred have become a government policy" (Ivanov 2019).

¹ The term 'state capture' (i.e., the capture of state institutions by private interests) is used to describe a condition of systematic political corruption which leads to private interests having a considerable influence over the state's functions and using that influence to their benefit.

The Commission's review of the rule of law in Bulgaria correctly identifies the main challenges: a lack of effective accountability and criminal liability of the Prosecutor General, the authorities' failure to react to attacks against the judiciary, failure to regulate lobbying, lack of final convictions in high-level corruption cases, and lack of transparency of media ownership. However, the 2020 and 2021 Reports proceed to state that the latest Cooperation and Verification Mechanism (CVM), through which the Commission had monitored Bulgaria's reforms of its judiciary and anti-corruption framework, affirms that Bulgaria has made sufficient progress to meet its commitments² made at the time of its accession to the EU (2020: 1; 2021: 2).³ Even as it notes that "Bulgaria will need to continue working consistently on translating the commitments specified in its report into concrete legislation and on continued implementation", the judgment on progress ("meeting commitments"), combined with a list of outstanding issues and praise of planned reforms creates the distinct impression of a positive assessment on the health of the rule of law in Bulgaria, especially at the backdrop of the highly critical chapters on Hungary and Poland.

DUE PROCESS 1

In parallel to ordinary courts, a system of specialised judicial bodies has been established to deal with high-level corruption and organised crime: a Specialised Criminal Court, Specialised Prosecution, a Specialised Appeals Court, and the Anticorruption Commission with an attendant 'specialised' committee dealing with a pre-trial confiscation of property in cases of suspected corruption (the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission). These have been set up via 'extraordinary' legislation by Parliament. In their area of competence, these courts have enhanced powers that lie outside of the normal legal system. As Evgenni Dainov noted in a 2018 letter to Justice Commissioner Věra Jourová, those implicated within the system of specialised courts do not have recourse to the normal institutions of law and order and thus do not profit from due process (Dainov 2018). Civil society actors have condemned this parallel court system as a tool used for harassing opponents of the government. They have also raised concerns about the manner in which the judges of this court were selected—many being former prosecutors and less sensitive to fundamental rights (Vassileva 2019b). The Specialized Confiscation Commission has powers to seize property and block bank accounts without reference to any due process or court decisions. As of

2 As per the accession criteria (the so called '[Copenhagen criteria](#)'), Bulgaria was meant to ensure the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities'.

3 In reference to the central texts of this report, the European Commission's 2020 and 2021 Rule of Law reports, we shall insert page numbers rather than the full embedded reference. Complete reference to be found in the bibliography as EC 2020 and EC 2021.

December 2018, new legislation specifically allows the Confiscation Commission to hold on to confiscated property even after a court declares the person innocent. The justification that was offered of this measure is symptomatic of the absence of any notion of rule of law in the mindset of the political class. Bulgaria's then Justice Minister stated: "Even if the court declares some criminal innocent, society has the right for redress. The Confiscation Commission, by not returning property seized from this criminal, provides this redress" (Dainov 2019a). It is a presumption of guilt, not of innocence that governs relations within the anti-corruption network of specialised institutions.

None of these systemic sources of abuse of power have been mentioned in the Reports. In fact, the European Commission has praised Bulgaria for setting up this specialized court system in its CVM reports as well as in the 2020 Rule of Law Report, giving this as an example of progress.⁴

We will give texture to the problem with a few examples:

Former municipal mayor Dessislava Ivancheva was arrested on trumped up charges of corruption, handcuffed publicly for six hours (as a way for the government to showcase its fight against corruption), and refused bail by the Specialised Appeal Court for "demonstrative behaviour". The Specialised Court sentenced Dessislava Ivancheva to 20 years in prison for allegedly asking for a bribe from a real estate developer. Her former deputy Bilyana Petrova was sentenced to 15 years. This occurred amongst a collapse of witness testimonies and evidence (Rafailovich 2019b). The ECHR is looking into rights violations in regard to the nature of the arrest and the treatment of Ms Ivancheva in jail.

Businessman Anton Prodanov was detained in 2019 by the Special Prosecutor's Office and charged with leading an organized group for tax crimes. His business premises were shut down and bank accounts were blocked putting his company out of business. Notably, Mr Prodanov was the main witness in the case of the so-called Sausage-gate, for which the former MP Zhivko Martinov is accused of having extorted 4 tons of flat sausage from Mr Prodanov claiming they were for the Prime Minister Borissov (Yaneva 2020). Mr. Martinov received a 2-year suspended sentence; the prosecution terminated the investigation in January 2021 and the decision was confirmed by the specialized court of appeal. This case brings to light the logic at work in fighting graft and corruption in Bulgaria: the victims of corruption are punished while the perpetrators, usually well-connected political figures, run free.

⁴ Evgenii Dainov has repeatedly pointed out this contradiction in communications addressed to Justice Commissioner Jourová (Dainov 2018) (Dainov 2019b) and successive Justice Commissioner Didier Reynders of the European Commission (Dainov 2019a)—Copies of these letters are available on the website of MEP Clare Daly: <https://claredaly.ie/rule-of-law-bulgaria-letters/>

The 2020 Report, in its commentary on the anti-corruption framework, mentions “the complex and formalistic Bulgarian system of criminal procedural law has been highlighted by different reports and analyses over the years as an obstacle to the effective investigation and prosecution of high-level corruption”(11)—but refrains from addressing the arbitrary power of the specialized prosecution system.

The Report also notes the creation of the new Commission for Counteracting Corruption and Illegal Assets Forfeiture (the specialised committee of the Anti-Corruption Commission) and acknowledges that “[s]takeholders have raised concerns about its staffing, noting risks for the political independence of the Anti-corruption Commission’s work” (ibid.)—whilst merely citing that this body had “further streamlined its organisational structure” in the 2021 Report (2021: 13). The European Commission acknowledged in 2020 that “[s]takeholders have raised serious concerns that the civil confiscation cases are not conducted in an independent and impartial manner” (2020: 13). Bizarrely, concerns over the civil confiscation regime were not touched on in the 2021 Report. These superficial acknowledgments of imperfections do not question the systemic issue with the structure of this parallel system of courts and its unconstitutional nature.



Courthouse in Sofia, Bulgaria - Palace of Justice. Tupungato / Shutterstock.com.

JUDICIAL INDEPENDENCE ————— 2

The politicisation of the judiciary in Bulgaria is endemic and pervasive. Appointments are commonly based on personal relationships and deals rather than professional merit and application of established procedures. As per the testimony of Judge Metodi Lalov: “without knowing personally the key [political] figures and without their approval, nothing essential in the judicial system can happen. I was not chosen to be the court chairman [of the Sofia Regional Court] after a competition and wide public discussion. I was elected thanks to the blessing of the networks around Yaneva and Kolev [two high-ranking judges]” (EU Elections Bulgaria, Editors 2019). We will survey some of the systemic roots of this phenomenon below.

POLITICALLY INFLUENCED SUPREME JUDICIAL COUNCIL (SJC) ————— A

The Supreme Judicial Council (SJC) is responsible for the appointment and promotion of all magistrates (investigators, prosecutors and judges) as well as for monitoring their ethics. A Constitutional reform in 2015 introduced a system of appointments to this body that invites political influence over the judiciary. Thus, eleven of the SJC’s twenty-five members are directly elected by Bulgaria’s Parliament—appointments conducive to political influence. Moreover, the four prosecutors and one investigator who are elected to the SJC are direct subordinates of the Prosecutor General, who is an automatic member of the SJC. This is problematic because all prosecutors are under the direct control of the Prosecutor General, while the Prosecution is strongly influenced by the executive—as we discuss in more detail below.⁵

The 2020 Rule of Law Report notes that “the overall structure of the SJC could limit its ability to safeguard judicial independence against pressure by the executive, the legislature, the judiciary, including the office of the Prosecutor General and the SJC itself. The 2021 Report maintains this position and adds that the voting practice in the SJC “demonstrates the limited influence in decision-making of the peer-elected judges... and the potential influence of the PG over the SJC” (2021: 6). “The risk to judicial independence is evidenced by the number of judges subject to attacks, targeted criticism based on the content of their rulings or the recent rhetoric used by public figures” (2020: 6). Specifically, the Commission comments on the deficient independence of the SJC by noting that 1) The overall number of judges elected by their peers does not amount to a majority; 2) the

⁵ The willing subordination of the SJC to the executive became visible, for instance, when its members asked instructions from the government on how to vote on the suspension of the Polish National Judicial Council in the European Network of Councils for the Judiciary. (See Vassileva 2018).

Prosecutor General plays a decisive role in the Prosecutor's chamber as well as an influence on the plenary and potentially the Judges' chamber; 3) the "overall structure of the SJC would limit its ability to safeguard judicial independence against pressure by the executive, the legislative, the judiciary, including the office of the PG"; 4) The lack of judicial independence is evidenced by the number of judges subject to attacks and criticism on their rulings (2020: 6-7). However, deprived of proper diagnosis, and at the backdrop of the congratulatory reference to the Constitutional reform of 2015 which in fact deepened the SJC's dependence on political forces, the Report treats the issue only superficially, as a matter of incidents, rather than as a systemic problem.

We will illustrate the gravity of SJC's abuse of power with some examples:

In 2018, the President of the Supreme Court of Cassation Lozan Panov launched an inquiry into administrative malpractice by the Specialized Criminal Court of Appeal. Bulgaria's prosecution publicly instructed the latter court not to cooperate with the Supreme Court of Cassation, which is a violation of the hierarchy of the justice system enshrined in the Constitution. Moreover, the Supreme Judicial Council (SJC) initiated proceedings against Panov claiming he had threatened judicial independence, in view of impeaching him. This was the culmination of years of harassment against Panov, who has been a vocal critic of the interference of the executive into the judiciary. The European Commission has been informed of this systematic harassment against the President of the Supreme Court of Cassation, as parts of the larger problem of the politicisation of the judiciary.⁶ And yet, the Commission [provisionally closed](#) the 'judicial independence' benchmark under the Cooperation and Verification Mechanism in 2018,

*"...thus demonstrating
not only denial of reality,
but also complicity with
Bulgaria's executive"*

(Vassileva 2019c).

During the 2020 stakeholder consultation, the Commission was informed of the faulty software used by the SJC for the allocation of cases. An outside audit of the software conducted in the period 17/02/2020 - 09/03/2020 stated that the system

⁶ For instance, on 14 December 2018, Magistrats Européens pour la Démocratie et les Libertés (MEDEL 2018) addressed such a [letter to](#) the European Commission.

for random case allocation fails to adhere with good security practices. By the time the Report was published, the issue with the software vulnerabilities has not been addressed. “Instead, the Prosecutor General Geshev has expressed certainty about the culprits for the above-identified deficiencies. He publicly pointed at Judge Kalin Kalpakchiev, the current chairman of Bulgaria’s Union of Judges and a former member of the Supreme Judicial Council, Hristo Ivanov, the former minister of Justice and Lozan Panov, the chairman of the Supreme Court of Cassation. In blatant disregard of the presumption of innocence, the Prosecutor General has publicly declared someone responsible for a crime before any conclusion of an on-going investigation. The three men that the Prosecutor General Geshev has singled out have previously frequently voiced public criticism of Mr. Geshev and his methods. And as a result, have been the subject of previous smear campaigns by him” (Anonymous Contribution 9: 7).⁷ This issue was omitted from the Report.

Some of the structural issues within the SJC are acknowledged in the Report, but they are framed in a way to convey the government’s commitment to reforms and create the impression of progress amidst a reality of ‘backsliding’—that is, of deliberate and systematic assault on the rule of law by the dominant political forces in Bulgaria. The incidents we reviewed above, however, and which had been communicated to the Commission by external stakeholders are not referenced; neither is criticism included on the amendments to the Constitution of Bulgaria in 2015 which have been contested as having effectively decreased the independence of the SJC (Venice Commission 2015).

UNACCOUNTABLE PROSECUTOR’S OFFICE _____ **B**

Bulgaria’s Prosecutor’s Office is afflicted not by lack of independence, but rather by unaccountable, unconstrained powers. The prosecution has a monopoly and complete procedural control of the investigation process and pre-trial phase, and disproportionate powers at the trial stage. At the same time, there is no judicial review of prosecutorial refusals to open investigations; neither is there a viable procedure for effectively investigating the Prosecutor General. The omni-powerful prosecution system endangers the independence of the judges.

The 2020 and 2021 Rule of Law Reports poorly reflect the gravity of the abuse of power by the unaccountable Prosecution. They mention that the prosecution service has been subjected to a series of reforms that aimed to restructure it (2020: 3). The 2021 Report puts greater emphasis on the lack of possibility for an effective

⁷ ‘Anonymous contribution’ refers to the anonymous stakeholder input submitted to the Commission in the lead up to the 2020 Rule of Law report. For more information, please see Commission website: https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

criminal investigation of the Prosecutor General. It notes that the Committee of Ministers of the Council of Europe have stressed the importance of reducing the influence of the Prosecutor General and to do so by an “effective investigation mechanism” and “by extending the judicial review to any prosecutorial refusals to open investigations” (2021: 5). They also cite the European Court of Justice’s (CJEU) ruling on this matter, which considers the ineffectiveness of criminal investigations a “systemic problem” (Ibid.)

Thus, while the Report effectively addresses some of the problems and refers to Council of Europe recommendations, the criticism is framed in terms of incomplete reforms and lack of sufficient resources, not as a lack of political will to undertake the requested reforms.⁸

Legal expert Radosveta Vassileva also points out that the Reports omit several spending scandals that have occurred within the office. For example, the investment of “extremely expensive, luxurious cars” and “millions poured into the development of a police force associated with the Prosecutor’s Office”—a force that does not have a constitutional basis and whereby there is little knowledge of its objectives and work. According to Vassileva, it was this police force which raided Bulgaria’s Presidency, triggering mass civil protests during the summer of 2020—a fact omitted from the Commission’s 2020 Report (Vassileva 2020). Bulgaria has a long troublesome track record of losing cases before the ECHR because of severe violations by the Prosecutor’s Office and this has also been omitted in the Report (Ibid.). The privatisation of public power, the personalisation of public office and the synergy this allows between the judiciary and the executive is well brought to light by the fact that the Prosecutor General Geshev lives in a villa inside the compound of the executive in Boyana; at Geshev’s request, this villa was renovated with public money. Such infringements of the most basic norms pertaining to the rule of law have become so common that they are not even hidden by their perpetrators.

Examples of politically motivated actions of the Prosecution abound, making it a systemic phenomenon. The most conspicuous case was the illegal raiding of the Presidency by the police force of the Prosecutor’s Office on 9 July, 2020, carrying out searches of offices in relation to two pre-trial procedures. The legal affairs secretary of the President was arrested on charges of leaking of classified information and power abuse. This broke Art. 103 (4) of the Constitution stipulating that no one shall initiate criminal prosecution against the president and the vice-president.

⁸ Former Justice Minister Hristo Ivanov, one of the leaders of the anti-corruption movement in Bulgaria commented that Prime Minister Borissov rejected his proposals for reforming the mandate of the omni-powerful Chief Prosecutor by saying “I will do this only if Merkel asks me to” (Reported in Georgieva 2020).

Civil society has been also object of arbitrary use of power by organs of the judiciary and the executive, ranging from active harassment to refusals to investigate crime.⁹



Sofia, Bulgaria—June 02 2021. A woman with a slogan protests against the chief prosecutor of the republic. Yulian Staykov / Shutterstock.com

⁹ Thus, Georgi Georgiev, leader of the BOEC civic movement which has been active in anti-government protests was subjected to harassment by the authorities. In the first 40 weeks of 2019, he had already received 60 written summons to appear at either the local police station or the Prosecution's office. Another example of the prosecution's arbitrary execution of its mandate is in the case of Bulgarian businessman Emelivan Gebrev, who was poisoned with a Novichok-like substance in 2015. The poisoning preceded a sustained effort of Bulgarian state institutions to take over his business (the "Emco case"). Chief Prosecutor Sotir Tsatsarov refused to investigate the poisoning. The entire security apparatus of the state has persistently refused to investigate the presence of dangerous GRU agents on Bulgarian (and EU) soil (Dainov 2019b).

Individuals are suffering miscarriage of justice, as basic mechanisms of due process are suspended.

Thus, in September 2019 a Bulgarian court ordered the early release of an Australian citizen, Mr Jock Palfreeman, who had served 12 years in jail for manslaughter. The police refused to accept the ruling, immediately re-arrested Mr Palfreeman and held him in a detention centre for illegal migrants, citing orders from the Prosecution (HRW 2019). As the Bulgarian Judges Association writes in its input for the 2020 Rule of Law Report, “the case was used for propaganda purposes in the course of the ongoing procedure for selecting a Prosecutor General. On the one hand, it diverted attention from critical voices against the only candidate, and on the other, it demonized judges who took a critical stance against the coarse intervention of the executive in the election of high-ranking representatives of the judiciary” (Bulgarian Judges Association 2020).

In its input to the Report, the Bulgarian Prisoners’ Association notes, “When the Sofia City Prosecutor was requested to review some missed evidence in the Jock Palfreeman criminal trial, the Sofia City Prosecutors office categorically refused to even look at the newly presented evidence that contradicts the indictment and final court decision....the Prosecutor’s department very suspiciously chooses when to review evidence or cases and when not to, without a defined criteria or constant explanation. To summarise the official refusal of the Prosecutor’s office, the Prosecutor claimed that the reason there was no need to review newly found evidence contradicting the final court verdict was because there was a final court verdict” (Bulgarian Prisoners’ Association 2020a: 7).¹⁰

On this occasion, the Union of Judges in Bulgaria issued on 25 September 2019 an Open Letter to Bulgarian Citizens, signed by 292 judges, noting that “the government system has made no effort to guarantee the independence of the court as a fundamental pillar of the rule of law”, and that lack of such independence transforms “the court into a decorative facade for imposing the will of those who are politically powerful today, of those who have economic and power resources to manipulate the public opinion for their own benefit.” (Bulgarian Prisoners Association 2020a).

II. ANTI-CORRUPTION FRAMEWORK

Bulgaria is marked by a high degree of fusion between the economic and the political spheres through mafia-type oligarchic networks and practices of

¹⁰ We note that Jock Palfreeman is the head of this association and wrote this input.

influence peddling. Apart from its nefarious impact on society, this presents a distinct danger of abusing the EU funds Bulgaria receives. The defrauding of EU funds is of the scale of the largest markets for organized crime (CSD 2020). Although this phenomenon has been well reported by specialised bodies and the mass media, it is not addressed in the Rule of Law Reports.¹¹

LEGAL FRAMEWORK AND POLICY PRACTICE ——— 1

The European Commission's 2020 and 2021 Reports commend the comprehensive reform of the legal and institutional anti-corruption frameworks that was carried out in 2017 and 2018, through which the specialised judicial system discussed above was established. It is exactly this apparatus of specialised judicial bodies that the government weaponised to persecute its political opponents, often engaging a rhetoric about fighting corruption and protecting the political independence of the judiciary. Instead, the Commission notes that "The legal framework to fight corruption is largely in place, but challenges remain", among which are mentioned understaffing of the respective agencies; it also comments that "a solid track record of final convictions in high-level corruption cases remains to be established" (2020: 10, 12; 2021: 13)

The Commission has been informed by stakeholders and members of civil society that this framework is not only completely ineffective, but is also being actively used for political persecution by incumbants, in rampant violation of due process norms. Thus, in their input to the Commission's 2020 Report, the Bulgarian Institute for Legal initiatives notes, on the basis of a series of examples, that the decisional bodies have adopted these measures

"...not to build a comprehensive toolbox for prevention of corruption, but rather to arm themselves with respective munitions for the inter-institutional power-play"

(BILL 2020, c.17).

¹¹ See, for instance, "Corruption and 'State Capture' in Bulgaria", EU Reporter, 8/10/2020 (<https://www.eureporter.co/politics/2020/10/08/corruption-and-state-capture-in-bulgaria/>); Christian Oliver, "How Bulgaria became the EU's mafia state, Politico, 9/09/2020 (<https://www.politico.eu/article/bulgaria-how-it-became-mafia-state-of-eu/>); "Dogan, Peevski, Borisov, Bulgartabak, counterfeit and financing of terrorism", Bivol, 20/04/2021 (<https://bivol.bg/bulgartabac-and-illicit-trade.html>); Genka Shikerova, "Who is the businessman Ilchovski, what did he accuse Borisov of, and how this story evolves", Svobodna Evropa, 6/05/2021 (<https://www.svobodnaevropa.bg/a/31240938.html>).

There are at least two sets of issues related to the failure to contain corruption: (i) the consolidation of state capture, and (ii) the endangering of citizens' lives and wellbeing through nefarious economic practices. To highlight the gravity of the abuse of power in regard to both these sets of issues, we will mention a few examples.

CONSOLIDATION OF STATE CAPTURE ————— **A**

The systematic lack of investigation into high-level corruption cases has become a trademark of the Bulgarian judicial practice, and is indeed referred to by the Commission with the remark, "A solid track-record of final convictions in high-level corruption cases remains to be established" (2020:1). It also notes in its 2021 Report in relation to the conduct of civil servants and senior officials that there is a "limited evidence as to the effectiveness of measures related to the integrity of the public administration" (2021: 14). However, as this practice is the enabling mechanism of the state's capture by the oligarchic mafia, it merits more detailed scrutiny. We will illustrate the problem with two examples:

The so called 'apartment-gate scandal' was leaked in January 2019 through an investigation by the Sofia-based NGO Anti-Corruption Fund (ACF). It revealed that senior members of the ruling GERB party in Bulgaria were acquiring properties at a fraction of market prices. They were sold these properties by a construction company which members of parliament of the then ruling GERB party helped through changing legislation in its favour, (its license for building a controversial skyscraper had run out and the legislative change extended it). This resulted in Tsetska Tsacheva, the Justice Minister, stepping down, and the GERB's Deputy Chairman Tsvetan Tsvetanov resigning his parliamentary seat. Two deputy ministers also stepped down—all of whom had bought luxury apartments at low prices. The former head of the Anti-Corruption Commission, Plamen Georgiev, was also under investigation. Bulgaria's Prosecutor General launched an official investigation into the purchases in March 2019. All those involved have denied wrongdoing (Dimitrov 20219b; Dimitrov and Hope 2019). The Specialised Prosecutor's Office on 28 May 2020 declared that it will not investigate Tsvetan Tsvetanov and the Apartment-Gate scandal. The inquiry by the prosecutors concluded that no evidence was found of "Tsvetan Tsvetanov taking part in corruption or other crimes" (Rafailovich 2019a).

The Corporate Commercial Bank (CCB) Bankruptcy case (starting 2014 and in courts since 2018) is also indicative of the imbrication between political forces and economic elites and the arbitrary use of power by the prosecution (Tchobanov 2020). CCB collapsed in late 2014, causing the largest financial crisis in Bulgaria since the 1990s—the Bulgarian National Bank then took it over. The Government filed a lawsuit against the bank's largest shareholder, Tsvetan

Vassilev, on embezzlement charges. Vassilev blamed the the failure to a plot by the government and his competitors, and fled the country. The controversy around the investigation surrounds, amongst other things the connection between well-known politician and media magnate Delian Peevski (owner of numerous national newspapers, websites, radio and TV stations) and his credit dealings with the Bank. Forbes journalist Frances Coppola cites media reports at the time connecting the bank's failure to a spat between Tzvetan Vassilev and Delyan Peevski (Coppola 2015) which were left uninvestigated by the Prosecutor General despite substantial documentation trail and testimonials on the relationship between the Bank and Mr. Peevski (Anonymus Contribution 9: 13).

A series of reviews conducted by the interim government in 2021 revealed a systematic and widely spread practice of contracting without public tenders or with only one participant, a concentration of commissioned projects to a handful of companies, as well as multiple abuse of public funds.¹²

These are not isolated cases of failures of an otherwise sound system—these practices display features of deliberate and systematic abuse of public office. The current head of Bulgaria's Anti-Corruption Commission is former General Prosecutor Sotir Tsatsarov who has been implicated in a number of corruption scandals that have never been investigated. The European Commission failed to address this, although it has been well reported in the input submitted during the public consultation by several of the stakeholders for the 2020 Report.

The European Parliament has taken a stance on this matter, pointing out “the necessity of conducting serious, independent and active investigations and achieving results in the areas of anti-corruption, organised crime and money laundering, and of thoroughly looking into the allegations of high-level corruption... all of which—taken together—suggest deep and systemic weaknesses in rule of law and anti-corruption measures in Bulgaria.” (EP 2020: 7)

12 “Minister Petkov: Mismanagement and abuses for million in the management of dams” bulletin of the Ministry of Economy, 5/08/2021; “Minister Assen Vassilev: Ministry of Finance goal is to put an end to the inefficient use of public resources”, bulletin of the Ministry of Finance, 15.06.2021; “Minister Vassilev: Road Infrastructure Agency has used over 2,5 billion leva above its budget without contracts”, bulletin of the Ministry of Finance 8/07/2021; Eleonora Taneva, “Kiril Petkov: Insane salaries of 60 000 lv in the Bulgarian Bank of Development”, Bulgaria on Air, 7/07/2021 (<https://www.bgonair.bg/a/2-bulgaria/232116-kiril-petkov-v-bbrs-sa-i-razdavali-zaplati-po-60-000-lv>)



Sofia, Bulgaria—Sept 22 2021, Sofia central area. Day 76th of the furious anti-government protests against corrupt politicians and the ruling party GERB.. Yulian Staykov / Shutterstock.com

DAMAGES TO PEOPLE'S WELLBEING B

Public procurement rules, including for EU projects, are systematically violated—this has become one of the greatest sources of economic mismanagement in the country, which has reached such proportions that it is endangering not only the long-term economic welfare of the population, but citizen's lives. As Evgenii Dainov writes in his letter to Commissioner Reynders of 9 December 2019,

"...Corruption is now the universal regulator of social and political relations [...] This situation has severely undermined the market economy, governance and politics; and has now reached the stage of taking human life. Because of corruption, trains routinely derail from newly laid rails, while new roads kill"

(Dainov 2019a).

To illustrate the problem, we will relate a few cases:

The Struma motorway case involves the starting of illegal preparatory works before the official tenders opened, with no due environmental assessment and precautionary measures for protected species (Stefanova 2019). In January 2020, the Bulgarian government decided to forego EU funding in order to break EU environmental legislation by constructing (and paying from its own budget) the motorway along a route different from the one approved by the Commission (Petrova 2019).

Between 2007 and 2013, the EU has granted Bulgaria 101 million euros to build hotels in the country's poorest regions and boost tourism. But most of the money was used to build private homes, often by eminent political figures (Nikolov 2019; Bivol 2019). Other subsidy fraud staples include projects that do not really exist or projects that end up being so badly constructed that more European money is needed to repair them.

The Bulgarian democratic opposition has been accusing the EU of insufficient oversight, as the Union is still sending money to Bulgaria, even though some of it just funds the mafia.

In late 2018, environmentalists caught the builders of the Northern motorway illegally dredging riverbeds for free gravel. This kind of gravel contains a mass of organic material that cannot be used for foundations for a motorway; but that is what it is being illegally used for, making the future motorway a risk for its passengers. Such practices are well-reported but are unopposed by the government, and therefore condoned. A road constructed in transgression of all possible standards (because the bulk of the money was stolen) near the town of Svoge in 2018 resulted in the death of 20 people (Dainov 2019a). Recently, it came to light that the GERB government had paid upfront, to avoid a public tender, for the future construction of at least four bridges along that motorway—bridges which have neither construction license nor valid technical paperwork (Boncheva 2021).

WHISTLE-BLOWER PROTECTION ————— **2**

The Report registers well the flaws of the existing regime: the submission of anonymous alerts is not allowed (2020:14), nor does there exist a specific law on whistle-blower protection (2021: 15). However, the practices of persecution of critics persists due to the arbitrary and highly politicised use of public office by organs of the executive and the judiciary we discussed above. To illustrate with an example:

On April 10, 2020, Asena Stoimenova, chairman of the Bulgarian Pharmaceutical Union, received an indictment from the Bulgarian Prosecutor's Office under Art. 326# 1 of the Penal Code, which deals with violations against public peace and order and are punishable by imprisonment for a term not exceeding two years. The indictment is in connection with interviews Stoimenova gave to the Bulgarian National Radio and Bulgarian National Television regarding the supply of medication in the context of COVID-19 pandemic. In these media appearances, Stoimenova talks about stockpiling of medicines, the need for flexibility of legislation and the likelihood of a shortage of certain medicines. The Bulgarian Pharmaceutical Union has notified the European Commission as well as the European Parliament about this institutional attack against the freedom of speech. The Prosecutor's Office however has requested 20 000 BGN/10 000 euro bail for the release of Stoimenova (Anonymous Contribution 9: 12). The Association of European Journalists - Bulgaria condemned these acts of the Prosecutor's Office, pointing out that anybody who discloses information about any problem may face accusations on the same ground (AEJB 2020). The prosecution of experts and other people disclosing information has been reported by the Association of European Journalists (ibid.).

III. MEDIA, PLURALISM, FREEDOM OF EXPRESSION AND INFORMATION

The section on Media Pluralism in the Reports correctly discerns some of the critical flaws of the existing system: from the lack of transparency of media ownership ("source of concern"), the missing regulatory safeguards for fair and transparent distribution of state advertising, and the fact that the legal framework against political interference in the media does not explicitly forbid politicians from owning outlets (2020: 15-16).

The persecution of journalists is also mentioned, but worded in a cursory or euphemistic manner: "Media freedom associations claim that journalists and media owners face politically motivated charges with a view to silencing critical reporting. The Media Pluralism Monitor (MPM) 2020 reports cases where the State is allegedly threatening media independence by way of political, administrative and judicial pressure" (2020: 18, emphasis added). The 2021 Report mentions a single case of a journalist being beaten by the police and detained for 24 hours, which the Prosecutor's Office refused to investigate (2021:17). This statement does not reveal the systemic lack of accountability for the abuse against journalists: in Bulgaria, the public authorities do not undertake investigations into these

practices, and the Commission neither request nor recommends it. The rule of law relies on mechanisms of accountability and the Report's role should be above all to note where such mechanisms are missing, as well as seek responsibility for these omissions.

The elimination of the mass media as a check on the arbitrary use of power in Bulgaria takes place through a number of channels—from intimidation of journalists to the acquisition of key media outlets by oligarchic entities with partisan-political agendas. We review some of these pathways below.

Over 2018-2020, all reputable investigative journalists in mainstream television, as well as independent-minded TV anchors, were purged from the three major national TV channels (Dainov 2020). In September 2019, Bulgarian National Radio's main news and discussion channel Horizont was taken off the air. The official explanation was technical maintenance—ruled out by an investigation later on. The host, Silvia Velikova, was removed from the on-air rota the previous day, as four people whom the director general couldn't name considered that she was covering the election of the new chief prosecutor too critically (Anonymous Contribution 7: 10).

Moreover, the media scrutiny over the government is also reduced through the existing system of funding. News site Club Z discovered through a freedom of information request, that since Bulgaria joined the EU in 2007, 29.62€ millions of EU funds has been given to broadcasters through a 'direct negotiation'—where the government hands out funds without an open selection process (Twigg 2019). As one of the Report's anonymous stakeholders comments, "The government continues to allocate EU and public funding to media outlets with a complete lack of transparency, with the effect of encouraging recipients to go easy on the government in their reporting, or to refrain from covering certain problematic stories altogether. At the same time judicial harassment of independent media, such as the *Economedia group* and *Bivol* continued to increase" (Anonymous Contribution 7: 10). This issue is briefly mentioned in the 2020 Report: "EU Funds are allegedly used by local authorities to strengthen their control of local newspapers and TV channels" (2020: 16), with the 2021 report stating that the allocation of this funding "remains problematic" (2021: 16). This however, does not convey the scale of political control through funding and its impact on media pluralism.

The centralisation of power in the media facilitates the influence of oligarchic interests such as the dominance of the media mogul and MP Delyan Peevski. Reporters without Borders note: "Corruption and collusion between media, politicians and oligarchs is widespread in Bulgaria. The most notorious embodiment of this aberrant state of affairs is Delyan Peevski, who ostensibly owns two newspapers (Telegraph and Monitor) but also controls a TV channel (Kanal 3),

news websites and a large portion of print media distribution (Reporters Without Borders 2018, also mentioned in Anonymous Contribution 7)."

When Nova TV was acquired by the oligarch Kiril Domuschiev in 2019, "his arrival marked the layoff of a number of critical investigative journalists, such as well-known Mirolyuba Benatova. The position of independent reporters is further complicated by an unwritten agreement among pro-government news media not to hire journalists fired by another one in their circle. Newspapers openly opposing the government exist, but they have denounced their extremely unfavourable working conditions, as well as their lack of access to politicians from the governing coalition, who are impossible to interview outside of state-organised press conferences. In addition, several opposition journalists accused the police of verbal and physical violence - especially while covering the current protests against Borissov's cabinet" (Bevacqua 2021).

In early March 2020, investigative journalist Valia Ahchieva was condemned by the Supreme Judicial Council for her "aggressive" approach and the "violation of the judge's private sphere" in reference to her questioning of the president of Sofia's City Court, Alexey Trifonov. Her weekly investigative program with the Bulgarian National Television was suspended without any legal grounds, in what appeared to be another attempt to silence journalism that disturbs those in power (Gotev 2019).

In 2015, the owners of two independent media groups—Ivo Prokopiev (Economedica) and Ognyan Donev (ClubZ) were indicted by the prosecution a number of times. Another independent publisher - Sasho Donchev (SEGA) was the subject of several investigations. For many years prior to those indictments the editorial policy of these publications systematically sought accountability from the prosecution (Anonymous Contribution 2).

Surviving independent journalists and publicists are routinely victimized by the authorities and targeted by gangs in the service of the regime (tire-slashing and car-burning are favoured modes of attack, as in the case of Mr Velislav Minekov, a famous sculptor) (Dainov 2019b). "At the moment, media content is completely synchronised with the government's narrative. There are no dissenting voices... This warped media environment influences all of society." (Mirolyuba Benatova, quoted in Pavlova 2020)

A new restrictive system for press access inside the new Bulgarian Parliament building was imposed in September 2020 when the Bulgarian National Assembly was moved to another location. This came on the tails of increased violence towards, and intimidation of, journalists during the anti-government protests in the summer of 2020 (EURACTIV Bulgaria 2020; International Press Institute 2020). The European Parliament has rebuked these practices, declaring that it 'regrets

the recent restrictions imposed on journalists on the premises of the National Assembly, which limit their access to parliamentarians and thus the possibilities for media scrutiny over the work of the legislature’ (EP 2020a: 7).

As it is left unchecked by the Bulgarian and EU authorities whose job is to safeguard the rule of law, the stronghold of the oligarchic mafia on the mass media in Bulgaria is consolidating.

IV. OTHER ISSUES RELEVANT TO THE RULE OF LAW

USE OF THE LAW TO INCREASE ARBITRARY POWER — 1

While in power, the political party GERB has been abusing its dominant position in Parliament to pass legislation in breach of rule of law norms. On the 7th December 2018, Bulgaria’s Supreme Court of Cassation concluded, after reviewing case law by the ECHR and the EU Charter of Fundamental Rights, that unless there is a guilty verdict, a person’s property cannot be confiscated. In response, on the 10th of December 2018, the ruling party GERB introduced bills for amending the Law on Confiscation and other reforms which increased the powers of the Confiscation Commission, reduced the scope of the anti-corruption law to exclude some civil servants, as well as to authorise secret arrests (under 48 hours for adults and 24 hours for children).¹³ Radosveta Vassileva comments:

“On the 12th of December 2018, the [bill](#) was approved by Parliament without any discussion or consultation with civil society. It entered into force retroactively on 23 January 2018. This arbitrariness shocked not only Bulgaria’s civil society, but also the legal profession. In December 2018, prominent attorneys sent [a letter of protest](#) to the GERB member (Danail Kirilov) who introduced this bill as well as other controversial bills” (Vassileva 2019b). The Commission’s 2021 Report notes an increased number of draft laws proposed by Members of Parliament “without compulsory stakeholder consultation, impact assessment and compatibility check with EU legislation” (2021: 18)—however, there is no reprimand of the political actors who have breached basic rule of law norms, nor commentary on questionable legislation.

13 The Police now has the right to arrest and keep incommunicado (no right to contact the outside world) any adult for up to 48 hours; and any child for up to 24 hours. During that time, the authorities are not obliged to inform next of kin, parents etc. In the case of arrested children, the deputy-minister of Justice has defended (on TV) the action thus: “If a child has been arrested, that child has not been a good and obedient child” (reported in Dainov 2019b).

INDEPENDENT FUNCTIONING OF HUMAN RIGHTS / REGULATORY BODIES --- 2

The Report notes that the new draft law on foreign funding for NGOs endangers civil society” (2020: 1, 20) and that “in some occasions, members of the civil society appear to be under pressure, through smear campaigns, intimidation and negative narrative” (2021: 20). However, it fails to address the scope of the systemic affront on civil society organisations and other infringements of fundamental freedoms that are directly relevant to the rule of law.

As the Bulgarian Institute for Legal Initiatives comments in its input to the Report:

‘the independence of human rights and other regulatory bodies in Bulgaria is relative. The very election and appointment procedure of their leadership is highly politicized, lacks transparency, competitiveness and merits. Thus, institutions function not as a corrective, but rather as a rubber stamp for actions of the political status quo in the country. This leads to conclusions made by civil society actors and opposition that we have a state capture situation in Bulgaria.’ (Bulgarian Institute for Legal Initiatives 2020: 25).

POLICE BRUTALITY --- 3

In its commentary to the [Velikova V. Bulgaria group of cases](#), the Council of Europe comments: ‘The Committee noted however reports indicating the persistence of risks of ill-treatment by the police and of impunity in law enforcement. Given that this group of cases has remained under its supervision for 19 years, it insisted firmly on the need to rapidly adopt comprehensive additional measures to combat the risk of ill-treatment in police detention and to ensure the effectiveness of criminal investigations into allegations of ill-treatment by law-enforcement officers.... The Committee equally insisted on the need to strengthen existing safeguards against ill-treatment in detention, such as the legal assistance arrangements, the quality and confidentiality of medical examinations and the mechanisms of reporting to the Prosecutor’s Office of medical findings of signs of ill-treatment and complaints received by the police’ (CoE 2019b).

Concerning the civil protests in Bulgaria in the summer of 2020, the European Parliament “expresses particular dismay at the allegations of the use of [police] force against women and children, including children with disabilities; is concerned

by the unlawful and excessive audits conducted into private businesses that have publicly expressed their support for the protests; condemns the violent and disproportionate intervention by the police during the protests in July, August and September 2020.” (EP 2020a: 7)

As the government condones (through inaction) police brutality, tolerates and even rhetorically encourages groups of hooligans to clash with protesters at anti-government rallies, the Bulgarian political system begins to display some typical features of fascistic regimes.¹⁴ The Commission’s 2021 report discusses the police force briefly in relation to the integrity of the public administration. It cites new measures adopted by the Ministry of the Interior, e.g. a system of video recordings of actions by security officers and road patrols which have been used to “discipline, sanction or convict police officers from different departments” (2021: 14). However, the issue of police brutality is left unmentioned.

PRISON SYSTEM / DETENTION ————— 4

While commentary on this is missing in the Commission’s Reports, the European Parliament has condemned “the inhumane conditions in Bulgarian prisons found by the European Court of Human Rights, including the existence of overcrowding, poor sanitary and material conditions, limited possibilities for out-of-cell activities, inadequate medical care and the prolonged application of restrictive penitentiary regimes”(EP 2020a: 7-8).

MINORITY DISCRIMINATION AND ABUSE ————— 5

The Romani community has suffered long-lasting and systematic abuse in Bulgaria. While the European Commission is silent on this, the European Parliament has condemned these practices, writing that it:

“deplores the climate of hostility against people of Romani origin in some populated communities, particularly against those who had to leave their homes following rallies targeting their communities in several localities; deplores the mobbing and violent evictions of Roma people in the Voyvodinovo area... believes that it is necessary to fully eradicate the educational segregation of children of Romani origin; calls on the authorities to put a stop to hate speech and racial discrimination against people from the Romani minority in the response to

¹⁴ Football hooligans were giving Nazi salutes during a football game between Bulgaria and England in October 2019 (Wright 2019). “The Prosecution charged only one hooligan—for baring his backside. The case was dropped when the accused claimed that it was not him baring his backside, but his identical twin brother. The reason that these Nazis were not sanctioned is that they form the hardcore of a group of storm-troopers, routinely hired by the authorities to disturb and break up protests demanding rule of law and critical of the Prosecution” (Dainov, 2019a)

Covid-19, and to halt police operations targeting Romani neighbourhoods during the pandemic” (Ibid. 9-10).

VIOLATION OF INTERNATIONAL ASYLUM LAW ——— 6

There is no mention in the Report of this well-recorded issue. The European Parliament has voiced its concerns “that persons who may be in need of international protection have been prevented from entering Bulgarian territory or expelled, at times with force, without the opportunity to apply for asylum or an individualised assessment; is particularly concerned about the troubling deportation of members of the Turkish opposition, in violation of international treaties and despite valid court orders issued by competent Bulgarian courts.” (Ibid. 10-11)

LACK OF INVESTIGATION INTO HUMAN RIGHTS ABUSE AND ECHR JUDGEMENTS ————— 7

The Report mentions Council of Europe recommendations that are still to be implemented. However, the relevant issue, in view of rule of law supervision, is the systematic failure of the Bulgarian authorities to comply with the judgments of the European Court of Human Rights. The European Implementation Network, which tracks the implementation of ECHR judgements across Europe, found that as of February 2020, 48 percent of the ECHR’s leading judgments against Bulgaria [have not been](#) implemented. This finding is also supported by the 2019 annual report of the ombudsman of the Republic of Bulgaria.¹⁵ (Anonymous contribution 9: 15).

The European Parliament has sounded its “deep concern at the fact that following over 45 judgments against Bulgaria by the European Court of Human Rights, the Bulgarian authorities have failed to comply with their obligation to carry out effective investigations; considers that these recurrent shortcomings have revealed the existence of a systemic problem” (EP 2020a: 9).

This matter has been communicated to the Commission in the course of public consultations, therefore its omission is deliberate (Vassileva 2019a).

CONCLUSION

There is no rule of law backsliding in Bulgaria. It is rather a landslide into lawlessness, state capture and authoritarianism, to borrow from Evgenii Dainov’s letter to

¹⁵ An informal English translation of the relevant portion of the report is available [here](http://bpra.info/en/annual-report-on-the-activities-of-the-bulgarian-ombudsman-in-2019-%20pages-229-304/?fbclid=IwAR03x6xFFQHlGyWFhiiGQ-8D8T54U40-HhZicA8Emw2YlvELnpNXNEJ9U1c) (<http://bpra.info/en/annual-report-on-the-activities-of-the-bulgarian-ombudsman-in-2019-%20pages-229-304/?fbclid=IwAR03x6xFFQHlGyWFhiiGQ-8D8T54U40-HhZicA8Emw2YlvELnpNXNEJ9U1c>)

Justice Commissioner Didier Reynders of 2019 (Dainov 2019a). With its 2020 and 2021 Rule of Law Reports the Commission failed to clearly present ongoing grave, systemic rule of law violations, and thus support the efforts of Bulgaria's democratic forces to regain control of its politics.

By claiming progress despite the well-recorded evidence of assaults on the rule of law in Bulgaria—evidence regularly and thoroughly communicated to it—the European Commission has become complicit to the demise of the rule of law in this country. As Georgi Gotev, Senior Editor at *Euractiv* wrote: “The most serious problem with the Rule of Law Report is the attempt to create the impression that there is some movement in the right direction in Bulgaria, even as some problems are acknowledged. The facts indicate just the opposite” (Gotev 2021).

To the detriment of Bulgarian society, the Bulgarian incumbent has received a lenient treatment in these reports, in contrast to the distinctly harsher treatment of Romania, Poland and Hungary. This is an unequivocal endorsement of the Bulgarian establishment and its corrupt practices, at a time of massive protests against state-sponsored corruption. The glaring omissions and mischaracterisations culminate in a striking presentation of the anti-government [protests](#) of 2020 in a more favourable light for the government. The 2020 Report stated that the “lack of results in the fight against corruption is one of the key aspects raised throughout the summer 2020 protests” (EC 2020: 1). However, these protests did not simply express frustrations with ineffective policy, they were explicitly directed against the corrupt practices of the ruling party, its leader Prime Minister Borissov, and the oligarchic groups with whose help they stayed in power (Vassileva 2020).

This misconception was reinforced by Justice Commissioner Reynders during the debates held at the [European Parliament on 5 October 2020](#), when he stated: “The necessary structures are essentially in place, but Bulgaria has to make them deliver results more efficiently” (EP 2020b). This is a dangerously wrong diagnosis: as stakeholders and scholars have persistently explained, including in direct communication to Commissioner Reynders, the structures themselves are part of the problem.¹⁶ These specialised bodies stand outside the ordinary legal framework, surmounting due process, and are being deployed by the powerful of the day to consolidate their power and deepen the symbiosis between mafia and state. This enables the arbitrary use of power and is hence a direct assault on the rule of law, whose *raison d'être* is the prevention of tyranny.

The case of Bulgaria has disclosed the dangerous politicization of the European Commission which, for reasons of political expediency and under the influence of the European People's Party of which Bulgaria's Prime Minister at

¹⁶ For instance, in Professor Evgenii Dainov's letter to Commissioner Reynders of 9 December 2019 (Dainov 2019a)

the time was a loyal member, has given an extremely lenient account of the rule of law situation in this country. It has thus become complicit in the capture of the Bulgarian state by the oligarchic mafia.

The nefarious effects of systemic corruption and mismanagement in Bulgaria extend beyond the Bulgarian society: they extend to the EU at large. The lack of transparent management of funds and the lack of an accountable and effective National Prosecution Service to investigate and prosecute fraud directly threaten the financial interests of the EU.

It is not the European Union institutions, but the Bulgarian people who decide how their country is ruled; they need to reign in their political class and tie it to the demands of decent politics. However, the EU's support is crucially needed to empower the Bulgarian people in their fight for the rule of law. Responsibility without power is as futile as power without responsibility is deadly.



Sofia, Bulgaria—Jul 14 2020, People protesting on the main streets in the capital and demanding PM's resignation. Circlephoto / Shutterstock.com.

References:

- AEJB (Association of European Journalists—Bulgaria) 2020. '[Statement on the Charges Against the Chairwoman of the Bulgarian Pharmaceutical Union](#)', *AEJ-Bulgaria online*, (15 April)
- Anonymous Contribution 2. '[2020 Rule of Law Report—targeted stakeholder consultation](#)', *European Commission Publications*, (4 May)
- Anonymous Contribution 7. '[2020 Rule of Law Report—targeted stakeholder consultation](#)', *European Commission Publications*, (4 May)
- Anonymous Contribution 9. '[2020 Rule of Law Report—targeted stakeholder consultation](#)', *European Commission Publications*, (3 May)
- Antonov, Stefan. 2013. '[The Age of the Oligarchs: How a group of political and economic magnates have taken control of Bulgaria](#)', Reuters Institute Fellowship Paper, University of Oxford
- Azmanova, Alben; Howard, Bethany. 2021. *Binding the Guardian: On the European Commission's Failure to Safeguard the Rule of Law*, study commissioned by the LEFT group in the European Parliament.
- Bevacqua, Davide. 2021. '[Rule of Law: Romania and Bulgaria's reforms from within the Union](#)', *eurac research*, (18 Feb)
- Bivol (Editorial). 2019. '[Bulgarian Deputy Minister uses 'guest house' built with EU money as own vacation home](#)', (12 April)
- Boncheva, Juliana. 2021. '[Комитова показа нови безобразия в строежа на магистрала Хемус](#)', *CEFA*, 24 June.
- Bulgarian Institute for Legal Initiatives (BILI). 2020. '[2020 Rule of law report—targeted stakeholder consultation](#)', *European Commission Publications*, (4 May)
- Bulgarian Judges Association. 2020. '[2020 Rule of law report—targeted stakeholder consultation](#)', *European Commission Publications*, (4 May)
- Bulgarian Prisoners' Association for Rehabilitation. 2020a. '[2020 Rule of law report—targeted stakeholder consultation](#)', *European Commission Publications*, (4 May)
- Bulgarian Prisoners Association for Rehabilitation. 2020b. '[Judges across Bulgaria have sent a statement of the Bulgarian citizens](#)'
- Coppola, Frances. 2015. '[Bulgaria's Failed Corpbank: The Former Owner's Story](#)', *Forbes* (5 Oct)
- CoE (Council of Europe)2019a. 'Execution of the judgments of the European Court of Human Rights S.Z. and Kolevi against Bulgaria', Interim Resolution CM/ResDH(2019)367 (5 Dec)
- CoE (Council of Europe) 2019b. 'Velikova v. Bulgaria: Deaths and ill-treatment by the Police: where does Bulgaria stand 19 years after landmark judgement by the European Court?', *Latest Developments CoE Online* (27 Sep)
- CSD (Center for the Study of Democracy), 2020. '[Bulgarian Organised Crime Threat Assessment](#)', Sofia, (13 october)
- Dainov, Evgenni. 2020. '[How to dismantle a democracy: the case of Bulgaria](#)', *Open Democracy*, (15 June)
- Dainov, Evgenni. 2019a. 'Letter to Justice Commissioner Didier Reynders' (9 Dec)—available online: <https://claredaly.ie/rule-of-law-bulgaria-letters/>
- Dainov, Evgenni. 2019b. 'Letter to Commissioner Vera Jourova on the justice system in Bulgaria', (11 Jan)—available online: <https://claredaly.ie/rule-of-law-bulgaria-letters/>
- Dainov, Evgenni. 2018. 'Letter to Commissioner Jourova on the justice situation in Bulgaria', (4 Nov) – available online: <https://claredaly.ie/rule-of-law-bulgaria-letters/>
- Dimitrov, Martin. 2019a. '[Ex-Prosecutor General to Head Bulgaria's Anti-Corruption Commission](#)', *Balkan Insight*, (11 Dec)
- Dimitrov, Martin. 2019b. '[Bulgaria's 'ApartmentGate' Scandal Engulfs Anti-Corruption Chief](#)', *Balkan Insight*, (1 April)
- Dimitrov, Martin. 2019c. '[Bulgarians march in defence of rare dissenting judge](#)', *Balkans Insight*, (6 Feb)
- Dimitrov, Martin; Hope, Kerin. 2019 '[Bulgaria's 'apartmentgate' infuriates struggling citizens](#)', *Financial Times*, (25 April)
- EC (European Commission). 2021. '[2021 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria](#)', (20 July)
- EC (European Commission). 2020. '[2020 Rule of Law Report Country Chapter on the rule of law situation in Bulgaria](#)' (30 Sept)EIN/B (European Implementation Network\Bulgaria): <https://www.einnetwork.org/bulgaria-echr/>; cited data accessed on 12 October 2021.
- EP (European Parliament). 2020a. '[Resolution of 8 October 2020 on the rule of law and fundamental rights in Bulgaria \(2020/2793\(RSP\)\)](#)', (8 Oct)

- EP (European Parliament). 2020b. [‘Debate on the rule of law and fundamental rights in Bulgaria’](#), speech by Didier Reynders, (5 Oct)
- EURACTIV Bulgaria. 2020. [‘New rules in Bulgaria’s parliament building: Journalists cry foul’](#), (17 Sep)
- EUElectionsBulgaria, Editors. 2019. [‘Exclusive: A judge describes the brutal political pressure on Bulgarian judiciary’](#), (6 May)
- HRW (Human Rights Watch). 2019. [‘Bulgaria: Despite Court Order, Australian Still Detained’](#) (8 October)
- Georgieva, Teodora. 2020. “Boyko Borissov, Europe’s cowboy”, *БЪЛГЕР* (19 Dec.)
- Gotev, Georgi. 2021. Statement via email to recipients Albena Azmanova & Bethany Howard , (25 Feb)
- Gotev, Georgi. 2019. [‘Ahchieva’s investigation sends shockwaves to the Bulgarian judiciary’](#), *euelectionsbulgaria*, (23 April)
- International Press Institute. 2020. [‘Police violence and press restrictions raise further red flags in Bulgaria’](#), (24 Sep)
- Ivanov, Miroslav. 2019. [‘Lozan Panov: Dark times in Bulgarian justice yet to come’](#), *transmedia*, (26 July)
- Magistrats Européens pour la Démocratie et les Libertés (MEDEL). 2018. [‘MEDEL letter to the President of the EU Commission and to the EU Commissioner of Justice about the CVM report on Bulgaria and Romania’](#), (18 Dec)
- Nikolov, Krassen. 2019. [‘The biggest fraud with EU money in Bulgaria so far: the guesthouses scam’](#), EU Elections Bulgaria, (May 2)
- Oliver, Christian. 2020. [‘How Bulgaria became the EU’s mafia state’](#), *POLITICO*, (9 Sep)
- Petrova, Aleskia. 2020. [‘Bulgaria withdraws application for EU funding for Struma motorway section, sticks with project’](#), *seenews*, (16 Jan.)
- Petrova, Teodora. 2020. [‘The General Prosecutor Unbound’](#), *Verfassungsblog* (17 July)
- Rafaoilovich, Julia. 2019a. [‘The Prosecutor’s Office will not investigate Tsvetan Tsvetanov for the ApartmentGate scandal’](#), *Mediapool* (28 May)
- Rafaoilovich, Julia. 2019b. [‘Specialized Court Sentences Dessislava Ivancheva 20 years....’](#) *Mediapool*, (20 April)
- Reporters Without Borders. 2018. [‘White paper on media freedom in Bulgaria’](#), (4 May)
- Stefanova, Anelia. 2019. [‘New investigation in Knresna gorge reveals another major breach of law’](#), *Bankwatch Network*, (15 Feb)
- Tchobanov, Atanas. 2020. [‘Fincen files: proxy of Bulgaria’s ruling party and controversial Bulgarian mogul’s frontman emerges from ‘Magnitsky’ scheme’](#), *Bivol*, (30 Sep)
- Twig, Krasii. 2019. [‘Analysis: Bulgaria’s frail media freedom 30 years after the fall of communism’](#), *BBC monitoring*, (17 Oct)
- Venice Commission. 2015. [‘Opinion No. 816/2015 on the draft at to amend and supplement the Consitution \(in the field of the judiciary\) of the Republic of Bulgaria’](#), CDL-AD(2015)022, Venice, (23 Oct)
- Vassileva, Radosveta. 2021. Interview with Dr Radosveta Vassileva—conducted by Albena Azmanova and Bethany Howard, (3 March)
- Vassileva, Radosveta. 2020. [‘The Commission’s Rule of Law reports: A Diagnosis or an Autopsy?’](#), Personal Blog of Dr. Radosveta Vassileva, (11 Oct)
- Vassileva, Radosveta. 2019a. [‘So Why Don’t We Just Call the Whole Rule of Law Thing Off, Then?’](#) *Verfassungsblog*, (24 Oct)
- Vassileva, Radosveta. 2019b. [‘Is Bulgaria’s Rule of Law about to Die under the European Commission’s Nose? The Country’s Highest-Ranking Judge Fears So’](#), *Verfassungsblog* ,(23 April)
- Vassileva, Radosveta. 2019c. [‘Capturing Bulgaria’s Justice System: The Homestrech’](#), *Verfassungsblog*, (9 Jan)
- Vassileva, Radosveta. 2018. [‘The Polish Judicial Council v The Bulgarian Judicial Council: Can You Spot the Difference?’](#), *Verfassungsblog*, (22 Sep)
- Wright, George. 2019. [‘Bulgarian football and its problem with racism’](#), BBC News, (5 Oct)
- Yaneva, Valya. 2020. [‘The businessman from Dobrich Anton Prodanov was detained during an action of the Special Prosecutor’s Office’](#), *Darik*, (25 July)

