The Perpetual Interim

Bulgaria's Chief Prosecutor Without a Mandate

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06.02.2026 doi: 10.59704/d8a3bc24d193f86e

Bulgaria's chief prosecutor has no mandate. Borislav Saraffov has remained in office since June 2023, although Bulgarian law provides no basis for an interim chief prosecutor and his authority has formally expired. In October 2025, the Supreme Court of Cassation (SCC) said so explicitly. The office, however, remains occupied.

This is not an oversight but a structural choice. By normalising an "interim" appointment without temporal or constitutional limits, Bulgaria has insulated its most powerful legal office from the very rules meant to constrain it. An expired Supreme Judicial Council sustains this arrangement, while the judiciary itself is divided over who may lawfully exercise prosecutorial power.

This arrangement does not merely paralyse Bulgaria's prosecution service. It offers a lesson in how power can entrench itself without ever appearing to break the law. By relying on formal continuity, procedural improvisation, and cultivated legal uncertainty, the Bulgarian case shows how institutional capture can advance quietly – without constitutional rupture, public confrontation, or open defiance.

The "Bulgarian model": a subtle blueprint for capture

By successfully projecting an image of steady European integration, Bulgaria has kept its domestic constitutional crisis largely out of view. Unlike the open defiance seen in Warsaw or Budapest, where blunt constitutional rewrites and public confrontations triggered the Commission's conditionality mechanism, Sofia has avoided the spotlight.

The absence of open confrontation should not be mistaken for institutional stability. In Bulgaria, constitutional erosion proceeds more quietly and resists easy categorisation – yet remains no less dangerous. It works by mobilising the language of legality to empty legal rules of their substance. Expired mandates and an unauthorised chief prosecutor have stripped this approach of its credibility.

What sets the Bulgarian model apart is its informality. Rather than dismantling judicial independence through structural overhaul, as in Hungary or Poland, it relies on institutional inertia and procedural improvisation. This dynamic plays out most clearly within the prosecution service, which operates through a closed, hierarchical structure inherited from the Soviet era. In 2025, the conflict surfaced openly when the Supreme Court of Cassation and Borislav Saraffov clashed over the legality of his mandate, turning a technical dispute into a constitutional fault line.

Legislative deadlocks and defensive tactics

Borislav Saraffov took office in June 2023 following the early termination of Ivan Geshev's mandate for denigrating the judiciary. Notably, Bulgarian constitutional law provides no basis for an interim chief prosecutor. Even so, the Prosecutorial Chamber of the Supreme Judicial Council (SJC) bypassed a formal election procedure and appointed Saraffov under rules designed for minor administrative posts. This manoeuvre blurred a crucial distinction. The chief prosecutor does not exercise routine managerial authority but holds extensive and exceptional powers within the justice system.

Political instability since 2021 has entrenched this improvised governance. Several key institutions continue to operate with expired mandates, including the SJC, whose term ended in 2022, and its Inspectorate, whose mandate lapsed in 2020. In 2025, Parliament amended the Judiciary Act and curtailed the SJC's powers to elect a new chief prosecutor. Lawmak-

ers acted against the backdrop of a widely shared expectation that any renewed procedure would simply reproduce Saraffov's appointment. These amendments halted the chief prosecutor's election procedure and introduced a six-month time limit for interim positions across the judiciary.[1]

The interim loophole and clashes with the Supreme Court

When the six-month period expired on 21 July 2025, Saraffov argued that the new legal limit did not apply to him, as the SJC had appointed him before the amendment entered into force. The Prosecutorial Chamber of the SJC endorsed this interpretation. In October 2025, the Supreme Court of Cassation rejected it outright and stated that Saraffov was exercising the office in violation of the law. The Prosecution Office responded by accusing the Court of undermining judicial stability.

As 2026 unfolds, the situation remains unresolved. Saraffov continues to act as chief prosecutor, while the Constitutional Court faces a referral from the Varna Court of Appeal on the constitutionality of the amendment in light of the rule of law. At the same time, the Bulgarian Judges Association has called on the SCC to open an interpretative case to address diverging judicial practices on the legality of Saraffov's mandate.

By normalising interim authority at the head of the prosecution service, and by sustaining it through the SJC Prosecutorial Chamber, the system opens a loophole that allows an office-holder to sidestep the strict constitutional requirements for a regular appointment (which involves a 7-year term, Presidential decree, and a high-threshold vote). What the Constitution frames as an exceptional and time-bound solution risks turning into a permanent mode of governance.

The safer path of insecurity

Legal certainty lies at the heart of this conflict. When the highest court declares that the chief prosecutor's mandate has expired, yet the office continues to operate within a rigid, hierarchical prosecution service, uncertainty spreads well beyond a single post. It casts doubt on the validity of prosecutorial action, which weakens confidence in the justice system as a whole.

The public confrontation between an interim chief prosecutor and the SCC amplifies this effect. It undermines the authority of any judicial ruling more broadly and places judges in a precarious position. Reports of appellate judges siding with the prosecution reflect a climate shaped less by legal conviction than by concern over possible retaliation from an unusually powerful prosecutorial hierarchy.

What appears as a technical dispute over the applicability and retroactive reach of a legal amendment carries far wider consequences. The language of legality itself becomes a shield, offering cover for the continued exercise of power without mandate. Over time, this dynamic erodes Bulgaria's credibility within the EU, despite its recent entry into the Eurozone. When the highest judicial actors cannot agree on who lawfully holds the office of chief prosecutor, the constitutional promise of governance under the rule of law loses its practical meaning.

At stake is not only an institutional disagreement, but a basic question of constitutional order: whether the law binds the powerful, or whether the powerful decide when the law applies.

Paradoxically, the conflict has also allowed Bulgaria to signal formal commitment to judicial independence at EU level. This strategy has so far paid off. Bulgaria closed the Cooperation and Verification Mechanism (CVM) in 2023 and now falls under the ordinary annual rule-of-law review. Recent Commission reports adopt a notably restrained tone and overlook the fact that the underlying problems have not disappeared but shifted into a less visible and more

[1] Art. 33.4 Judiciary Act prevents the SJC with an expired term of office from electing a new chief prosecutor, and heads of the supreme courts and Art. 173.15 Judiciary Act stipulates that an interim head of the supreme courts or the prosecution cannot hold office for more than six months. These amendments entered into force on 21 January 2025.

entrenched form. Reluctant to reopen scrutiny so soon after closing the CVM, the Commission has avoided activating the Conditionality Mechanism under Regulation 2020/2092.

A wake-up call for Brussels

By formally closing the CVM, the EU signalled that it deemed Bulgaria's judicial reforms sufficient. This decision now functions as a diplomatic shield against more intrusive funding-freeze tools. In late 2025, the Commission postponed only a minor payment under the Recovery and Resilience Plan, despite persistent concerns over corruption and stalled judicial reform.

However, Bulgaria entered the Eurozone on 1 January 2026 and therefore narrowed the EU's room for manoeuvre. Declaring a country a systemic rule-of-law threat under the Conditionality Mechanism while simultaneously admitting it to the Eurozone would expose a deep institutional contradiction. The result is a familiar impasse. Having endorsed Bulgaria's formal compliance, the Commission has little appetite to revisit its own assessment. Recent rule-of-law reports therefore strike a cautious tone and overlook how constitutional dysfunction has not disappeared, but adapted to operate within the boundaries of legality.

Performative legality and its limits

Bulgaria's ability to perform legally has thus become a blueprint for a subtler form of democratic backsliding. The normalisation of an unauthorised chief prosecutor stands at its centre, but it does not remain an isolated anomaly. In late 2025, Borislav Saraffov met with the Hungarian counterpart Gábor Nagy to discuss rule-of-law cooperation, even as Bulgarian courts openly questioned the legality of his own mandate. The symbolism went largely unchallenged at EU level.

A similar pattern emerged in January 2026, when Prime Minister Rossen Zheliazkov, whose government had resigned amid mass protests, signed Trump's Board of Peace Charter alongside Victor Orbán. Zheliazkov did so without authorisation from the Council of Ministers, without a parliamentary mandate, and without renewed public confidence.

The subtle approach of Bulgaria to preserve legality while projecting an EU-friendly image is beginning to fray in these examples, where state actors openly choose positions that contradict the Union's core values. This is the endpoint of the perpetual interim. By tolerating power exercised without mandate, the state has shifted from a system governed by predictable legal rules to one shaped by institutional will. Bulgaria has used EU-friendly legality to conceal the hollowing out of its constitutional order. As long as the Union accepts this performance at face value, it risks endorsing a model of backsliding that avoids confrontation precisely by remaining formally compliant. Quiet monitoring will not suffice once the exception begins to look permanent.

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SUGGESTED CITATION

Katchaounova, Adela: The Perpetual Interim: Bulgaria's Chief Prosecutor Without a Mandate, Verfassungsblog, 06.02.2026, doi: 10.59704/d8a3bc24d193f86e.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260206-153159-0.