



APARTMENTGATE: the property deals of senior public officials

On 19 March 2019 a joint investigation of the Anti-Corruption Fund (ACF) and Radio Free Europe revealed that the chairman of parliamentary group of the ruling party GERB, Mr. Tzvetan Tzvetanov¹ had acquired a luxury property at prices significantly below market rates directly from a large construction company with significant business interests in Sofia. In the following weeks, journalists from various media and additional investigations by ACF exposed several high-level politicians and magistrates with similarly suspicious acquisitions. What ensued was one of the biggest corruption scandals since Bulgaria's entry into the EU. It led to multiple resignations, including by the Minister of Justice, Ms. Tzetzka Tzacheva, the deputy ministers of economy, of energy and of sports, the former Minister of Economy, Energy, and Tourism and Member of Parliament, Mr. Delian Dobrev, and Mr. Tomi Nikolov, Deputy Governor of Sofia. A former Minister of Culture and Member of Parliament, Mr. Vezhdi Rashidov was implicated with similar transactions but did not resign.

The Prosecutor General's Office launched investigations into recent high-value property acquisitions by Mr. Plamen Georgiev, Chairman of the Commission for Counteracting Corruption and the Forfeiture of Illegally Acquired Property (CCCFIAP) and Mr. Borislav Sarafov, Deputy Prosecutor General (both of whom temporarily withdrew from office). An investigation also started in regards to properties acquired by the wife of Mr. Lozan Panov, Chair of the Supreme Court of Cassation (acquired prior to their marriage), and Mr. Krum Zarkov, Member of Parliament and Deputy Chairman of Bulgarian Social Party's parliamentary group.

The revelations about the property deals by politicians and magistrates showed the continuing ineffectiveness of assets declaration monitoring by CCCFIAP, political interference in the work of CCCFIAP, as well as gaps in the anti-corruption legislation. The reactions by the public² revealed the growing expectations about ethical behaviour in public life, and deficit of ethical standards of public officials – not a single one of them expressed remorse or admitted any wrongdoing despite resigning.

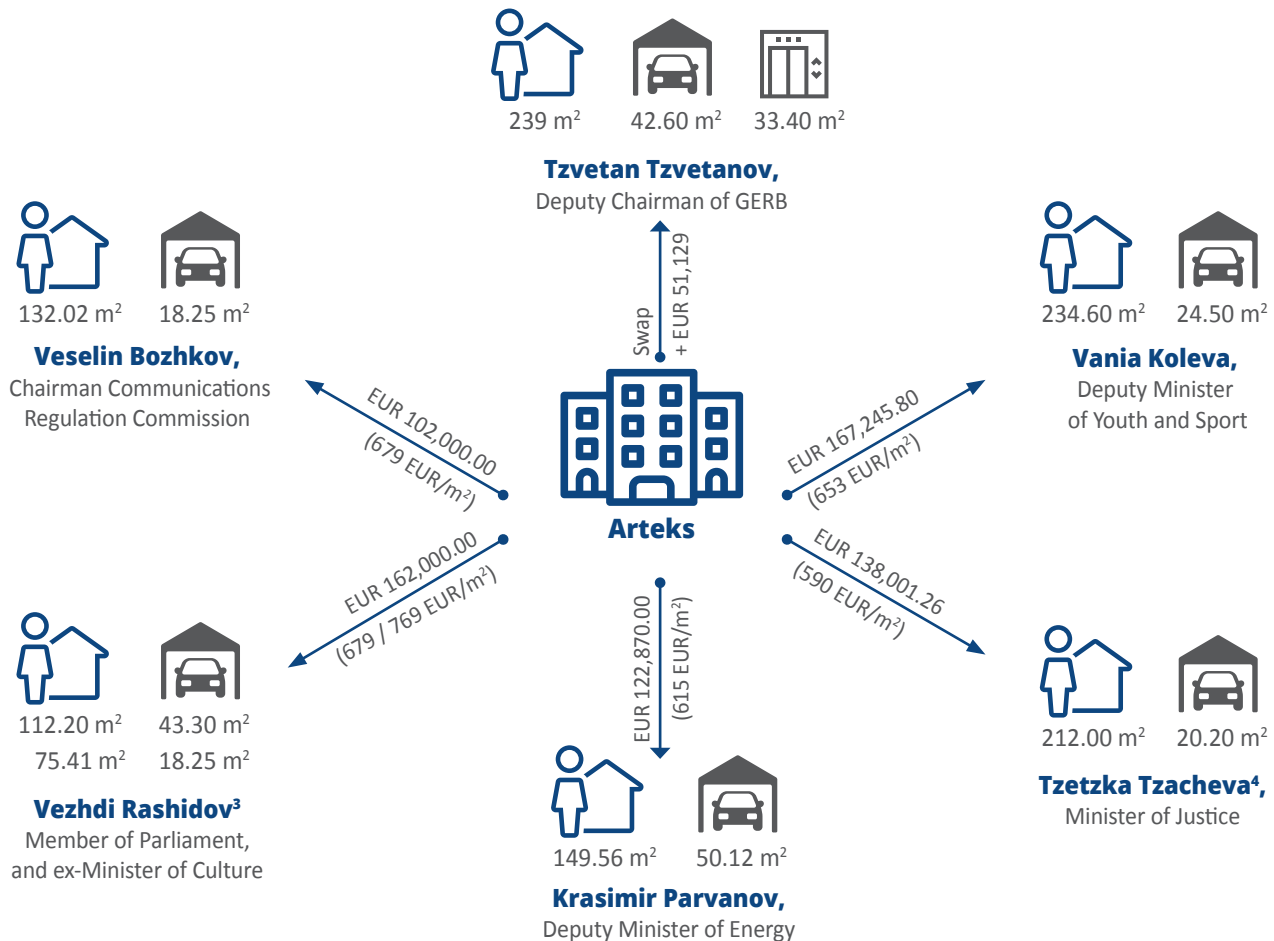
This brief outlines the legal and ethical ramifications of the actions of high-level public officials exposed by the scandal and the policy changes needed to prevent further abuse of public office.

1. Mr. Tzvetanov is one of the most influential politicians in the country. As former Deputy Minister and Minister of the Interior, and (now former) Chairman of the Parliament's Internal Affairs Committee, he is largely considered to yield influence over national and local politics.

2. The average apartment size in Bulgaria is 72 square meters, according to the National Statistical Institute. The average size of the mortgages in Bulgaria is EUR 60,000. Therefore the properties discussed in this brief are well above the means of the average person.

1. The Facts

Analysis of the Bulgarian Property Register by ACF and independent journalists established that during 2018 Bulgarian real estate developer Arteks sold luxury properties to several senior public officials. The sales took place between June and December of 2018, in various buildings in Sofia's Izток neighborhood where property prices are amongst the highest.



While in all other cases the sales were direct transactions between Arteks and the public officials, the case of Mr. Tzvetanov was a highly unusual property swap. Instead of payment, Arteks⁵ had agreed to receive a smaller apartment from Mr. Tzvetanov⁶. Mr. Tzvetanov paid in cash an additional amount of EUR 51,129. Even more unusual was that on the day of the swap, 12 June 2018, at the same time and in the office of the same notary public⁷, Arteks sold Mr. Tzvetanov's apartment to his close associate, Mr. Simeon Velkov, a former IT specialist for GERB and member of the party's election campaigns team⁸. While the above transactions were public and they were about to be declared in these officials' 2019 asset declarations, they all included a number of improprieties discussed below.

3. The transactions were carried via Rashidov Properties Ltd. of which Rashidov is majority owner.

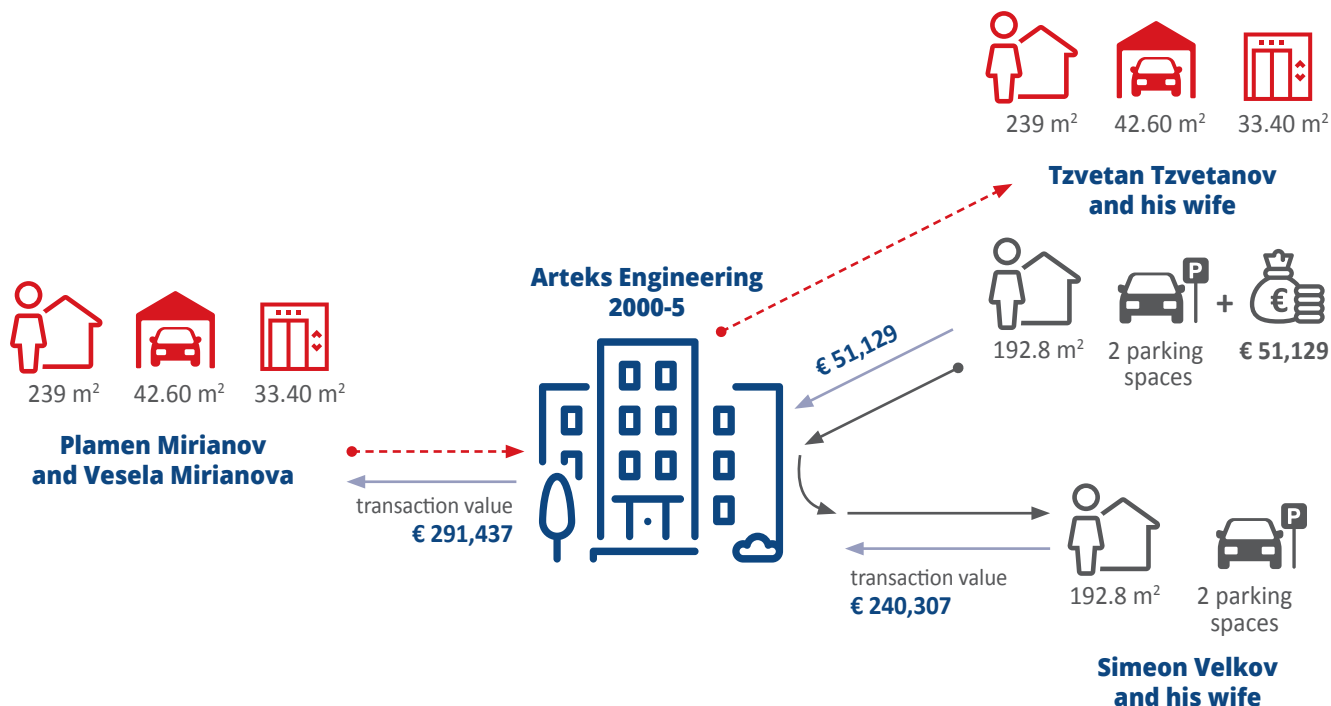
4. Ms. Tzacheva owns three quarters of the property, for which she paid a sum close to the one mentioned in her income declaration.

5. The transaction was in fact between Mr. Tzvetanov and his wife on one side, and Arteks Engineering 2000-5 Ltd. Founded in 2013, this company belongs to the Arteks group and had no registered activities and revenue for the period 2013 – 2018.

6. Formally, these are two apartments but they are linked into one.

7. The four property transactions were registered by the same notary with consecutive entry numbers by Notary Bogdana Bachvarova via deputy-notary with substitute powers Tsveta Marova.

8. Reportedly, as of April 2019 Mr. Velkov was employed at the Bulgarian Air Traffic Services Authority, a state-owned enterprise.



Two other cases, revealed by investigative journalists, differed from the ones above because there the public officials either misrepresented the value of the property in their asset declarations or did not declare them. The first case was that of Mr. Plamen Georgiev, Chairman of CCCFIAP. Mr. Georgiev declared the purchase of an apartment and garage for a price 30% lower than the taxable value of the property and omitted to declare the full size of his property in his asset declaration (a roof-top terrace bigger than the apartment itself, which was listed in the property deed). The second case included Mr. Borislav Sarafov, Deputy Prosecutor General, whose son, a student in the UK, purchased two luxury apartments for the amount of EUR 276,098. The sum had never been declared in Mr. Sarafov's prior income and asset declaration, and again the purchase value was significantly below market rates⁹.

Another case that drew public attention involved the wife of Mr. Lozan Panov, Chair of the Supreme Court of Cassation. This case is not analysed in this brief as ACF's analysis showed no improper actions by Mr. Panov himself and therefore it has no bearing on his asset declarations¹⁰. Nevertheless, the fact that the owners of Arteks, Mr. Plamen Mirianov and Ms. Vesela Mirianova were best man and maid of honour at Mr. Panov and Ms. Panova's wedding, and Ms. Panova publicly defended Arteks in the course of the present scandal, are facts to be noted.

The above-mentioned property transactions¹¹ have several legal and ethical dimensions:

- All sales by Arteks were significantly below market rates;
- The transactions were registered at the properties' taxable values, a practice considered a strong indicator for tax evasion and money laundering;
- The transactions involved senior politicians with sufficient political power to influence any regulatory scrutiny, investigations or prosecutions, or even legislative process in which Arteks may have had an interest.

9. <https://fakti.bg/razsledvania/371331-21-godishniat-sin-na-shefa-na-nsls-s-apartamenti-za-540-000-leva>

10. The case involved the 2013 purchase of an apartment and garage from Arteks by Mr. Panov's then wife-to-be. The deal was registered two years before the marriage of Mr. Panov to Elisaveta Panova. Even though the declared prices were low, it cannot be linked directly to Mr. Panov (Interview with Ms. Elisaveta Panova). <https://www.btv.bg/video/shows/120-minuti/vreme-za-otgovor/saprugata-na-predsedatelja-na-vks-lozan-panov-vzehme-reshenie-da-zavedem-delo-v-strasburg.html>

11. The case of Mr. Krum Zarkov is not assessed in this policy brief, as ACF's analysis showed no improprieties.

2. Market prices and the value of potential benefits

An analysis of the property deeds related to the transactions between Arteks and the public officials showed that the declared sale price roughly equaled the taxable value of the real estate properties, not the market price. Taxable values are set by municipalities. They are usually the same (per square meter) for all properties in the same neighborhood, regardless of the actual market value of the property. ACF's analysis shows that in all transactions involving the above-mentioned politicians, Arteks sold properties at rates three to four times beneath the market rate.

ACF staff, posing as regular buyers, called the Arteks sales department and enquired about the property prices in the buildings concerned in the above cases. The prices mentioned were EUR 2,640 per square meter with VAT included. Radio Free Europe's enquiry for another of the concerned buildings was quoted EUR 3,500 per square meter which is about **four to six times** higher than the prices paid by the public officials concerned. As shown in the figure above they paid between EUR 590 and EUR 679 per square meter.

An analysis of properties sold on one of the main real estate websites showed that the asking prices for properties in the Iztok neighborhood were on average EUR 1,578 per square meter.¹² This was an average rate, valid as of March 2019 and based on all available offers for the period, without considering factors such as the age and quality of the properties. Asking prices for luxury properties were higher.

In the case of Mr. Tzvetanov's property, cost estimates are even more complicated, as the property deed features "an elevator shaft room" (of around 28 square meters), while the elevator itself is not included (adds around EUR 123,000 to the total cost).¹³ In addition, the difference in the cost between the properties which Mr. Tzvetanov swapped and for which he paid around EUR 50,000 was also below market value. The subsequent sale of Mr. Tzvetanov's property by Arteks to his associate revealed the actual market value – in Mr. Tzvetanov's swap transaction, the property was valued at EUR 146,965, while in the sale to Tzvetanov's associate the price was EUR 240,307. Finally, the two apartments that were swapped were acquired by Mr. Tzvetanov during a prior public scandal in 2009, when as a Deputy Mayor of Sofia, it was found that he had paid only about half of the market value. At the time, his explanation was that the company that sold him the apartments was owned by his close friends¹⁴.

ACF compiled market data by reviewing property deeds pertaining to transactions, carried out by Arteks in Iztok. The analysis showed that for the majority of apartment sales (in the case of Ms. Tzacheva's apartment building, all apartments in the building) were declared two to three times below market value and closer to the taxable property values. This is a possible indication of large-scale tax evasion and money laundering, as difference to the market price is usually paid by the buyers in cash without any paper trail or on the basis of annexes subsequently added to the deed contract¹⁵.

12. <https://www.imot.bg/pcgi/imot.cgi?act=3&slink=4h7k3m&f1=1>

13. According to interviewed construction engineers, provisions for such features should be made at the initial design stage. An elevator shaft takes up around four m² from the total floor area of each floor and involves significant equipment cost.

14. It should be noted that the company was winning government contracts, even though not directly related to Mr. Tzvetanov's authority.

15. An indication of the real values differed was a clause in the deed contract that provided for the buyer to seek damages in case of non-sale to an amount equal to the difference in the cost between taxable property value and the market value.

3. Legal and ethical Implications

There are **two possible scenarios** that can explain why these transactions had been officially registered at prices so different than the market value:

- the public officials paid the market price but used undeclared income to complete the transactions, and also avoided paying the required property sales tax, notary fee, and VAT taxes¹⁶;
- the public officials have declared the true transaction prices, but the difference with market value is so significant that it could be considered a material benefit because of their public office, and implies that they were in a conflict of interest.

The table below provides an estimate for either scenario's tax losses or possible benefit to the politicians involved.

The estimated market price is calculated using the rate EUR 2,640 per square meter. Garage prices are calculated 50% lower. Public budget harm is estimated by adding VAT (20%), local tax (2.5%), and fees (0.5%) due on the market price minus the taxes and fees paid. The material benefit is estimated by subtracting the price paid from the estimated market price and adding the amount of avoided taxes and notary fees. For Mr. Tzvetanov, the material benefit is estimated by adding the amount of avoided taxes and notary fees to the estimated price difference of the swapped properties should the transaction have been carried out at the market price. In cases of swap transactions, all taxes and fees are calculated using the higher property price as base, save VAT which is added for both properties in the swap transaction. Calculations regarding the properties transferred by Mr Tzvetanov were made at an estimated market price of EUR 2,200 per square meter. The public income and asset declarations filed by the politicians prior to the deals did not show sufficient funds to pay the estimated market price.

All prices mentioned below include VAT, due on transactions featuring new buildings.

	Price as per deed contract	Estimated market value	Estimated harm to public budget	Estimated material benefit to politicians
Tzvetan Tzvetanov	€ 197,693	€ 899,160	€ 194,342	€ 526,206
Vania Koleva	€ 167,246	€ 624,287	€ 88,057	€ 578,698
Tzetzka Tzacheva	€ 146,078	€ 450,448	€ 58,642	€ 525,212
Vezhdi Rashidov	€ 162,000	€ 536,856	€ 72,222	€ 490,428
Krasimir Parvanov	€ 122,870	€ 347,678	€ 43,313	€ 404,838
Veselin Bozhkov	€ 102,000	€ 292,459	€ 36,695	€ 322,635
Total			€ 493,271	€ 2,848,017

The legal implications – depending on what the case turns out to be – can include:

- Declaring a lower transaction value and paying the difference in cash constitutes a **violation of the Limits to Cash Payments Act**, according to which payments of more than EUR 5,000 are only to be made via bank transfers or via payment services providers¹⁷.

16. Local property transfer tax owed to Sofia Municipality equal to 2.5% of the transaction value or the property tax valuation, in the event the transaction value is lower;

- A fee to the Registry Agency, equal to 0.1 % of the property transaction value;
- Value-added tax (VAT) – transactions involving properties in new buildings are subject to 20% VAT, added to the final price of a property;
- Notary fee, based on the property transaction value as follows: for deals valued from BGN 100,000 to BGN 500,000 – BGN 730.50 + 0,2 % of the amount above BGN 100,000; deals valued over BGN 500,000 – BGN 1,530.50 + 0,1 % the amount above BGN 500,000, with a ceiling of BGN 6,000;
- VAT on the notary fees.

17. The law envisions sanctions for private individuals at 25 % of the payment value, or 50 % of the value if the payment has been made by a company. Sanctions are doubled in the event of repeat violations.

- **Criminal liability** implications for the politicians involved: if it is found that they declared a false amount of the transaction¹⁸ or that they avoided the amount of taxes shown in the table above¹⁹, the public officials involved could face fines or prison sentences of up to six years.
- The Anticorruption and Forfeiture of Illegally Acquired Property Act (AFIAPA) defines ‘conflict of interest’ as a situation in which a high-ranking public official has a **private interest** that can affect the impartial exercise of his duties and authority (Art. 52). The present cases involve **preferential and advantageous treatment** of high-ranking public officials, as a result of which the latter obtained a **direct material benefit** of considerable proportion. The benefit to the politicians could be considered **privilege or gift** directly connected with the position of the high-ranking official within the legislative and executive institutions. ACF’s analysis of past legal practice shows that the above cases are unlikely to be declared as conflict of interest, as the provision is only applicable in cases where the official **has actually exercised power** in the pursuit of a private interest, and not in cases where the misuse of power remains a **mere potentiality**. In addition, Art. 62 of AFIAPA stipulates that a high-ranking public official **is prohibited from using or agreeing to let their position be used** for the purposes of commercial advertising – media close to the government tried to defend the purchases as an ‘advertisement strategy’ by Arteks (although there is no evidence to support such a claim).
- Finally, **members of parliament** (MPs) in Bulgaria are bound by the Rules on the Organization and the Activities of the National Assembly. According to the Rules, which are a legal instrument, **benefiting from privileges is explicitly prohibited**: MPs cannot use their position to receive **special privileges or gains** valued at more than 10% of the basic monthly remuneration (Art. 149) or put themselves in a position of **financial or other dependency** with respect to legal persons (**Art. 145**).

4. The government’s response so far

While the facts around the apartment purchases are difficult to hide or change,²⁰ finding the motivation or proving a conflict of interest may be challenging for the investigative authorities. Proving criminal liability – even more unlikely. The actions of the Prosecution and the CCCFIAP have so far been only limited to checking the facts exposed publicly by ACF and media. Publicly, it is not known if criminal investigations or conflict of interest investigations have been launched.

In the meantime, the Bulgarian President declared withdrawing his confidence from the chairman of the CCCFIAP, Mr. Georgiev, while the Bulgarian Socialist Party officially requested his resignation. The Parliamentary Committee on Anti-Corruption, Conflict of Interest and Parliamentary Ethics has not taken any immediate steps, awaiting the results of the investigations, including on the issues, surrounding the chairman of the CCCFIAP.

One possible line of investigation could be related to the 25 January 2017 amendment to Art. 153(2) of the Spatial Planning Act. This amendment, proposed and supported by the GERB, expanded the timeframe for construction of certain categories of buildings²¹. Arteks took advantage of the amendment, requesting an extension of the deadline to construct a controversial skyscraper in central Sofia. This not only allowed for the construction of the building to continue but saved the company considerable regulatory fees. Mr. Tzvetanov publicly declined these allegations.

18. Every transaction involving a property deed requires the parties to declare that the amount stated in the property deed corresponds to the amount that was actually paid and that no additional payments had been made. Submitting a false declaration constitutes a crime within the meaning of Art. 313 of the Criminal Code (CC) and is punishable with imprisonment for a period of up to three years or with a fine of up to BGN 1,000 (EUR 511).

19. According to Art. 255 of the Criminal Code, tax evasion involving considerable amounts accomplished by means of submitting a false declaration are illegal and punishable with imprisonment for a period between one and six years and with a fine of up to BGN 2,000 (EUR 1,023). In cases where the due taxes are of particularly large amounts, the punishment is imprisonment for a period between three and eight years, coupled with confiscation of part or all of the perpetrator’s property.

20. Mr. Georgiev already claimed that there had been various mistakes in his property deed, which he rushed to change.

21. According to an information inquiry published by the Bulgarian office of Radio Free Europe, a total of 76 MPs voted for the amendment of Art. 153 of the Spatial Planning Act, among whom 61 MPs from GERB. As of 27 March 2019, the transcript of the plenary session held on 25 January 2017, during which the amendment to the SPA was passed, is not available to the public.

5. Policy implications

The above cases indicate that the asset declarations system continues to be non-functional despite the Government-stated ambitions in the anti-corruption strategy and law. Asset declarations continue to be a mere verification exercise, comparing declared assets to public registers, without any analysis and investigations of improprieties and conflict of interest. Plans to develop a sophisticated software-based analysis of asset declarations, despite secured EU-support from structural funds, have not moved forward.

In the absence of the tools to be analytical and proactive, the CCCFIAP is targeting political opponents and remains at the will of the parliamentary majority parties. The simple majority election procedure for the chairman of the CCCFIAP continues to guarantee direct political dependency.

Legislative amendments are necessary, aimed at developing comprehensive prohibitive provisions within AFIAPA, which would limit the possibilities for narrow and selective implementation of conflict of interest rules and procedures.

Specifically, in order to make the law more effective, legislators should include a separate interdictory provision in AFIAPA stipulating that high-ranking public officials shall be prohibited from obtaining in their private interest any privilege, advantage, preferential treatment, property, or services at below market prices, as well as gifts or other benefits, associated with their office.²²

22. Such a provision can be based on the codified ethical standards for avoiding conflict of interest situations in Commission Decision on a Code of Conduct for the Members of the European Commission, Brussels, 31.1.2018 C(2018) 700 final. Exceptions to this rule are situations where discounts and promotions have been publicly announced and are not based on the recipient's office or profession, as well as ordinary gifts of reasonable size. This provision could be applied for a period of up to one year following the official's relinquishment of his office, unless other legislation stipulates differently.

BULGARIA

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By RFE/RL's Bulgarian Service

Bulgaria's 'Second-Most Powerful Politician' Resigns Amid Real Estate Scandal



...any wrongdoing, saying: "All I have done is completely legal."



WORLD NEWS MARCH 23, 2019 / 4:37 PM / A MONTH AGO

Bulgarian justice minister resigns over real estate deal

3 MIN READ

SOFIA (Reuters) - Bulgarian Justice Minister Tsatska Tsacheva resigned on Saturday following media reports that she and three other ruling center-right GERB party politicians have bought luxurious apartments at below market prices, the government's press office said.

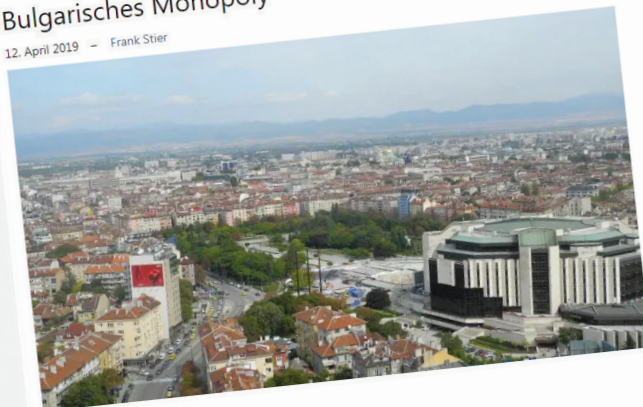


Ein Angebot von heise online

TELEPOLIS > POLITIK > BULGARISCHES MONOPOLY

Bulgarisches Monopoly

12. April 2019 - Frank Stier



Sofia. Bild: F. Stier

Fahrstuhl zum politischen Schafott

Affären und Skandale lösen sich in Bulgarien in rascher Folge ab. "Ein Wunder dauert in Bulgarien drei Tage", lautet eine Volksweisheit dazu. Das aktuelle "Apartmentgate" erregt die bulgarische Öffentlichkeit aber bereits seit drei Wochen. Es hat zu einem in der jüngsten Vergangenheit präzedenzlosen Körperrollen geführt.

Die Justizministerin, die stellvertretenden Minister für Energie und Sport und der Vorsitzende der Parlamentsfraktion der Regierungspartei GERB mussten abdanken. Ihnen wird vorgeworfen, Wohnungen von der Baufirma Arteks entweder zu Spottpreisen erworben und dafür möglicherweise Gegenleistungen gewährt zu haben oder aber die Kaufpreise ihrer Wohnungen zu niedrig deklariert zu haben, um Steuern zu sparen.

The Anti-Corruption Fund is an independent, expert-led non-governmental organization, which investigates cases of alleged corruption, misuse of public funds, and conflict of interest among public officials in Bulgaria. Our research adheres to the highest legal, professional, and ethical standards. We aim to assist public authorities and journalists in investigating and prosecuting corruption-related violations. The goal of our work is to help address systemic factors leading to high corruption levels, and to raise public awareness about the existing mechanisms to counteract corruption.

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