The Sofia City Court which is notorious for its corruption is currently dealing with its latest scandal which involves the citizenship of the court’s President Alexey Trifonov. There are rising concerns that he is not a Bulgarian citizen – holding Bulgarian citizenship, however, is a requirement to serve as a magistrate in Bulgaria. The answer to a question, which appears to be simple at first glance – what is judge Trifonov’s citizenship? — requires the study of USSR and Bulgarian citizenship law applicable in 1972, including a Bulgaria-USSR Convention on Citizenship ratified in 1966. The issue has already reached Bulgaria’s Supreme Administrative Court and illustrates the deplorable state of Bulgaria’s rule of law.

Judge Trifonov was elected as the President of the Sofia City Court by the judicial college of Bulgaria’s Supreme Judicial Council in November 2018 and entered office in February 2019. It is essential to clarify for the Western reader that Sofia City Court is one of the most important Bulgarian district courts by virtue of its jurisdiction. It has exclusive competence to register political parties on Bulgaria’s territory and to examine claims for recognition of foreign judgments. Since Sofia is the capital of the political and business life of the country, this court examines high-profile cases and large claims. It also authorizes surveillance and wiretapping by Bulgaria’s Prosecutor’s Office.

What’s in a citizenship?

The circumstances surrounding Alexey Trifonov’s election and appointment as President of Sofia City Court by the Supreme Judicial Council may already attract the attention of scholars interested in the rule of law. On the one hand, all Vice-Presidents of the Sofia City Court resigned in protest after Trifonov entered office. On the other hand, Trifonov’s competitor Evgeni Georgiev who was not elected is contesting the election procedure before Bulgaria’s Supreme Administrative Court. He argues the Supreme Judicial Council ignored the will of the majority of judges at Sofia City Court, thus violating the principle of judicial self-governance, and he submits that two members of the judicial college were in a conflict of interest which they did not declare.

Prior to the vote by the judicial college of the Supreme Judicial Council, the general assembly of the Sofia City Court carried out an internal election to nominate their candidate for court president pursuant to Article 85(3) of the Law on the Judiciary. The Law on the Judiciary was amended in 2016 to allegedly promote internal court independence by allowing the general assembly of a court to take decisions concerning the functioning of the court – for instance, nominate a candidate for court president, accept internal rules, develop joint legal opinions, etc. At this election, Georgiev received 56 votes while Trifonov received 25 votes. Subsequently, however, 9 members of the judicial college of the Supreme Judicial Council voted
for Trifonov while 4 supported Georgiev, which led to Trifonov’s appointment and Georgiev’s appeal.

Yet, investigative journalist Valia Ahchieva, who has a long record of exposing corruption, was more troubled by something else – Trifonov’s birthplace, as stated on his CV, is Kursk (then USSR, current Russian Federation). She wondered when and how Trifonov acquired Bulgarian citizenship. This is essential in light of Article 162 of the Law on the Judiciary, which stipulates the basic criteria one should meet to serve as a judge, prosecutor or investigator in Bulgaria. Its chapeau explicitly states that these magistrates should have Bulgarian citizenship only, which makes the requirement for Bulgarian citizenship as well as the lack of dual citizenship the most important prerequisites for becoming part of Bulgaria’s magistracy.

**Born in the USSR: what’s your citizenship?**

Mrs. Ahchieva’s investigation and subsequent commentary were published on EUelectionsBulgaria.com. Below I focus on the constitutional question which emerges based on Mrs. Ahchieva’s fact-finding and the relevant law.

Mrs. Ahchieva established that judge Alexey Trifonov was born in 1972, in Kursk (then USSR, current Russian Federation) in a mixed marriage – his father had Bulgarian citizenship and his mother had Soviet citizenship. However, he was issued a Bulgarian birth certificate only on 13 October 1988, when he was 16, and he was included in the Register of Bulgarian Citizens on the following day based on this certificate. Was he entitled to Bulgarian citizenship and a Bulgarian birth certificate?

For the sake of precision, it should be noted that Trifonov should have been issued a birth certificate within 1 month of his birth in Kursk pursuant to the applicable vital records law in the USSR at the time.

When Trifonov was born, Bulgaria’s Constitution of 1971 was in force. Its Article 34 specifies: “Bulgarian citizenship is acquired and lost according to the procedure established by the law”. One finds the applicable procedure in the Law on Bulgarian Citizenship (LBC) of 1968 and the Bulgaria-USSR Convention on Citizenship, which was ratified in 1966.

Article 6 of the LBC of 1968 stipulates the concrete circumstances in which one is Bulgarian by birth. One of the hypotheses envisaged by Article 6, as it was in force at the time Trifonov was born, is the following:

> the person is born abroad and one of their parents is a Bulgarian citizen unless the person is born in the country of their foreign parent and the national law of this parent recognizes them as their citizen (emphasis mine).

It should be mentioned that in 1986, Article 6 of the LBC of 1968 was amended to grant Bulgarian citizenship automatically at birth to foreign-born children with one Bulgarian parent. However, this amendment entered in force 14 years after Trifonov’s birth, so it does not apply to him.
Was Trifonov recognized as a USSR citizen by USSR citizenship law at the time he was born? The USSR enacted a comprehensive *Law on USSR Citizenship* comparable to the Bulgarian LBC only in 1978. Pursuant to Article 12 (1), in case one parent is a USSR citizen and the child is born on USSR territory, the child is a USSR citizen by birth. The 1978 law replaced an underdeveloped *law from 1938*, which was silent on the acquisition of citizenship in cases similar to Trifonov’s. However, scholars and experts concur that prior to 1978, there were clear rules about the attribution of citizenship in many cases. In his detailed monograph *The Citizenship Law of the USSR* (Springer 1983), George Ginsburgs cites different sources, including a Collective Volume on Soviet Constitutional Law from 1967 approved by the Ministry of Higher and Special Education of the USSR, which was used in the law curriculum: “If the parents have different citizenship, one of them possesses the citizenship of the USSR and the other holds a foreign citizenship, provided at least one of the parents at the moment of birth of the child resides on the territory of the USSR, the child is counted as a Soviet citizen” (pp. 197-198).

In turn, the preamble of the aforementioned *Bulgaria-USSR Convention on Citizenship*, which entered in force in 1967, explicitly states the contracting parties have signed the treaty led by their intent to “prevent dual citizenship”. Article 1(1) of the Convention specifies:

> Parents one of whom is a citizen of one of the contracting parties and the other one – a citizen of the other contracting party, may mutually agree to choose the citizenship of one of the contracting parties for their child…

According to Article 1(2), they should submit such a request within 1 year of birth before the competent authorities. Article 2(1) stipulates: “If the parents of a child do not submit a request with which they choose a citizenship pursuant to Article 1 of the Convention, the child is considered a citizen of the contracting party on whose territory it was born” (emphasis mine).

In other words, it seems Trifonov was a Soviet citizen by birth both according to USSR and Bulgarian national citizenship law. He could be entitled to Bulgarian citizenship by birth only if his parents submitted a request compliant with the requirements of the Bulgaria-USSR Convention on Citizenship. In addition, he was not entitled to dual citizenship.

**Citizenship riddles for teens**

Mrs. Ahchieva struggled with Bulgaria’s Ilinden municipality for a long time because they refused to provide information about the grounds on which Trifonov’s Bulgarian birth certificate was issued in 1988. However, judge Evgeni Georgiev seized the opportunity to raise the question of Trifonov’s citizenship before the Supreme Administrative Court as part of the proceedings in which he contests judge Trifonov’s appointment. After the court obliged them, the municipality finally provided an answer – Trifonov’s Bulgarian birth certificate of 1988 was issued without supporting documents.
As explained above, judge Trifonov could have Bulgarian citizenship by birth only if his parents had submitted a request for this within 1 year of his birth. If that was the case, however, one may wonder why his birth certificate was issued when he was 16 and without documents evidencing directly or indirectly that his parents submitted such a request. Considering this is his first Bulgarian birth certificate, one may ponder what documents Trifonov used to enroll at school in the USSR and Bulgaria, to access healthcare or to travel between the USSR and Bulgaria – one may doubt if they were Bulgarian because he was not even registered as a Bulgarian citizen prior to 1988. If Trifonov travelled as a USSR citizen, that would be further proof he is not a Bulgarian citizen by birth pursuant to the Bulgaria-USSR Convention on Citizenship. Alternatively, pursuant to Article 3(1) of the Rules on Application of Bulgaria’s Law on International Passports of 1973, children below 16 could be entered in the international passport of their parent – in this case, Trifonov’s father. It is doubtful if this could be done if the child was not a Bulgarian citizen and there was no proof it was its father’s son – both are usually proven with a Bulgarian birth certificate.

In her commentary, Mrs. Ahchieva suggests Trifonov could have applied for naturalization “on the grounds of having one parent [sic] Bulgarian citizen”, but this is imprecise. In fact, he could have benefitted from a number of pathways. Article 14 of the LBC of 1968 allows a child between 14 and 18 years old, who was born in a mixed marriage (Trifonov’s case in 1988), to be naturalized if their foreign parent is naturalized and if they agree to naturalization. Article 15 of the LBC of 1968 also allows children below 18 years old to apply for naturalization if they have one Bulgarian parent, but both parents should express their consent in writing. The LBC of 1999, which replaced the LBC of 1968, also provides various pathways for naturalization (Article 12 and subsequent). In other words, Trifonov had many opportunities to acquire Bulgarian citizenship through naturalization after he moved to Bulgaria from the USSR.

Overall, however, to be naturalized, one should apply before the competent authorities, which means there should be a record of such application. At this stage, Mrs. Ahchieva’s inquiry before institutions shows there is no indication that Trifonov has been naturalized. This also seems obvious from the mere fact that he has a Bulgarian birth certificate – had he been naturalized, he would not have been issued a Bulgarian birth certificate to begin with.

As a point of contrast, Sergei Stanishev, President of the Party of European Socialists, was also born in the USSR to a Bulgarian father and a mother with USSR citizenship. He acquired Bulgarian citizenship in 1996. It is publicly known he applied for Bulgarian citizenship and renounced the Russian one because Article 65(1) of Bulgaria’s Constitution of 1991 forbids dual citizens from serving as Members of Parliament. It should be noted that pursuant to Chapter 2 of the Law of 28 November 1991, N1948-I on Citizenship of the Russian Federation, USSR citizenship was automatically converted to Russian citizenship under certain conditions. This law seems to indicate that Trifonov may be a citizen of the Russian Federation if his parents did not submit a request for Bulgarian citizenship pursuant to the Bulgaria-
USSR Convention and/or he has not renounced the USSR/Russian Federation citizenship at some point.

It is not just about citizenship

How and why Trifonov’s Bulgarian birth certificate was issued seems to be a golden question not only because of his appointment as President of the Sofia City Court, but because without Bulgarian citizenship obtained in compliance with the law, Trifonov should not have become a magistrate in Bulgaria. Beyond the individual case, the drama with his citizenship provides one more illustration of the lack of rule of law in Bulgaria.

The Supreme Judicial Council did not verify Trifonov’s citizenship even though this seems to be the basic prerequisite for the appointment of magistrates. Moreover, when the question of Trifonov’s citizenship was raised before the Supreme Administrative Court as part of the proceedings in which judge Georgiev is contesting the procedure for judge Trifonov’s appointment, the representative of the Supreme Judicial Council asked the court not to examine this issue. In his view, the Supreme Judicial Council was not obliged to verify the candidates’ citizenship by law. Fortunately, the Supreme Administrative Court did not follow this argument, so it is expected that it will examine the question at its next sitting in November 2019. Yet, if indeed the Supreme Judicial Council is not obliged to verify the citizenship of magistrates, then which institution is, considering the Supreme Judicial Council is the body responsible for the appointment and promotion of magistrates? As stated above, Bulgarian law does not allow magistrates to have dual citizenship either, so even if they have a Bulgarian passport and a Bulgarian national identification number which is assigned at birth if one is Bulgarian by birth, there should be continuous checks for dual citizenship. In this case, if it was not for Mrs. Ahchieva’s watchful eye, this constitutional question would not have emerged.

In addition, having in mind that all facts put forward by journalist Valia Ahchieva are easily verifiable, it is surprising that Bulgarian institutions are silent on the matter. Why should they wait for the Supreme Administrative Court to examine judge Georgiev’s appeal? Is judge Georgiev the only person who is affected by the surfacing constitutional paradox surrounding judge Trifonov’s citizenship? If judge Trifonov does not manage to prove he acquired Bulgarian citizenship according to the applicable law, it will mean he has obtained the birth certificate in violation of Bulgarian citizenship law and the Constitution. Judge Trifonov should provide convincing evidence he was not a Russian citizen while serving as a magistrate too. If he fails at either, this will imply he has been serving as a magistrate in violation of the requirements to become a magistrate for decades.

“To err is human, but to persist is diabolical” (Seneca)

Sofia City Court is notorious for its corruption and its scandals. In 2015, Bulgaria was shaken by Yaneva Gate – a series of wiretapped conversations between the
then President of the Sofia City Court Vladimira Yaneva and another judge, which were published on the website of the Bulgarian partner of the Organized Crime and Corruption Reporting Project *Bivol*. The two judges and a third party discussed at length how they receive political orders by Prime Minister Borissov, Member of Parliament Peevski, and General Prosecutor Tsatsarov, how they sign authorizations for surveillance and wiretapping without reading the case materials, etc. Bulgaria’s Prosecutor’s Office refused to investigate the allegations brought up in the tapes. Moreover, Kaloyan Topalov, the President of the Sofia City Court after Yaneva, resigned in 2017 under enigmatic circumstances and has refrained from public statements since then – media reported he was subjected to political pressure. Judge Trifonov, in fact, is the first court president after a *lacuna*.

The appointment of a new court president was the perfect occasion to at least imitate a fresh start, but it seems we are witnessing more of the same. The silence of Bulgaria’s institutions and their failure to address citizens’ queries and concerns on the matter are quite revealing – sometimes how you react to a public controversy is more eye-opening than the controversy itself. Bulgarian institutions have swept many controversies under the rug in the past.

Meanwhile, Mrs. Ahchieva claims that judge Trifonov told her in writing via the court’s press center that he was Bulgarian because under the Constitution, everyone who has at least one Bulgarian parent is Bulgarian by birth. Indeed, this is what Article 25(1) of Bulgaria’s Constitution adopted in 1991 says. However, this was neither the applicable law at the time judge Trifonov was born nor the applicable law at the time he was issued a Bulgarian birth certificate and included in the Register of Bulgarian Citizens.