

Press release issued by the Registrar

Chamber judgment¹

[Kolevi v. Bulgaria](#) (application no. 1108/02)

**UNLAWFUL DETENTION OF A SENIOR BULGARIAN PROSECUTOR AND
INEFFECTIVE INVESTIGATION INTO HIS MURDER**

***Violations of Article 2 (right to life) and
Article 5 §§ 1, 3 and 4 (right to liberty and security)
of the European Convention on Human Rights***

Under Article 41 (just satisfaction) of the Convention, the Court awarded 30,000 euros (EUR) in respect of non-pecuniary damage, and EUR 5,280 for costs and expenses.

(The judgment is available only in English).

Principal facts

The first applicant, Nikolai Kolev, was a Bulgarian national born in 1949. He died in December 2002. His wife and two children maintained his application after his death and submitted additional complaints.

Mr Kolev was a high-ranking prosecutor; he served as Deputy Chief Public Prosecutor of Bulgaria between 1994 and 1997. In January 2001, upon an application by the Chief Public Prosecutor, he was dismissed from his position as a prosecutor at the Supreme Cassation Prosecution Office with an order sending him into retirement. Following his appeal submitting that he had neither reached the requisite age nor had asked for retirement, the courts decided in his favour. He resumed work as a prosecutor, this time at the Supreme Administrative Prosecution Office.

Mr Kolev publicly stated his opinion that Mr F., the Chief Public Prosecutor, who occupied that post between 1999 and 2006, suffered from a psychiatric disorder, committed unlawful acts and ordered criminal proceedings on fabricated charges against persons he found inconvenient. Mr Kolev alleged that, as a retribution for his disagreements with the Chief Public Prosecutor, he himself had been retired compulsorily.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

At the time, other public figures also expressed publicly concerns about the mental health of the Chief Public Prosecutor and alleged that he had committed a number of serious criminal acts.

Within a short period of time after Mr Kolev's public accusations, several sets of criminal proceedings were brought against him and members of his family, on various unrelated charges. In the first half of 2001, Mr Kolev wrote to the authorities and the press stating that he expected he would be arrested on charges of illegal possession of drugs which would be planted on him in an attempt to silence him.

On 20 June 2001 Mr Kolev was arrested in front of his home. According to the official record, small quantities of heroin, cocaine, a hand gun and other belongings were seized. On the day of the arrest, a prosecutor ordered Mr Kolev's provisional detention for 72 hours, at the expiry of which a new prosecutor ordered his detention for another 72 hours without mentioning the first order. Both orders were based on the Code of Criminal Procedure. Mr Kolev was charged with illegal possession of drugs and a fire-arm. He alleged that he had seen the prosecutors place the drugs among his possessions at the time of his arrest. He repeatedly challenged his continuous detention after the expiry of the first 72 hours. Initially, the court found that Mr Kolev's detention before 25 June was not subject to judicial control. In September 2001 it placed him under house arrest and ultimately released him in November 2001. In February 2002, the criminal proceedings against him were terminated as the court found that he enjoyed immunity from prosecution.

In November 2002 the Supreme Judicial Council (the Council) dealt with the public accusations against the Chief Public Prosecutor submitted by a former member of Parliament. Many high-placed officials, including prosecutors, the head of the National Security Service and a former Interior Minister testified against the Chief Public Prosecutor submitting that he terrorised and punished every subordinate who dared disobey his orders including when those were unlawful. Information about alleged serious criminal acts committed by him was also submitted. The Council called on the Chief Public Prosecutor to resign, which he refused to do.

Mr Kolev repeatedly voiced in public his fears that he might be killed as part of a merciless campaign against him orchestrated by the Chief Public Prosecutor. On the evening of 28 December 2002 he was shot dead in front of his home. An investigation was opened on the same day and a number of investigative steps were carried out in the days and weeks that followed, including expertises and witness questioning. The same former member of Parliament who challenged the Chief Public Prosecutor before the Council testified in detail about earlier events concerning crimes allegedly committed by the Chief Public Prosecutor. He, Mr Kolev's family and other persons stated their conviction that the Chief Public Prosecutor and persons from the national anti-terrorist squad had been behind the murder. Although a number of new investigative acts were ordered and carried out, the investigation was suspended repeatedly, the last time in September 2008, for failure to identify the perpetrator.

Complaints, procedure and composition of the Court

Relying on Articles 5 §§ 1, 3 and 4, Mr Kolev had complained about not having been brought before a judge sufficiently quickly after his arrest, of having been detained unlawfully and for an excessively long time, and of his appeal against his detention not been examined speedily. Mr Kolev's widow, daughter and son further complained that the investigation into their husband and father's murder was neither independent nor effective, in breach of Article 2, as it was under the control of the Chief Public Prosecutor.

The application was lodged with the European Court of Human Rights on 17 December 2001.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), **President**,
Renate **Jaeger** (Germany),
Karel **Jungwiert** (Czech Republic),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Zdravka **Kalaydjieva** (Bulgaria), **judges**,

and Claudia **Westerdiek**, **Section Registrar**.

Decision of the Court

Article 5 complaints:

Bringing Mr Kolev promptly before a judge

The Court first noted that Article 5 § 3 of the Convention required that a person be brought promptly before a judge or judicial officer as a guarantee against possible ill-treatment or unjustified limitations on a person's liberty. The Bulgarian authorities had not explained why it had not been possible to bring Mr Kolev before a judge earlier than five days and eight hours after his arrest as had been the case. Furthermore, the Bulgarian law applicable at the time had been deficient in that it either allowed blanket authorisation for or did not prohibit consecutive periods of police or prosecutor-ordered detention before a person was brought before a judge. The Court held unanimously that this deficiency in the law and the acts of the prosecutors had resulted in a violation of Article 5 § 3 of the Convention.

Unlawful and excessively long detention

The Court limited its examination to the period between 13 September and 29 November 2001, the complaint concerning the remaining period having been declared inadmissible. It found that Mr Kolev's deprivation of liberty had been unlawful under domestic law as he had enjoyed immunity from prosecution at the time and domestic law had expressly and clearly prohibited criminal proceedings against and the detention of persons who enjoyed such immunity. Therefore, the detention order in respect of Mr Kolev had been invalid and as such contrary to Article 5 § 1 of the Convention.

Furthermore, the Court did not accept the Government's arguments that the domestic case-law had not been settled at the time of Mr Kolev's detention and it had been thus unclear whether dismissal from office removed immunity with immediate effect or when the dismissal was upheld on appeal. The Court found that it had been flagrantly obvious that the dismissal order had been unlawful, as Mr Kolev had neither reached retirement age, nor asked for retirement. The Court also held unanimously that a lack of clarity in the legal rules governing deprivation of liberty, if it existed in the relevant domestic law, opened the door to arbitrariness and was therefore in breach of Article 5 § 1. Given this finding, the Court did not consider it necessary to examine separately the length of Mr Kolev's detention.

Prompt examination of appeal against detention

The Court found that Mr Kolev's appeal against his detention had only been examined 36 days after he had lodged it due, in particular, to a delay in its transmission. This delay had been unlawful and arbitrary, both in terms of domestic law which required that such appeals be transmitted to the courts immediately, and in terms of the Convention which required a speedy examination by a court. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 4.

Article 2 complaint (ineffective investigation):

It was undisputed that the investigation into Mr Kolev's killing had started promptly and that numerous urgent and indispensable investigative steps had been taken. The applicants had complained, however, that the investigation had lacked independence and objectivity.

The Court noted that the investigative authorities had before them solid evidence of a serious conflict between Mr Kolev and Mr F., the Chief Public Prosecutor at the time. They had been aware that Mr F. had ordered or approved unlawful acts against Mr Kolev, such as his dismissal, his arrest and detention, and the bringing of certain unfounded criminal charges against him and his family. The investigators had also received testimonies of persons considering that high-ranking prosecutors, including the Chief Public Prosecutor himself, might have been implicated in Mr Kolev's murder. Consequently, in the absence of clear evidence that these allegations were groundless, the investigators should have examined them and should have undertaken the necessary investigation steps, even if the allegations eventually proved unfounded. That was decisive in the light of the Convention requirement that investigations' conclusions must be based on thorough, objective and impartial analysis of all relevant elements.

The Court noted that up until September 2003 the Bulgarian Constitution did not make it possible to bring criminal charges against the Chief Public Prosecutor against his will. While eventually the law had been changed, in practice no Bulgarian prosecutor would have brought charges against the Chief Public Prosecutor, as admitted by the Bulgarian Government. That had been the consequence of a number of factors, such as the centralised structure of the Prosecution service, the working methods which had prevailed when Mr F. had been the Chief Public Prosecutor and the existing institutional arrangement. In particular, the prosecutors alone had the exclusive power to bring criminal charges while the Chief Public Prosecutor had full control over each and every decision issued by a prosecutor or an investigator. In addition, the Chief Public Prosecutor could only be removed from office by decision of the Supreme Judicial Council, some of whose members were his subordinates. The Court observed that this arrangement has been repeatedly criticised in Bulgaria as failing to secure sufficient accountability. The Court also considered highly relevant that the Government had not informed the Court of any investigation ever undertaken into any of the numerous allegations made publicly about unlawful and criminal acts allegedly committed by the former Chief Public Prosecutor.

In these circumstances, given that the investigation of Mr Kolev's murder had been for practical purposes under the control of the Chief Public Prosecutor until the end of his term of office in 2006, that his possible involvement had not been investigated and that after 2006 no serious investigative measures had been undertaken, the Court held unanimously that the investigation had not been independent and effective, and there had been a violation of Article 2.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.