

CASE STUDY

SLAPP IN BULGARIA



MEDIA
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CENTER



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1. INTRODUCTION

There are no researches conducted in Bulgaria about the number of cases with extensive SLAPP elements. However, in recent years, this topic is subject of public discussions and monitoring by non-governmental organizations, including the Anti-Corruption Fund (ACF), the Association of European Journalists (AEJ) among others. In December 2022, AEJ organized a conference "New horizons in journalism", which one of the main topics was the intimidation lawsuits against journalists lodged by wealthy and influential people. At the conference, SLAPP cases employed by state authorities and not by politicians only, were recognized as specific character of the Bulgarian public environment (<https://aej-bulgaria.org/slapp-how-to-combat-the-cancer-of-public-participation/>).

Reported in the media cases against media and journalists, as well as the European Court of Human Rights' decisions, can be used as illustrations of proceedings (administrative, civil, criminal, and disciplinary) that have been filed improperly prompting legal entities and individuals to impose self-censorship on matters of public interest and to end publications or investigations about justice, public funds distribution mechanism, compromising transactions with participation of heads of state institutions, concentration of state resources in an insolvent bank (Corporate Commercial Bank – CCB) and currently under criminal investigation, inactive oversight institutions leading to the bankruptcy of the same bank, and concentration of media ownership imposing limitations on media freedom.

In 2022, the University Publishing House *St. Kliment Ohridski* published the book *The Justice Question. Journalists under trial in Bulgaria* by Assoc. Dr. Zhana Popova and Prof. Dr. Snezhana Popova from the Faculty of Journalism. The book contains interviews with 15 journalists brought to trial in connection with their work. It also deals with the problems related to such trials. One of the conclusions of the research is that some of the journalists under trial miss to provide reasons that their work is in the public interest. As result the arguments about balance between competing rights - the right to freedom of expression and information and the right to private and family life – is not a main topic of discussion in these cases.

The lawsuits with SLAPP elements burden lives and businesses of those they are brought against, both financially and existentially. The duration of these lawsuits creates legal uncertainty and consumes time and resources of the journalists under trial.

The main case study for Bulgaria is chosen because it illustrates the use of proceedings and cases with SLAPP elements over a period of several years (from 2009 to the beginning of 2023) against businessman and media owner, Mr. Ivo Prokopiev. Various proceedings have been used against him: massive tax and administrative inspections, administrative sanctions, civil cases, criminal proceedings against him and/or his business (publishing and other), seizure and confiscation of property for long periods of time, and attacks against journalists working in his media. Most of the cases were closed with rulings in favor of Mr. Prokopiev and the legal entities in which he is the owner or manager.

As illustration of the scale of the cases with elements of SLAPP in Bulgaria needs to be considered other landmark cases.

In the case of *Miroslava Todorova v. Bulgaria* of 19.10.2021, the European Court of Human Rights ruled that the disciplinary prosecution of a judge was not conducted for the purpose provided for in the law, but because of her active positions in relation to justice issues in Bulgaria being chairman of the Bulgarian Judges Association.

- <https://hudoc.echr.coe.int/eng?i=001-212376>

The case of Elena Yoncheva, a Bulgarian journalist and politician (member of the 44th National Assembly (NA) and MEP since 2019) also contains elements of SLAPP due to the fact that in connection with her statements about spending public funds, the prosecutor's office opened criminal proceedings for money laundering in connection with a loan she had received from a bank that subsequently went bankrupt (Corporate Commercial Bank, cited above). The European Parliament refused to lift her immunity as an MEP so that she could be prosecuted in Bulgaria, arguing that criminal proceedings should not be used as political weapons and that the charges had been brought to the prosecutor's office by two of Yoncheva's political opponents eight years (2018) after the alleged crimes had taken place, with no convincing explanation for the delay.



Another example is an ongoing defamation case by a judge against the online portal Mediapool.bg, which, according to the site's editor-in-chief Stoyana Georgieva, has made it impossible to pay reporters' salaries due to the site's modest financial resources, and has made journalists more cautious fearing the consequences when writing about potentially corrupt influencers.

2. Facts of the case

2.1. The facts of the case are presented and summarized upon receiving information from the office of the concerned businessman Ivo Prokopiev. These are supported by media publications (see links attached), information from the media, information provided by lawyers who represented Mr Prokopiev in administrative proceedings, and the ones who defended him, his wife Galya Prokopieva and journalists in the criminal and civil proceedings filed by and against them.

2.2. Mr. Prokopiev is a former journalist, and founder and first editor-in-chief of the *Capital* newspaper. Subsequently, he has become an entrepreneur but continued to be a media publisher - of the Economedia group. He was the chairman of the Confederation of Employers and Industrialists in Bulgaria from 2006 to 2010 and Honorary Consul of Canada in Bulgaria for the period 2010-2019.

As a shareholder and manager, Mr Prokopiev is directly related to the publishing house Economedia AD and with Alfa Finance Holding AD (as part of the holding group are Bulbrokers EAD, Solarpro Holding AD, including before 2012 - Kaolin JSC , etc.)

Economedia AD is the largest publisher of business media in Bulgaria and one of the leading online groups. Their portfolio includes *Capital*, the most influential economic publication, and the news site *Dnevnik*.

- <https://www.economedia.bg/show.php?guid=540846>
- <https://www.economedia.bg/izdania.php>

2.3. *Capital* weekly has published journalistic investigations for issues related to the bankrupt Corporate Commercial Bank since the period of its creation, materials broadcasting doubts surrounding the election of the Chief Prosecutor of the Republic of Bulgaria in 2012, and investigations for Stoyan Mavrodiev - head of The Financial Supervision Commission (and subsequently Chair of Bulgarian Development Bank) and his contacts with a convicted drug trafficker.

The journalistic investigations of *Capital* weekly have provoked an "institutional response" targeting termination the publishing house Economedica AD or its financial deterioration. Various drawbacks sanctions have been imposed on Mr. Prokopiev's business in order to discourage him from developing his media business.

Upon failure of the institutional harassment approach to achieve its intended effect, two criminal charges in two separate cases for different crimes were brought against Mr. Prokopiev. Respectively, both trials resulted in an acquittal and by closing the criminal proceedings with ruling that no crime has been committed. However, regardless of the absolution, two forfeiture proceedings were opened and are currently pending - 2023. Property valued at over BGN 200 million has been seized and confiscated from Mr. Prokopiev, his wife (journalist and executive director of Economedica JSC Galya Prokopieva) and companies in which they have a stake. The confiscation proceedings were instituted based on the criminal charges brought based on the Counteracting Corruption and Illegal Assets Forfeiture Act (in force since 6.03.2018, last amendment 2021). The law allows the confiscation proceedings to continue despite the criminal cases were closed with absolution. Currently, the property is still at risk to be confiscated despite the outcome of criminal cases. *A per se* legally baseless criminal charges provide grounds for a reasonable assumption that they have been brought solely for the purpose of creating a precondition for opening separate confiscation proceedings against Mr. Prokopiev and the companies he controls, in order to pressure him economically.

2.3.1. Journalistic investigations about Corporate Commercial Bank induced imposing heavy fines and attempting forcibly change of the ownership of the publisher of *Capital* and *Dnevnik*

2.3.1.1. In a series of publications over the period November 2009 to December 2010, *Capital* published journalistic investigations revealing that at the beginning of the mandate of the first cabinet of Prime Minister Boyko Borisov, 50% of the funds of the largest state-owned enterprises were concentrated in Corporate Commercial Bank; that the aggressive acquisition of other media (TVs and newspapers) by the family of Delyan Peevski (investigator and MP from the political party Movement for Rights and Freedoms) was financed with funds from

this bank, and the media themselves were used for extortion in order to protect the Corporate Commercial Bank model. Abuses and suspicions of corrupt practices by judges on the Supreme Administrative Court and vicious practices in this court were indicated.

- https://www.capital.bg/biznes/finansi/2009/11/27/822065_podozritelno_edinomisl_e/
- https://www.capital.bg/politika_i_ikonomika/bulgaria/2010/05/16/901600_korporativna_bankata_i_na_tazi_vlast/
- https://www.capital.bg/politika_i_ikonomika/bulgaria/2010/04/16/888290_petata_vlast_reket/
- https://www.capital.bg/politika_i_ikonomika/bulgaria/2010/06/04/912087_emeistvo_i_priiateli/
- https://www.capital.bg/blogove/pravo/2010/11/12/992776_suobrajeniiia_vurhu_suobrajeniiata_na_visshiiia_sudeben/

2.3.1.2. Irena Krasteva, mother of the MP from the Movement for Rights and Freedoms party Delyan Peevski, was in 2010 the sole owner of the "New Bulgarian Media Group", whose titles include the newspapers *Monitor*, *Telegraph*, *Politika* and others.

On June 11, 2010, Irena Krasteva filed a complaint against Economedia JSC with the Commission for Protection of Competition (CPC), claiming that the publications of *Capital* damaged the good name and trust of its competitors ("New Bulgarian Media Group") and violated the general prohibition on unfair competition. The request was to impose a fine equal to 10% of the turnover of Economedia AD, and to stop the journalistic articles published on the subject.

In January 2011, the CPC ruled against Economedia AD, imposing a fine of BGN 32,000 for investigative articles.

- https://www.capital.bg/politika_i_ikonomika/redakcionni_komentari/2010/06/11/915957 irena_krusteva_vnese_jalba_v_kzk_sreshtu_ikonomedia_ad/

Following a complaint by Economedica AD regarding the negative publications against Economedica AD in the newspapers *Monitor*, *Telegraph* and *Politika*, the CPC ruled to the detriment of Economedica AD.

- http://www.capital.bg/politika_i_ikonomika/bulgaria/2011/01/07/1021640_kzk_-_regulator_ili_cenzor/

2.3.1.3. During the period May 2011 - July 2012, the journalistic investigation continued, which revealed that the Corporate Commercial Bank group had aggressively entered and controlled a number of businesses - from the retail trade of fuels, through the privatization of Bulgartabac (the largest group for the manufacture of cigarettes and tobacco products in Bulgaria) by companies related to Delyan Peevski, to one of the three telecoms companies in Bulgaria, as well as through plans to establish a monopoly in the retail market for newspapers, magazines, and tobacco products, which later was implemented through the Lafka chain stores.

- https://www.capital.bg/biznes/finansi/2011/05/27/1096293_petrol_i_semeistvo_petrovi/
- https://www.capital.bg/biznes/kompanii/2011/04/29/1082004_bulgartabak_-_samo_za_favoriti/
- https://www.capital.bg/politika_i_ikonomika/redakcionni_komentari/2012/07/13/1865230_durjava_na_razuma_ili_na_mutrite/

2.3.1.4. The continuous journalistic investigations about the subject above, as well as the fact that the institutional pressure undertaken through the CPC did not have a deterrent effect, prompted a **hostile takeover of Economedica** in December 2012.

Since 2007, Alfa Bank has been a creditor of the Investment Information Agency and PH Media - at that time shareholders of Economedica AD (the company that publishes the newspapers *Capital*, *Capital Daily*, the website *dnevnik.bg* and other publications).

At the beginning of December 2012, by making an inquiry at the Commercial Register, Economedia AD discovered that Alfa Bank had undertaken a foreclosure procedure by appointment of a manager and the "absorption" of Economedia AD, which commercial enterprise asset was provided as collateral to the bank.

The Alfa Bank submitted a demand notice to the Commercial Register claiming a default of the loan agreement and declared "immediate acceleration of all overdue installments". The bank's action surprised the publishing house, because before opening the foreclosure procedure, all due loan installments had been paid. Regardless, Alfa Bank requested the appointment of a new manager and started the foreclosure of the commercial enterprise asset of Economedia AD.

In order to prove that there is no ground for demanding acceleration of the loan, Economedia AD filed a court claim against Alfa Bank. Simultaneously, Economedia AD requested a court order banning the entry of the new manager into the Commercial Register and foreclosure by the Alfa Bank. The court approved the request by Economedia JSC and suspended the registration on the grounds that there was a dispute between the company and the bank, and that Alfa Bank could not demand immediate acceleration before the dispute is resolved. On December 21, 2012, Economedia AD, with financial support from its shareholders, paid off its obligations to Alfa Bank in full and ahead of schedule.

The media group suspects that behind the attack from the Alpha bank are the interest of the people associated with Corporate Commercial Bank, Tsvetan Vasilev and Delyan Peevski, because they provided an extremely high bid to acquire the publishing group and as well as have an interest in stopping the publications for Corporate Commercial Bank.

2.3.2. In February 2013, upon publications of articles **concerning the chairman of the Financial Supervision Commission (FSC) Stoyan Mavrodiev, the institution headed by him took a number of administrative measures and imposed an unprecedented number and magnitude of fines on the publishing house Economedia JSC and other companies belonging to Mr. Prokopiev.**

On February 1, 2013, Dnevnik published material stating that the chairman of the Financial Supervisory Service, Stoyan Mavrodiev, had been summoned as a witness for the prosecution in a court case against Evelin Banev-Brendo on charges of laundering money obtained from the trafficking of drugs. Mr. Mavrodiev's signatures were on documents from two of the companies through which the financial operations had been carried out, including signed powers of attorney to the defendants in the case.

Mr. Mavrodiev initially denied any association with the case and his name was deleted from the publication, but the information was later confirmed and reinstated.

Publications on this matter also appear in *Capital*.

- http://www.dnevnik.bg/bulgaria/2013/02/01/1995603_shefut_na_kfn_stoian_mavrodiev_e_prizovan_kato/
- https://www.capital.bg/политика_и_икономика/имена/2013/02/15/2003781_brendo_chained/
- https://www.capital.bg/politika_i_ikonomika/2013/09/06/2135322_ispanskata_vruzka/

After these publications, Mr. Mavrodiev began a campaign against Economedia AD and Alfa Finance Holding AD, in which Mr. Prokopiev is the majority shareholder, and other companies related to him, using the Financial Supervision Commission (FSC) as a weapon to harass and apply institutional pressure.

Over the course of the following two years, the FSC issued more than 100 fines with a total value of over BGN 1 million, most of which have been struck down by the courts as illegal.

Over the same period, more than 25 coercive administrative acts were issued against the companies of the Alfa Finance Holding AD group and its management, and more than 100 requests for additional information made, often in impossibly short terms.

Legal provisions have been applied against Alfa Finance Holding AD and actions have been taken by the FSC which have not been applied or carried out against any other publishing house - for example, specific information concerning internal calculations has been requested only from Alfa Finance Holding AD. This information is not mandatorily required by law and is furthermore beyond the scope of inspection under the supervision of the FSC.

In another instance of an action directed solely at Alfa Finance Holding AD, a letter was sent by the FSC to all banks operating on the territory of Bulgaria, requesting information about all contracts under which the Alfa Finance Holding AD has obligations. The banks with whom the Alfa Finance Holding AD had worked were also requested to provide credit contracts complete with annexes, and access to the balance's sheets and transfers accounting of its accounts and those of the group companies for monitoring purposes.

The FSC has applied coercive measures against the group's business partners, forcing them to separate themselves from investments in companies related to Alfa Finance Holding AD, but not from directly analogous investments in other companies.

The FSC has deliberately published announcements and news about opening of administratively penalizing proceedings only for Alfa Finance Holding JSC and its management, and certain media have been provided with detailed, often internal, information concerning these proceedings.

In his capacity as chairman of the Financial Supervisory Commission, Mr. Mavrodiev has sent numerous reports to the prosecutor's office against Mr. Prokopiev and companies in which he has a stake.

The legal ground of the FSC to enforce administrative measures is Alfa Finance Holding AD being an securities issuer (publicly traded financial obligations instruments - bonds) and "the potential possibility of harming the interests of the holding's shareholders".

- http://www.dnevnik.bg/biznes/finans/2015/02/12/2471060_alfa_finans_holding_otgovori_na_trud_predi_mavrodiev/

On the first working day of 2016, the FSC imposed a record sanction of BGN 150,000 on Economedia AD.

In addition, the publishing house was fined a further BGN 10,000 after journalists refused to reveal their sources.

These fines were appealed and overturned by the court, but the case attracted public and international attention for the unprecedented and harsh intervention of a state regulator into the editorial policy of a media outlet.

During Mr. Mavrodiev's campaign against Mr. Prokopiev and his business, the FSC sent official letters to foreign banks conducting business relations with Alfa Finance Holding AD, aiming to discredit the Holding and its shareholders by repeating the defamatory claims. Similar letters were also sent to foreign regulators and institutions in connection with transactions in which Alfa Finance Holding AD had participated.

In June 2016, the court annulled the FSC's record fine against the publisher of *Capital* - Economedia JSC.

- http://www.capital.bg/politika_i_ikonomika/bulgaria/2016/06/12/2776199_sudut_otmeni_rekordnata_globa_na_mavrodiev_sreshtu/

As the FSC, under Mr Mavrodiev's leadership, was attacking the business and publishing interests of Mr. Prokopiev, the former was also pursuing personal legal cases against the latter.

In October 2013, Mr. Mavrodiev filed a court claim against Mr. Prokopiev, which he eventually lost at the end of April 2014. The court completely rejected Mr. Mavrodiev's complaints, ruling that the involvement of his name in the case of drug distribution by Evelin Banev - Brendo was indisputable fact, proven by the materials presented to the Sofia City Court, specifically from the minutes of court hearings and reasons provided in the verdict.

Respectively Mr. Prokopiev filed a civil case against Mr. Mavrodiev at the end of 2014, which he won in June 2019.

- http://www.dnevnik.bg/bulgaria/2017/09/01/3034743_ivo_prokopiev_osudi_bivs_hiia_shef_na_finansoviia/

2.3.3. In 2013, the National Revenue Agency (NRA) began a **full tax audit** of Economedia JSC, the *Capital* Foundation and Mr. Prokopiev and his wife Galya Prokopieva, as individuals.

In December 2013, a total of eleven full tax audits were appointed for the maximum permissible period of seven years for Economedia AD, Capital Foundation, Mr. Prokopiev and Mrs. Prokopieva, and several companies from within the structure of Alfa Finance Holding, in which Mr. Prokopiev is the main shareholder.

All tax audits were completed in 2014. The NRA's inspection of Economedia AD, covering the period 2007-2012, concluded that no violations are found. The personal tax audits of publisher Mr. Prokopiev and his wife Galya Prokopieva - executive director of Economedia, also concluded that no violations are found. However, the NRA found that Mrs Galya Prokopieva has a liability of BGN 2 and 89 cents with interest, which has been repaid.

These tax audits are a typical example of administrative harassment because they are not aimed at verifying a suspicion that someone's legal income does not correspond to their lifestyle, but intend to cause difficulties in the normal functioning of companies while intimidating their shareholders.

During the same period, inspections were carried out by the State Agency for National Security and the Economic Police. They also did not detect violations.

- http://www.dnevnik.bg/bulgaria/2014/09/03/2373504_nap_ne_otkri_danuchni_n_arusheniia_pri_proverkata_na/

2.3.4. The first criminal charge against Mr. Ivo Prokopiev (the EVN case)

The privatization of the minority state shares in the energy distribution companies in Bulgaria, which had been in preparation for several years, was set in motion with the sale of the state shares in the company's EVN Elektrorazpradelenie and EVN Elektrosnabdevane in

December 2011. According to its model, the sale of shares in CEZ and E.On (today Energo-pro) continued. Before proceeding with privatization, the Agency for Privatization and Post-Privatization Control organizes a competition for investment broker to handle the procedure through the Bulgarian Stock Exchange. Bulbrokers EAD - part of Alfa Finance Holding AD with majority shareholder Ivo Prokopiev, had been chosen to organize the offering of the state shares of 33% each in EVN Elektrorazpradelenie and EVN Elektrosnabdevane.

Bulbrokers EAD proposed to implement the transaction through the Bulgarian Stock Exchange using the closed auction method. This is a fair competitive method, as the market itself determines the value of the shares, and it cannot be below the minimum set by the Agency for Privatization and Post-Privatization Control.

The deal for the remaining minority EVN shares was hailed as a huge success by the government. In the midst of an economic and financial crisis, the purchase requests exceeded the offered shares by 130%, the achieved price was 1/3 above the minimum allowable price approved by the Agency for Privatization and Post-Privatization Control, and the amount received was almost BGN 100 million.

In September 2013, Mr. Mavrodiev, in his capacity as chairman of the Financial Supervisory Commission, submitted a report to the Chief Prosecutor Sotir Tsatsarov, in which it was claimed that the state interest had been seriously violated in the transaction for the privatization of the remaining EVN shares. In a number of interviews, Mr. Mavrodiev pushed the theory that the state had been damaged by BGN 87 million under this particular deal. According to him, violations included non-compliance with the procedure, conflict of interest and disproportionate damage to the state.

In January 2017, Mr. Prokopiev was brought in as a defendant in criminal proceedings for the privatization of the remaining EVN shares. At a special press conference at the Sofia City Court, the spokesperson for the prosecutor's office presented detailed information on the pre-trial proceedings and the evidence gathered.

The privatization of the minority share package of EVN Bulgaria by the "mixed closed auction" method was one of the three identical procedures for the sale of minority packages opened in electricity distribution companies at that time. Only one of these procedures, where the broker was a company in which the majority shareholder was Mr Prokopiev, was deemed criminal by the prosecutor's office, fully five years after its successful completion. The other two identical procedures with transactions of the same type were not so deemed. Simeon Dyankov and Traicho Traikov (ministers in the government of the Republic of Bulgaria at the time of the sale of the remaining shares in EVN) and Radoslav Rachev, Lyubomir Evstatiev and Petar Vassilev (associated with the company Bulbrokers EAD, part of the financial group of Alfa Finance Holding AD with majority shareholder Ivo Prokopiev) were also brought as defendants in this criminal case.

- https://www.capital.bg/politika_i_ikonomika/bulgaria/2017/01/06/2894391_vre_me_e_da_izvadim_deloto_ot_shkafa/
- https://www.capital.bg/politika_i_ikonomika/bulgaria/2017/01/10/2897378_prok_uraturata_obvini_izdatelia_na_kapital_ivo_prokopiev/

In October 2018, an indictment was filed in the Specialized Criminal Court (closed in 2022) charging Mr. Prokopiev with a crime under Art. 283a, item 1, Art. 282, para. 2nd paragraph para. 1 and Art. 20, para. 4, para. 1 of the Penalty Code, for his speech before the National Council for Tripartite Cooperation in his capacity as a representative of the Confederation of Employers and Industrialists in Bulgaria. For the crime charged, the law provides for a penalty of three to ten years of imprisonment. In the proceedings in this case, the court accepted for joint consideration in the criminal trial the civil claim filed by the state against Mr. Prokopiev and four other defendants for the sum of BGN 7,457,553.82 - for property damage to the state caused by the crime, together with legal interest from the date of the injury.

In the case, 46 court hearings were scheduled and 25 held between 8.11.2018 and 28.06.2020, when the Specialized Criminal Court acquitted Mr. Prokopiev and the other

defendants of all charges. Some of the hearings lasted many hours (at most 14 hours - from 10.00 to 00.38 hours), and 66 witnesses and 13 experts were questioned during twenty-two examinations.

Upon the case ended with an acquittal, the Chief Prosecutor Ivan Geshev commented on the development of the trial on Twitter as follows: "Respect for the decision of the court. Respect to fellow prosecutors. We have lost a small battle, but we are determined to win the war against corrupt politicians and criminally wealthy oligarchs. In the name of justice for robbed Bulgarians who deserve a better life"

- <https://news.lex.bg/%D1%81%D0%BF%D0%B5%D1%86%D1%81%D1%8A%D0%B4%D1%8A%D1%82-%D0%BE%D0%BF%D1%80%D0%B0%D0%B2%D0%B4%D0%B0-%D0%B4%D1%8F%D0%BD%D0%BA%D0%BE%D0%B2-%D1%82%D1%80%D0%B0%D0%B9%D0%BA%D0%BE%D0%B2-%D0%B8-%D0%BF%D1%80/?fbclid=IwAR3g0kmzsmDpYj537HPxOIP9MxCuozBGiC75Z2gGYvMWOotiTfCD-y71Eas>

The acquittal was protested by the Specialized Prosecutor's Office and confirmed, finally entering into force on 11.05.2021.

- https://www.capital.bg/politika_i_ikonomika/bulgaria/2020/06/21/4081360_deloto_evn_osven_politika_triabva_da_ima_i_logika_i/
- https://defakto.bg/2021/02/11/%D0%B2%D1%8A%D0%B7%D1%80%D0%B0%D0%B6%D0%B5%D0%BD%D0%B8%D0%B5-%D0%BD%D0%B0-%D0%B0%D0%B4%D0%B2-%D0%B4%D0%B0%D0%BD%D0%B8%D0%B5%D0%BB%D0%B0-%D0%B4%D0%BE%D0%BA%D0%BE%D0%B2%D1%81%D0%BA%D0%B0-%D0%BF%D0%BE/?fbclid=IwAR3zja_1zeqGvgxF0kiFyeMqUTosxd-xa8r-39xNU5E3RZEetpAbZSe7I-U

Mr. Prokopiev filed a civil case against the Prosecutor's Office demanding compensation for being illegally accused of committing a crime. The case is pending before the Sofia City Court.

According to the Law on Confiscation of Unlawfully Acquired Property, the Prosecutor's Office is obliged to notify the Unlawfully Acquired Assets Forfeiture Commission that it has brought charges for a certain range of crimes, among which is that for which Mr. Prokopiev was charged. If the property is found to be illegally acquired, the state has the right to confiscate it. The commission has started asset verification proceedings and has imposed security measures on his property, as well as on the property of his family and business, worth BGN 203,447,438.30.

On December 14, 2017, the article "*BGN 200 million seizure of Ivo Prokopiev's assets (OVERVIEW)*" was published -

- <https://trud.bg/200-%D0%BC%D0%BB%D0%BD-%D0%BB%D0%B2-%D0%B7%D0%B0%D0%BF%D0%BE%D1%80-%D0%B7%D0%B0-%D0%B0%D0%BA%D1%82%D0%B8%D0%B2%D0%B8-%D0%BD%D0%B0-%D0%B8%D0%B2%D0%BE-%D0%BF%D1%80%D0%BE%D0%BA%D0%BE%D0%BF%D0%B8%D0%B5/>

This proceeding has not ended and as of January 2023, the property is still blocked, which results to significant difficulties for the business of the companies affected by the precautionary measures imposed. The imposed securities have been repeatedly challenged in court, but have not been canceled, even though a significant part of the seized property (mainly company shares and real estate) does not belong to the companies / defendants in the confiscation proceedings, but to related parties.

- https://www.capital.bg/политика и икономика/българия/2017/15/12/3097235_nad_konpi_e_samo_gospod/

2.3.5. *Capital* is one of the few media outlets that has publicized suspicions surrounding the election of Mr. Sotir Tsatsarov as Chief Prosecutor in 2012. Already in the first months of his mandate, Chief Prosecutor Tsatsarov named *Dnevnik* and *Capital* as hostile media because of their articles critical of the prosecutor's office.

Shortly after, in January 2013, the Sofia City Prosecutor's Office began an investigation into the sale of Kaolin AD (part of the Alfa Finance Holding AD group, with majority shareholder and executive director Ivo Prokopiev) to a large international investor.

This criminal proceeding has been pending for seven years without an effective investigation, prosecution or termination. After a publication in *Capital* in July 2018, the same month Mr. Prokopiev was brought in as a defendant in the case.

Also, in July 2018, *Capital* published an investigation that implicated the name of former Prime Minister Boyko Borisov in the approval of large-scale transactions with the title "*Sweet investors, come to daddy.*"

- https://www.capital.bg/politika_i_ikonomika/bulgaria/2018/07/27/3288175_ia_elat_e_investitori_pri_batko/

On July 23, 2018, the prosecutor's office charged Mr. Prokopiev with the crime of money laundering and embezzlement - that on December 20, 2012, in his capacity as chairman of the Board of Directors of Alfa Finance Holding JSC, he converted (through the sale of Quarzwerke GmbH) 425,404 shares of Kaolin AD, which he knew had been acquired through serious intentional criminal activity. According to the indictment, the crime was committed jointly and in concert with other members of the board of Alfa Finance Holding AD, who were also accused of the same crime.

In connection with the indictment, the Commission for the Inspection of the Property of Accused Persons began a second inspection of Mr. Prokopiev's property. On March 30, 2020, the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission, announced that it had imposed new security measures on the property of Ivo and Galya Prokopievi and on companies in which he was a shareholder, worth BGN 256,000. While the proceedings continued and protective measures were in force, Ivo Prokopiev could not use the distrained and seized property, and in the case of an unfavorable decision his property could have been confiscated by the state.

On October 23, 2020, the prosecutor's office terminated the criminal proceedings against Mr. Prokopiev and the other defendants on all charges for the sale of Kaolin AD shares due to a lack of evidence that 425,404 Kaolin AD shares had been acquired through a serious intentional crime.

Upon appeal against the grounds for termination of proceedings, the Sofia Court of Appeals accepted that not merely the lack of evidence of a crime, but the absence of a crime at all, was a sound reason for the termination of proceedings.

Mr Prokopiev filed a civil case against the prosecutor's office including a request for compensation for being illegally accused of committing a crime.

With a decision dated 16.12.2022, the court awarded him compensation in the amount of BGN 40,000, together with interest and costs, accepting that Mr. Prokopiev "has a fairly wide reputation that covers all layers of society, related to media, politics and entrepreneurship. He leads commercial structures carrying out commercial, financial and other activities in and outside the country, and these connections are numerous. Indeed, when a charge of "money laundering" (serious financial crime) is brought, the person's name is tarnished, and if he is a large entrepreneur, it is also poses a problem in future communication with co-contractors. At least in Bulgarian society it is known that Mr. Prokopiev is under investigation. That he was acquitted is hardly widespread and meaningful news." The decision is not final and is subject to appeal by the Prosecutor's Office.

The proceedings under the Law on Combating Corruption and Confiscation of Unlawfully Acquired Assets, which began against Mr. Prokopiev in connection with the charge brought against him for an intentional crime in connection with the sale of the shares of Kaolin EAD, have not ended even as of January 2023, although the criminal proceedings were terminated and the prosecutor's office was convicted in the first instance for damages caused to Mr. Prokopiev by an illegally brought accusation.

2.3.6. Cases and investigations against journalists from *Capital*

The editor at *Capital* Mr. Nikolay Stoyanov is being sued in three cases filed by Stoyan Mavrodiev and the Cypriot citizen Michael Timovios. In April 2020, Mr. Mavrodiev was removed as a director of the Bulgarian Development Bank following a publication by Mr. Stoyanov in *Capital*.

Rosen Bosev is a journalist at *Capital*. In connection with an article on Mr. Mavrodiev's summons in the case against Evelin Banev - Brendo, Mr. Bosev made a round of media appearances in which he explained the context and the series of fines imposed on the editors of *Capital* and *Dnevnik*, as well as on Economedia. Because of his words "Stoyan Mavrodiev used the FSC to repress *Capital* and *Dnevnik*", and Mr. Bosev was convicted of defamation. Currently, his complaint for the violation of his right to free expression under Art. 10 of the European Convention on Human Rights and Fundamental Freedoms is pending before the European Court of Human Rights.

In December 2022, *Capital* editor-in-chief Alexey Lazarov and journalist Desislava Nikolova were summoned for questioning over an article describing the exorbitant overcharges that state hospitals had paid for special drugs. In his statement to the media, Mr. Lazarov reported that the police had asked questions about whether they had fulfilled their duties as journalists in good faith, and he expressed indignation that health officials, who purchase medicine for cancer-stricken children at excessively high prices, do not give explanations, and nor do the journalists who publicize these problems.

- <https://boulevardbulgaria.bg/articles/zhurnalisti-ot-kapital-sa-vikani-na-razpit-v-sdvr-zaradi-statiya-za-zloupotrebi-s-porachki-na-lekarstva>

3. Plaintiff's strategy

3.1. In the case, the plaintiff cannot be defined as a single person, but a number of state bodies and the individuals at management level, who, by carrying out inspections, filing lawsuits and blocking assets of great value, aim to demotivate a media owner from financing independent investigative journalism in Bulgaria.

Attempts to block participation in public debate on important topics through showing down procedures and cultivating a fear of unbearably severe administrative and criminal sanctions have seen prolonged use over the years and have involved various individuals, as independent investigative journalism has tried to expose various sores in the management of public finances and corruption. As seen from the facts above, during the period 2009 to 2022, various investigations were published in *Capital* which were followed by procedures implemented by the subjects of the investigations, with the aim of destroying or blocking the media company's financial resources and discouraging further investigative work.

3.2. Due to the fact that the institutional pressure used has not led to the desired results, there is a gradation in the severity of the influence attempts - from financial sanctions by state bodies such as the Commission for the Protection of Competition and the Financial Supervision Commission, to tax audits, attempts to replace the management, and buyouts of the Economedia publishing house through a creditor bank. They have also included two criminal charges leveled personally against Mr. Prokopiev, as well as related civil claims for over BGN 7 million, and cases to verify the legality of his property. The latter was accompanied by blocking and preventing the use of business property worth over BGN 203 million.

3.3. In parallel, criminal and civil cases have also been conducted against investigative journalists and editors at *Capital* and executive directors at other companies from Mr. Prokopiev's business.

Separately, in a number of media, defined as tabloid and with unclear ownership, the cases against Mr. Prokopiev and his media were widely covered, purposefully creating a negative image of him in order to damage trust in the truth of his media publications.

3.4. After bringing criminal charges against Mr. Prokopiev in public statements by high-ranking individuals, the media and his business have been discussed via the prism of the accusations against him: of causing enormous damage to the state and money laundering, while completely ignoring the fundamental presumption of innocence established by the European Convention on Human Rights and Fundamental Freedoms.

3.5. The many cases have also resulted in serious legal costs and attorneys' fees.

3.6. As a strategy of those leading the battle against independent journalism, it can be summarized that the purpose of the inspections, cases and imposed sanctions and guarantees was not to seek responsibility for real violations and crimes, but to create financial and personal difficulties in order to discourage public participation. This conclusion follows from the facts that the vast majority of the imposed sanctions have been canceled by the courts, the inspections (regarding tax and other matters) have ended with no findings of violations, and the criminal charges have concluded with acquittals and an order to pay compensation for an illegal accusation.

3.7. The deterrence strategy continues to be implemented through the presence of still-pending asset forfeiture proceedings. As of January 2023, the property concerned is still blocked, which has led to significant difficulties for the companies affected by the imposed precautionary measures. The imposed securities were repeatedly challenged in court, but have not been canceled, although a significant part of the seized property (mainly company shares and real estate) does not belong to the companies - defendants in the confiscation proceedings, but to related parties.

4. Defense strategy

4.1. In Bulgaria, there is no possibility of protection by reference to SLAPP elements.

4.2. A general defense strategy for the different types of cases is not possible - the defense is against any action taken in the order provided for in the legislation. The imposed fines with criminal decrees are appealed before the court, the defense in criminal cases is within each case. In all cases, where relevant, reference has been made to the rights under the European Convention on Human Rights and Fundamental Freedoms: specifically, the right to a fair trial, the right to freedom of expression, and the right to private and family life.

4.3. As a general strategy, the use of all legal means to respond to the imposed sanctions and seeking responsibility from private individuals in separate proceedings (e.g. Ivo Prokopiev vs. Stoyan Mavrodiev), ensuring the protection of journalists and assuming the costs thereof can be determined.

4.4. As a general strategy, publicity can be defined - the wide media coverage of what is happening.

5. Cases impact and conclusion

5.1. The reported cases provoked reactions from international journalistic organizations and political figures. Some of these are:

5.1.1. Organization for Security and Co-operation in Europe (OSCE - <https://www.osce.org/>) - Harlem Désir, Representative on Freedom of the Media at the Organization for Security and Co-operation in Europe. In addition to the position on the official Twitter account, information about the case is also included in his Regular Report to the Permanent Council dated June 2, 2020 on page 19 of the document

- https://www.osce.org/files/f/documents/4/9/456130_0.pdf.

In the same report from 2018, there is also a paragraph on the assets frozen by the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Commission on page 12

- https://www.osce.org/files/f/documents/3/0/386301_2.pdf

5.1.2. 2018 Reporters Without Borders Position

- <https://rsf.org/en/bulgaria-harasses-independent-media-group-again>

5.1.3. Post by Christophe Deloire, Secretary General of Reporters Without Borders on Twitter, 06/26/2020.

5.1.4. Publication on the Facebook profile of the Media Program for Southeast Europe at the Konrad Adenauer Foundation from 26.06.2020

- <https://www.facebook.com/114162855308118/posts/3273608169363555/?d=n>

5.1.5. Position of the Association of European Journalists in Bulgaria (AEJ)

- https://aej-bulgaria.org/en/aej-expresses-urgent-concerns-about-threat-of-prison-term-against-bulgarian-media-owner-for-voicing-opinions/?fbclid=IwAR3JiSq8Fo-Aw0x80vByk7_yHJQvm0kkXx_HAB8yrQr1z5WU1wOZNW2AxM4

5.1.6. Position of Christian Spahr, spokesperson for the European Commission at the time, on his personal Twitter account

5.1.7. Position of Vincent Peyregne, CEO of the World Association of News Publishers (WAN-IFRA). The World Association of Newspaper and News Publishers is the global publishers' association established in 1948. It is a non-profit, non-governmental organization made up of 76 national newspaper associations and many individual newspaper executives in 100 countries.

5.1.8. Position of the European Newspaper Publishers Association

- <https://www.enpa.eu/>

5.2. The reported cases have had an impact on the targeted businessman in the sense of diverting his attention and resources (time and financial) away from his usual media and business activities and toward organizing a defense and participating in legal proceedings for over 10 years.

5.3. The personality of Mr. Prokopiev was the object of increased media interest during the inspections against him and his business and especially during the criminal proceedings, which were widely covered by all media in Bulgaria. Footage of Mr. Prokopiev as a defendant in the courtrooms is still available in the public domain. These circumstances have led to a change in public opinion about him, damage to his image as a businessman, doubts over his moral qualities and the legality of his business, and doubts over the reliability of the information presented by him in the media.

5.4. In conclusion, it should be noted that quality legal protection is the basis of success against unlawful attacks. The anti-SLAPP protection mechanisms provided for in the proposed EU Directive are designed to alleviate the adverse effects sought by plaintiffs in lawsuits seeking to restrict the right to expression and freedom of the media.