

## **Why is Mr. Borissov still keeping his unfit Minister of Justice!**

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In the spring of 2019 as a result of the so called “Apartmentgate” the Minister of Justice and former Head of the parliament Mrs. Tzacheva resigned. The vacated ministerial chair was taken by the, at that time, Head of the Legal Issues Committee in the parliament, Mr. Kirilov. His immediate actions as Minister of Justice were to attack some of his predecessors and political opponents, as well as to make the statement that he will resign if Bulgaria continues to be subject to the Cooperation and Verification Mechanism /CVM/. Mr. Kirilov is a controversial figure who has proved political flexibility moving from the socialist party /BSP/ to the currently ruling center-right party /GERB/ with ease and no prejudices. His appointment spurred outrage and protest among the legal community, especially because of his arrogant attitude in the parliament and his habit to circumvent parliamentary procedures in order to make path for lobbyist pieces of legislation.

In principle the leading legislative procedure should start from the executive – in the Bulgarian case the Council of Ministers where the various ministries are drafting laws and they are subject to a mandatory public discussion and after that are submitted in the parliament. However, Kirilov tolerated the so called “speedy track” of making laws, allowing single or a group of MPs to submit numerous types of laws, mostly in favour of particular interests. In that case there is no obligation for public hearing and the terms are shorter. One such law for example was the change in the Judicial System Act allowing for the lawyers who are in the Inspectorate at the SJC to be able to get a higher position in the hierarchy of the judiciary without participating in a competition /advancement in the judicial system at every level normally happens through a competition/. In the parliament Kirilov had also tried to push through laws restricting foreign funding for the professional associations of judges, prosecutors and investigators and obliging all magistrates to disclose participation in any professional or non for profit organization /he succeeded in the latter/.

Because of his dubious parliamentary practices and his negligence to the rule of law in December 2018, a group of Bulgarian attorneys asked for the first time for his resignation. After becoming a Minister of Justice he initiated a process for changes and amendments to the Criminal Procedure Code introducing a special procedure for prosecution and temporary removal from office of the so called “three big” in the Bulgarian judiciary – the Presidents of the two Supreme Courts and the Prosecutor General. This came as a response to the critiques to Bulgaria that the country lacks such a mechanism. However, what the Committee of Ministers, the European Commission, the Venice Commission and others have in mind is the fact that Bulgaria is not fulfilling the decision of the ECHR under the “Kolevi” case which is requiring to develop a mechanism for prosecution and accountability of the Prosecutor General only. The decision on the “Kolevi” case is from 2009 and for 10 years now the responsible Bulgarian authorities are basically refusing to introduce such a procedure, thus the Prosecutor General has become the most powerful figure in the country regardless of the political constellations. This infinite power, coupled with complete lack of accountability and a prosecution still structured as the former soviet one is distorting the key principle of any democratic society – the separation of powers and the need for a system of checks and balances.

Kirilov’s initiative was harshly criticized by lawyers and magistrates, mainly judges. Again his resignation was requested. He navigated through that by sending in September a request for an opinion from the Venice Commission on this particular draft. It is to be expected that the VC will come with an opinion by the end of this year.

The culmination of his arrogance and complete lack of respect towards people who do not support his interests came during the procedure for election of a next prosecutor general. It started in July 2019 and according to the law the Minister of Justice has the right to nominate a person for the position. Mr. Kirilov refused to do so with the argument that he prefers the prosecutors to nominate on their own and he does not want to interfere in the independent judiciary. The result was only one candidate, not less controversial than Mr. Kirilov and his election provoked numerous protests – pro and against. Again according to the law the Minister of Justice presides the sessions of the plenary of the Supreme Judicial Council /it elects the Prosecutor General/ without having a right to vote. During the hearing on October 24 he was facilitating the 10 hours discussion and the questions and answers part. It was obvious back then that he is not willing to hide his sympathies to the candidate despite his initial argument for not nominating a person for the position. After the refusal of the President to sign the decree for the appointment of the elected prosecutor general, the SJC carried out another session on November 14. During that session, the Minister of Justice behaved in an absolutely non-professional way, mocking and insulting members of the SJC who are not supportive of the elected prosecutor general. His behavior was at the edge of cynicism and corresponded to the behavior of the elected person. The result was an open letter signed by more than 170 Bulgarian judges demanding that both the Minister and the elected person publicly apologize and that the SJC initiates disciplinary procedures against them for undermining the prestige of the judiciary. As expected, both said that they will not apologize as there is no ground to do so and the members of the SJC are simply lacking a sense of humor.

Mr. Kirilov has proved that he is unfit for the position of Minister of Justice. Apparently he lacks the competence and schooling necessary for this high post. During his mandate as MP and now as a Minister of Justice he is continuously ignoring the importance of the judicial independence substituting it with personal attacks and humiliation. Bulgaria is a member of the EU and claims to be a democratic country with some level of operating institutions. No country will tolerate such attitude which harms its reputation and authority on the international arena. Prime Minister Borissov has surely observed the moves of his minister, but so far he did not comment on them. It is natural to ask the question – is Borissov doing so because he supports his minister's actions or is he keeping silent because his influence is weakening and the real power in the country is somewhere else? It was a public secret that he was not in favour of the only candidate for prosecutor general, nevertheless he backed him. One gets the feeling that there is an internal battle between the prosecution and the state and the prosecution is winning. If Borissov wants to show that he is still to be counted and capable of doing more than crossing the country in his jeep, he has to be tough and request the resignation of the Minister of Justice. If there is no action on his side, this will mean that he is playing in a match which he is losing and if there is one thing he hates most, it is to lose.