



Abstract
of a Doctoral Thesis
for
the award of the educational and scientific degree of
„Doctor“ (PhD)
on the topic:
"PROTECTION OF THE FUNDAMENTAL RIGHTS
OF LGBTI PEOPLE WITHIN
THE CONSTITUTIONAL FRAMEWORK OF BULGARIA"

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The dissertation consists of 292 pages structured into an introduction, three parts, six chapters, and a conclusion. The bibliographic apparatus encompasses a total of 384 sources, predominantly in English (295), supplemented by literature in Bulgarian (75), German (11), and other languages. The doctrinal framework is built upon 189 articles in peer-reviewed journals, 88 monographs and textbooks, and 46 articles and studies in collective works, supported by 45 institutional reports and 16 specialized manuals. The jurisprudence is separated into a distinct section, offering an analysis of supranational case law (38 judgments of the ECtHR and 28 judgments of the CJEU) and constitutional jurisprudence (12 decisions of the Bulgarian Constitutional Court and 13 decisions of the Federal Constitutional Court of Germany). Adjudicatory activity is also examined in detail through 99 national decisions – including one judgment of the German Federal Court of Justice and 98 Bulgarian court rulings, focused on anti-discrimination, refugee, and family law (predominantly from the jurisprudence of the Supreme Administrative Court), as well as proceedings on legal gender recognition.

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Jury Members:

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1. General Characteristics of the Dissertation

The present dissertation offers a critical analysis of the deficits in the legal protection of the fundamental rights of LGBTI persons within the constitutional framework of the Republic of Bulgaria. At the center of the research lies a specific constitutional paradox: the formally declared universal guarantees of equality and the inviolability of human dignity, proclaimed in Article 6 of the Constitution, clash with an institutional reality of systemic discrimination and normative exclusion. This rift between positive law and its factual application leads to legal "invisibility" for a significant group of Bulgarian citizens and deprives abstract constitutional principles of their substance.

The dissertation traces the historical transformation of the Bulgarian constitutional and legal order from a totalitarian state to the democratic Constitution of 1991, which introduces an integrative approach to human rights protection through the recognition and primacy of international treaties ratified by Bulgaria, and an emphasis on the rule of law. In this context, the role of the Constitutional Court is analyzed, as it establishes the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as a core standard for evaluating national legislation and requires compliance with generally accepted international norms. At the same time, the work emphasizes that the lack of effective legal and institutional protection for LGBTIQ+ persons is not due to sporadic legislative omissions, but is the result of a systemic phenomenon. Its genesis is found in the dominant formalistic and originalist interpretative tradition within Bulgarian legal doctrine and jurisprudence. The research transcends traditional dogmatic readings to illuminate the mechanisms through which the national legal order remains isolated and insensitive to social evolution. The study reveals the implicit hierarchies and normative assumptions embedded in legal language, and deconstructs the doctrinal division between universal human rights and fundamental subjective rights in Bulgarian theoretical thought.

The focus of the dissertation also encompasses contemporary conflicts and tensions in the protection of LGBTIQ+ rights, engendered by the contradictions between the national normative framework and jurisprudence, on the one hand, and human rights obligations and EU law, as interpreted in the supranational jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), on the other. Within this context, the work also examines Bulgaria's role in the European legal and institutional framework—its membership in the EU and the Council of Europe—where European human

rights protection mechanisms serve as a benchmark for the functioning of the rule of law. The dissertation underscores the necessity for a coordinated and integrative approach at the national, international, and supranational levels to enhance the protection of vulnerable minority groups amidst contemporary socio-political challenges. The dissertation seeks to contribute to the deepening of legal scientific discourse by systematizing theoretical issues, investigating institutional and normative pitfalls, and offering a critical starting point for future reforms and scientific analyses in the field of human rights and constitutional law in Bulgaria.

1.1. Relevance of the Research

The significance and timeliness of the dissertation research are determined by the complex crisis in the legal protection of fundamental rights in Bulgaria, unfolding against the backdrop of severe tension between the national legal order and supranational human rights standards. The relevance is justified by the progressive divergence between the dynamic jurisprudence of the ECtHR and the CJEU and the conservative practice of national institutions in Bulgaria. Supranational courts affirm an expansive interpretation of protection against discrimination regarding the protected grounds of sexual orientation and gender identity, which are consolidating as an integral part of the European value order. Conversely, the Bulgarian state demonstrates institutional resistance, expressed in a systemic refusal to implement binding judgments of the ECtHR. The lack of adequate normative action by the legislative and executive branches has led to the country being placed under enhanced supervision by the Committee of Ministers of the Council of Europe and to the erosion of its status as a predictable partner within the shared European legal space.

The topic is exceptionally relevant also due to the jurisprudence of the Constitutional Court of the Republic of Bulgaria (CC) in the period 2018–2021. Decision No. 13/2018 and Decision No. 15/2021 of the CC construct a strict originalist approach that binds constitutional concepts to absolute biological content and the historical will of the constitutional legislator of 1991, thus denying social facts. This practice instrumentalizes the concept of national constitutional identity, turning it into a barrier against the evolutive interpretation of the Constitution. As a result, the Constitution is deprived of its quality as a "living law" and a flexible instrument expected to guarantee the dignity of all citizens in a pluralistic society, while simultaneously narrowing the legal remedies for LGBTI persons.

Furthermore, the significance of the work is linked to a direct legislative regression from established international standards, clearly illustrated by the introduction of restrictions in the Pre-school and School Education Act in 2024. This legislation is an indicator of regression in the human rights framework and is accompanied by the heightened politicization of the rights of LGBTI persons, who have become the target of deliberate attacks in public discourse. In recent years, based on the decisions of the Constitutional Court, the legislature and the courts in Bulgaria have officially adopted and begun implementing the so-called doctrine of traditional values and the traditional society, which is used to justify the denial of fundamental rights to LGBTI persons and undermines the foundations of the democratic state governed by the rule of law.

All these factors determine the urgent need for an in-depth legal analysis that proposes conceptual solutions for overcoming the existing constitutional paradox and restoring legal certainty.

1.2. Object and Subject Matter of the Research

The object of the present work constitutes the social relations formed and developed in connection with the exercise and protection of fundamental rights and freedoms in the Republic of Bulgaria, examined through the prism of contemporary European constitutionalism. Within this broad context, the object of research focuses on the legal status of LGBTI persons and the institutional mechanisms designed to guarantee their equal treatment. This object is not exhausted solely by the entirety of applicable national constitutional and statutory norms, but organically integrates international human rights treaties and acts of European Union law. An integral part of the researched object is also the adjudicatory activity of the Constitutional Court, the general courts, and the supranational legal systems, insofar as it is precisely jurisprudence that imparts a practical dimension and social validity to abstract legal provisions.

Narrowing the focus, the subject matter of the dissertation encompasses the specific issues related to the deficits, normative collisions, and lacunae in the law that hinder the effective legal protection of LGBTIQ+ persons within the national legal framework. For the purposes of the present work, with a view to terminological clarity and the reflection of broader institutional strategies, the acronyms LGBTI and LGBTIQ+ are treated as interchangeable categories and are used in parallel throughout the exposition.

The scope of the subject matter is concentrated on the outlined constitutional paradox, wherein the formal manifestation of the principle of equality in objective law comes into direct contradiction with the factual impossibility of fully exercising fundamental subjective rights. An essential element of the subject of research is the dogmatic and casuistic analysis of the interpretative approaches in national jurisprudence, which condition the restrictive application of human rights standards. The scope of the subject matter also includes the systemic tension between the isolated national model and the evolutive jurisprudence of the ECtHR and the CJEU. The focus is directed towards unmasking the mechanism of normative silence and conceptual definition by exclusion. It is precisely through these hidden instruments that the universal effect of constitutional guarantees is deformed, and a significant group of legal subjects is left in a state of permanent legal uncertainty and institutionalized deprivation of rights.

1.3. Aims and Objectives of the Research

The main objective of the present dissertation is to conduct a comprehensive and critical legal analysis of the normative deficits and doctrinal lacunae in the constitutional protection of the fundamental rights of LGBTI persons in the Republic of Bulgaria. The research categorically transcends a descriptive overview of the applicable positive law, setting as its task to clarify the deep theoretical and historical premises that condition these deficits. The ultimate goal of this research effort is to construct scientifically sound proposals for overcoming the existing legal uncertainty and for genuinely guaranteeing the principle of equality.

To achieve this primary objective, the research follows a logical progression of interconnected steps. The foundation of the analysis is laid through a precise clarification of the terminological and conceptual apparatus, constructing an analytical framework that integrates the tools of deconstruction and queer theory into the sphere of constitutional law. The application of this specific approach aims to reveal the implicit binary hierarchies and normative assumptions embedded in legal language, doctrine, and jurisprudence, through which institutions construct legal subjects and legitimize unequal treatment.

Building upon this theoretical basis, the study traces the historical development of the legal status of LGBTIQ+ persons in Bulgaria. Through a legal-historical analysis of the normative framework from the post-Liberation period to the adoption of the current Constitution of 1991, the influence of previous repressive regimes on the contemporary

institutional environment is examined. In this way, it establishes the extent to which the historical legacy and the lack of its critical reassessment continue to condition a conservative culture of law application.

To overcome the national insularity of the doctrine, the scientific analysis shifts to a supranational and comparative legal level. This requires, on the one hand, a vertical comparison of the national legal order with the standards of the CJEU and the ECtHR, to assess the degree of compliance with the pan-European human rights protection order. In parallel, a horizontal comparison of the regulatory models in other Member States is conducted, serving as a tool for identifying adequate normative solutions and for deconstructing arguments of legal impossibility.

The theoretical, historical, and comparative foundation thus established allows for the transition to the actual critical analysis of the current Bulgarian constitutional and statutory framework. Attention is concentrated on discovering lacunae in the law and normative collisions, conducting a study of the jurisprudence of the Constitutional Court and the general courts. The evaluation of their interpretative methodology and legal reasoning aims to establish the dogmatic reasons for the restrictive application of human rights standards.

The synthesis of these lines of inquiry finds its logical conclusion in the systematization of the scientific findings and the formulation of specific *de lege ferenda* proposals. The research endeavor is directed toward constructing a complete legal model for legislative amendments that would bring the Bulgarian legal order into full compliance with the state's international obligations and ensure the effective operation of constitutional guarantees for all citizens.

1.4. Methodology of the Scientific Research

In order to respond adequately to the complex nature of the researched issues, the present work adopts a multidimensional methodological framework that organically combines the classical legal-dogmatic apparatus with a critical theoretical one. The dissertation is based on the socio-legal approach, as strict legal positivism proves cognitively insufficient to uncover the deep ideological and structural reasons for the deficits in the legal protection of LGBTIQ+ persons. This research model allows the law to be analyzed not as a closed and self-referential system, but as a normative order deeply rooted in the social context and power structures. Through this paradigm, the phenomenon of normative silence

is examined, establishing how the lack of explicit regulation functions as an active instrument for normative exclusion.

To achieve a comprehensive analysis, the research integrates two mutually complementary methodological points. At the core of the first lie the methods established in constitutional legal science. By applying a parallel legal-historical approach, the evolution of the normative framework from the post-Liberation period to the present is traced, in order to clarify the influence of the historical legacy on current jurisprudence. The comparative legal method is applied in a functional aspect through a two-dimensional structure: vertically, a systematic comparison is made between national law and the standards of supranational judicial bodies, and horizontally, the regulatory models in other European countries with similar historical development are evaluated. The casuistic method is integrated through the mechanism of thick description, which provides a detailed microanalysis of the judicial argumentation of the Constitutional Court and the supreme courts, aiming to reveal the tacit assumptions in their reasoning. The validity of the drawn conclusions is ensured through methodological triangulation, whereby the three primary methods are applied for cross-verification of the data.

Beyond classical dogmatics, the research also introduces a second conceptual point, operating as a critical theoretical filter built upon the symbiosis of queer theory and deconstruction. In the context of legal analysis, these theories do not function as ideological platforms but are applied as juridical methods for a precise reading of the repressive and regulatory mechanisms of state power. Deconstruction provides an apparatus for destabilizing hierarchical binary oppositions in legal language, while queer theory fills this model with specific content regarding heteronormativity and the legal construction of subjects. The application of an intersectional approach further broadens the scope of the analysis, illuminating the interaction between different forms of legal and social exclusion.

The documentary basis of the research encompasses a broad corpus of primary sources, including the current constitutional and statutory framework, international acts, legislative preparatory materials, and jurisprudence. The research design is qualitative, descriptive, and analytical, being entirely subordinated to strict ethical standards. An objective presentation of all sources is ensured, with clear consideration of researcher positionality. By synthesizing this broad methodological complex, the work consciously overcomes institutional formalism and offers a complete dogmatic and theoretical model for conceptualizing and reforming the constitutional status of LGBTI persons in the Republic of Bulgaria.

1.5. Structure of the Scientific Research

The dissertation is logically structured in accordance with the established research objectives and encompasses an introduction, three main parts developed into a total of six chapters, a conclusion, and directions for future research.

The first part of the research lays the theoretical and historical framework of the work. Its beginning introduces the terminological apparatus and subjects the main legal definitions to critical analysis, while in parallel outlining the established international framework regarding sexual orientation, gender identity, and sex characteristics. The legal-historical analysis of the development of the status of LGBTI persons in Bulgaria builds upon this conceptual foundation. The exposition traces the evolution of the normative framework from the post-Liberation period, through the penal repression in the totalitarian state, to the adoption of the current Constitution. This retrospective overview aims to establish the genesis of contemporary normative silence and the historical construction of the heterosexual model as the sole legally relevant one.

The second part shifts the research focus beyond national borders, situating the issues at a comparative legal and supranational level. This stage of the research begins with a comparative constitutional overview of selected foreign legal systems, wherein a classification of approaches in constitutional justice is derived through a parallel between Western European countries and those in Central and Eastern Europe. This horizontal comparative approach transitions naturally into a vertical analysis of the standards of supranational law. Within its framework, the evolution in the jurisprudence of the ECtHR and the CJEU is examined, with a particular emphasis on the prohibition of discrimination and the right to free movement, which function as an external corrective to national law.

Based on the conclusions from the national context, the research concentrates its attention in the third part on the current constitutional legal regime and jurisprudence in the Republic of Bulgaria. The analysis here begins with a critical reading of the Bulgarian normative framework, illuminating the systemic tension between fundamental constitutional principles and institutionalized arguments related to national identity and public morality. Special attention is given to the normative regression in the special legislation of 2024. Since the normative framework acquires a real form only through its application, the next logical step is a detailed casuistic analysis of national adjudicatory activity. In this chapter, the acts of the Constitutional Court are critically evaluated, alongside the restrictive practice of the

supreme courts on issues of legal gender recognition and the institutional protection of LGBTIQ+ persons.

The concluding part consolidates the main scientific-theoretical and practical findings of the research. Based on the established lacunae in the law, specific and systematically linked *de lege ferenda* proposals are formulated to bring national legislation into full compliance with international human rights standards. As a natural finale to the exposition, the original research contributions of the dissertation are presented, and the prospects for future scientific research in the examined subject matter are outlined.

2. Content of the Thesis

2.1. Introduction

The dissertation's opening section presents the core research problem by critically evaluating the sharp divide between theoretical constitutional ideals and how they are actually enforced for LGBTI individuals.. Although following the adoption of the 1991 Constitution and the accession of the Republic of Bulgaria to the Council of Europe and the European Union, the national legal order adopted an integrative approach to human rights protection, and despite the normative entrenchment of the primacy of international law through Article 5, Paragraph 4 of the Constitution, the introductory section substantiates the existence of a profound crisis in the exercise of fundamental rights by LGBTIQ+ citizens. This crisis manifests in the form of a systemic constitutional paradox: the declared universal equality before the law is accompanied by a state of general legal invisibility and factual disenfranchisement for a significant part of society.

To explain this phenomenon, the exposition outlines the main doctrinal and institutional causes of this constitutional deficit. The thesis is advanced that an artificial tension continues to dominate Bulgarian legal science between the concepts of "human rights" and "fundamental subjective rights." This theoretical construct reduces universal rights to a conditional category, placed in absolute dependence on the specific national positive legal framework and the will of the historical legislator. It is pointed out that such a formalistic approach legitimizes the institutional resistance of the state apparatus against the evolutive standards of the ECtHR and the CJEU. As an example of this legal regression, the introduction highlights key acts of the Constitutional Court, which create the concept of

national constitutional identity for the purpose of restricting rights, as well as the recent restrictive amendments in educational legislation that introduce explicit prohibitions in violation of international human rights standards.

To comprehend the repressive mechanisms of the law and the effect of normative silence, the introduction substantiates the necessity of upgrading classical legal positivism with a more complex methodological framework. The research applies a critical theoretical filter integrating deconstruction and queer theory. Through this analytical apparatus, the objective is set to reveal the latent hierarchies in legal language, by means of which the heteronormative model is established as the sole valid one, and the LGBTI subject is constructed as a deviation requiring special treatment, rather than as a bearer of universal protection.

In the concluding segments of the introduction, the research questions are formulated, and the main thesis of the work is presented, according to which the deficits in legal protection represent a systemic phenomenon generated by the strict originalist interpretative tradition. On this basis, the logical structure of the research is built, smoothly transitioning from a conceptual and historical-genealogical clarification of the problem, through a comparative legal and supranational juxtaposition, to a critical analysis of national jurisprudence. This consecutive research progression prepares the dogmatic foundation for formulating a comprehensive legal model to guarantee fundamental rights in full compliance with the imperatives of the European legal space.

2.2. Part One: Theoretical and Historical Framework

2.2.1. Chapter One: Concepts and Theoretical Framework

The first chapter of the dissertation is dedicated to the construction of a conceptual apparatus that functions as an analytical foundation for the subsequent legal-dogmatic research. Proceeding from the observation that classical legal positivism is methodologically insufficient for uncovering the latent mechanisms of social exclusion, the chapter introduces and substantiates the application of a critical theoretical filter based on the organic combination of deconstruction and queer theory.

The theoretical reading begins with a deconstruction of the legal concepts themselves (following the model of *Jacques Derrida*), whereby the law is examined not as a neutral system of objective norms, but as a discursive field structured by binary oppositions (e.g., biological/ideological, presence/absence, universal/specific). It is demonstrated that these

oppositions are deeply hierarchical: one concept is invariably positioned as "original," "natural," and "normal," while the other is marginalized as secondary, artificial, and deviant. The analysis demonstrates how this hierarchical structure actively operates within Bulgarian constitutional discourse. Landmark decisions of the Constitutional Court are subjected to criticism for their logocentric logic, which absolutizes "biological sex" as a transcendental reality and stigmatizes "social sex" (*gender*) as an artificial construct and a threat. Concurrently, it is revealed how the legal definition of marriage creates an effect of "normative silence," whereby the heterosexual union is established as the sole legitimate form, and alternative family models are actively relegated to the sphere of legal absence and invisibility.

The conceptual destabilization of hierarchies transitions naturally into a deconstruction of the "identity–difference" opposition within the context of the liberal paradigm. It is clarified that the construction of the abstract "universal" subject often conceals the tacit norm of the heterosexual, cisgender citizen. In this way, the legitimate human rights demands of LGBTIQ+ persons are reframed from an issue of universal equality into a question of granting a "specific privilege." The perspective of queer theory allows for overcoming this dogmatic impasse by revealing that legal norms themselves are not a passive mirror of reality, but performative acts that produce and naturalize heterosexual identity as a privileged status.

Following the clarification of performative mechanisms, the exposition proceeds to the terminological elucidation of the acronym "LGBTI." It is not viewed as a biological given, but as a socio-politically constructed concept that unites groups subjected to systemic unequal treatment. Despite its mobilizing value, the analysis clearly demarcates the serious internal differences in legal claims: demands for equal recognition of family ties (L, G, B), the right to self-determination and legal gender recognition (T), and the protection of bodily integrity against non-consensual medical interventions (I).

This internal heterogeneity necessitates the introduction of the internationally established SOGIESC analytical framework (sexual orientation, gender identity, gender expression, and sex characteristics). Its absolute necessity is substantiated as a countermeasure to the systemic doctrinal flaw in Bulgarian law—the conceptual conflation of the concepts of sex, gender identity, and sexual orientation. This flaw leads to the reduction of legal gender recognition claims to hypotheses of family law, which creates preconditions for a denial of justice. Each of the four dimensions of SOGIESC is analyzed independently, emphasizing the interpretative role of the Yogyakarta Principles. Although acts of "soft law,"

they possess key interpretative value and function as a normative corrective for an objective assessment of the (non)compliance of the Bulgarian legal order with evolving human rights standards.

2.2.2. Chapter Two: Historical-Legal Genesis of the Status of LGBTI people in Bulgaria

The second chapter of the research traces the historical-legal evolution of the status of LGBTI persons in Bulgaria from the establishment of the modern Bulgarian state to the adoption of the Constitution of 1991. The analysis demonstrates that normative development does not follow a linear trajectory of progress, but represents a series of strategic legislative decisions reflecting shifts in the ideological paradigms and biopolitical functions of the state.

The chronological overview begins with the post-Liberation period, placing an emphasis on the inherited legal situation. It is pointed out that the applicable Ottoman Penal Code of 1858, having received the French *Code pénal* of 1810, did not criminalize same-sex acts between adults. Against this backdrop, the adoption of the first Bulgarian Penal Law in 1896, which criminalized male homosexuality (Article 216), was not a manifestation of continuity, but a conscious normative regression under the influence of conservative Russian and Hungarian models. This legislative decision institutionalized state intervention in the intimate sphere, turning sexuality into an object of medical and legal pathologization and legitimizing the concept of the "healthy" social organism.

Biopolitical control reached its peak within the repressive apparatus of the totalitarian state (1944–1989). The radical criminalization through the Penal Code of 1951 (Article 176) is examined, which for the first time also criminalized same-sex acts between women, reflecting the Marxist-Leninist regime's aspiration for total control over non-reproductive sexuality. The subsequent Penal Code of 1968 introduced partial decriminalization, which, however, was categorically not a manifestation of liberalism. By criminalizing manifestations in a "scandalous manner" (Article 157), the state created a model of "pathologized tolerance," providing a legal basis for systemic police surveillance by State Security and the People's Militia, thereby forcing LGBTI persons into absolute social invisibility.

The historical framework concludes with the transition period and the genesis of the Constitution of 1991. A critical analysis is conducted on the introduction of the restrictive definition of marriage in Article 46 of the Constitution of the Republic of Bulgaria. It is substantiated that this norm is not the product of a primordial legal tradition, but constitutionalizes heteronormativity in the search for social stability during a time of radical

societal transformation. By applying a deconstructive approach, the chapter demonstrates how constitutional silence regarding alternative forms of family acts as an active mechanism for exclusion. The lack of regulation for intimate partnerships outside of marriage creates a profound "normative vacuum," which not only leaves LGBTI persons without legal protection but also condemns them to a state of permanent legal invisibility and civil isolation. This model of dual exclusion continues to predetermine the systemic deficits in the contemporary constitutional legal framework.

2.3. Part Two: Comparative Legal and Supranational Analysis

2.3.1. Chapter Three: Comparative Constitutional Review of Selected Legal Systems

Building upon the historical context, the third chapter of the research advances the analysis into the field of comparative constitutional law. By applying the functional method, it transcends the mechanical juxtaposition of positive legal texts to examine the dynamics of constitutional hermeneutics and the ways in which various legal systems overcome the structural contradiction between traditional (often heteronormative) definitions of marriage and contemporary imperatives for equality. The aim of this horizontal overview is to deconstruct the narrative of "cultural exceptionalism" and to demonstrate the variability in institutional responses.

The comparative overview begins by tracing the evolution within Western European legal systems—Germany, France, and Spain. In this context, the historical transition from models of parallel institutions (registered partnerships) to full legal assimilation (marriage equality) is outlined. A special emphasis is placed on the role of constitutional courts, which do not merely react to social changes but act as an active engine of modernization. The German experience is characterized by the gradual abandonment of the conservative doctrine of the "distance requirement" (*Abstandsgebot*) in favor of substantive equality. For their part, the French and Spanish models demonstrate the rejection of "naturalistic" arguments for marriage: the Constitutional Council of France confirms broad legislative discretion to reconceptualize the institution, while the Spanish Constitutional Tribunal applies an "evolutive interpretation," viewing the constitution as a "living tree" capable of adapting its meaning to contemporary societal needs.

In parallel with the transformations in family law, the research focus shifts to legal gender recognition and the rights of intersex persons. The global transition from a biopolitical model based on coercive medical pathologization and sterilization (exemplified by the

historical analysis of the German *Transsexuellengesetz* – TSG) to the contemporary model of self-determination, wherein the state's role transforms from constitutive to purely declarative, is analyzed. This trend is followed by examples from the legislation of Malta, Spain, and the new German law (*Selbstbestimmungsgesetz* – SBGG). Special attention is given to the deconstruction of the binary model through the recognition of non-binary identities and the protection of intersex children from non-consensual "normalizing" surgeries—a process that resolves the collision between parental authority and the right to bodily integrity (the "right to an open future").

To achieve comprehensiveness in the functional analysis, the exposition delves into the specifics of the post-socialist space of Central and Eastern Europe (CEE). The analysis reveals an internal division that refutes the myth of a unified, conservative Eastern bloc. On the one hand is positioned the "emancipatory model" (Slovenia and Estonia), in which the law is used as an instrument for integration and for overcoming discrimination through judicial activism or bold legislative initiative. On the other hand, the "restrictive model" (Hungary, Poland, and Bulgaria) is examined, where constitutional texts and procedures are instrumentalized ("abusive constitutionalism") for active exclusion, the institutionalization of heteronormativity, and the erection of barriers against supranational human rights standards under the pretext of preserving constitutional identity.

In summarizing these divergent trends, the analysis derives a clear typology of constitutional approaches, distinguishing the conflict between the doctrine of static law (formalistic originalism, characteristic of Bulgaria) and the doctrine of the Constitution as a "living law" (teleological interpretation in the name of human dignity). It is emphasized that the level of protection is not historically predetermined, but is the result of a conscious sovereign choice—whether the national legal order will embrace judicial dialogue and European integration, or limit itself to judicial resistance and institutional isolation.

2.3.2. Chapter Four: Standards of Supranational Law (Vertical Analysis)

To examine the external boundaries of national sovereign margin of appreciation, the fourth chapter conducts a "vertical analysis" of human rights standards, investigating the structural collision between the restrictive national framework and the evolutive imperatives of the supranational legal order. The focus is placed on the obligations of the Republic of Bulgaria pursuant to Article 5, Paragraph 4 of the Constitution, which establishes the primacy of international law.

The vertical analysis begins with an examination of the standards of the Council of Europe and the jurisprudence of the ECtHR. In this context, the evolution of protection under Article 8 in conjunction with Article 14 of the ECHR is traced—from initial negative obligations (the decriminalization phase in the *Dudgeon* case) to the establishment of strict positive obligations. Of key significance in this jurisprudence is the *Fedotova* judgment, which imperatively obliges member states to provide a legal framework for the recognition of same-sex families. This doctrine finds direct application for Bulgaria through the condemnatory judgment in the *Koilova and Babulkova* case, which delegitimizes the passivity of the national legislature. As the scope of owed protection expands, the analysis concurrently traces the development of protection regarding gender identity (the cases of *Goodwin, A.P. v. France*, and *Y.T. v. Bulgaria*), wherein the ECtHR rejects the sterilization requirement. The analysis of conventional standards is supplemented by an examination of the positive obligations to investigate hate crimes (the *Stoyanova v. Bulgaria* case), criticizing the Bulgarian procedural practice of qualifying these acts as ordinary "hooliganism"—an approach that directly violates the obligation to unmask the discriminatory motive.

Beyond the framework of the Council of Europe, the research focus shifts to the autonomous legal system of the European Union. The central role of the Charter of Fundamental Rights (and in particular the explicit prohibition of discrimination under Article 21) and the jurisprudence of the CJEU, which utilizes the fundamental right to free movement as an instrument to overcome national restrictions, are examined. This process is presented through an analysis of landmark decisions of the Court in Luxembourg. Prominent among them is the *Coman* case, which establishes a gender-neutral interpretation of the term "spouse" for residency purposes. This line is built upon by the *V.M.A. v. Stolichna obshtina ("Baby Sara")* case, which obliges the state to recognize a parental link established in another member state in order to guarantee the free movement of the child. The most recent supranational jurisprudence, objectified in the *Mirin, Shipova*, and *Cupriak-Trojan* cases, imposes an imperative for the mutual recognition of civil status, including acquired gender identity and civil marriage concluded in another member state.

The synthesis of this supranational jurisprudence leads to the fundamental constitutional conclusion that EU law functions as an active constitutional corrective. The doctrine of the primacy of EU law obliges the national judge to disapply any domestic norm or interpretative decision of supreme national courts that hinders the full recognition of the status of LGBTIQ+ EU citizens. Supranational pressure strips the reliance on "national

constitutional identity" as a justification for discrimination of its legitimacy and necessitates a transition toward an open and pluralistic constitutionalism.

2.4. Part Three: Constitutional Legal Regime and Practice in the Republic of Bulgaria

2.4.1. Chapter Five: Analysis of the Bulgarian Constitutional and Legal Framework

Entering into the core national issues, the fifth chapter shifts the analytical focus to the domestic legal order of the Republic of Bulgaria. The mechanism through which national institutions transform flexible constitutional concepts into insurmountable barriers to the protection of fundamental rights is examined. This process creates a profound rift between the state's international legal obligations and its internal institutional reality.

In order to deconstruct this mechanism, the exposition subjects the interpretation of four fundamental constitutional principles to critical analysis. First, the collision between the primacy of international law (Article 5, Paragraph 4 of the Constitution of the Republic of Bulgaria) and the concept of constitutional identity is examined: the "judicial sovereigntism" of the Constitutional Court is reviewed, with the landmark Decision No. 13/2018 being subjected to severe criticism for the "constitutionalization of biological determinism." It is demonstrated that the CC instrumentalizes concepts such as "public morality" and "tradition," elevating them to the rank of supreme values, to create factual immunity for national law against evolutive European standards—an approach that leads to a "suspended primacy" and institutional blockage.

This restrictive approach reflects directly upon the concept of human dignity (Article 4, Paragraph 2 of the Constitution): the systemic subordination of individual dignity in favor of conformism and the sociocultural comfort of the majority is analyzed. The lack of an explicitly codified right to the "free development of personality" and the deficit of proportionality in judicial review, wherein administrative convenience prevails over identity, are criticized.

A direct consequence of this narrowing of the human rights framework is the deformation of the principle of equality (Article 6 of the Constitution): the dogmatic conflict between the exhaustive enumeration of protected grounds in the Constitution and the "open" statutory framework of the Protection Against Discrimination Act (PADA) is examined. The formalistic "symmetrical approach" of the courts, which masks social exclusion as procedural fairness, is criticized. In contrast to this practice, the necessity for a transition to substantive equality and a broad interpretation of the ground "personal and social status" is substantiated.

Lastly in this dogmatic group, the reductionist interpretation of the right to private life (Article 32 of the Constitution), which reduces the principle to the "right to be left alone," is deconstructed. Interpretative Decision No. 2/2023 of the Supreme Court of Cassation is analyzed as an act that severely infringes upon the self-determination of trans persons. It is substantiated that the lack of legal recognition of family life (through marriage or partnership) is not merely institutional passivity, but an active form of discrimination leading to property, inheritance, and procedural deficits.

Beyond the purely constitutional text, the research interest encompasses the special anti-discrimination legislation, with an emphasis on the paradox of the PADA. Although the law explicitly protects "sexual orientation" and gender reassignment, law enforcement suffers from severe lacunae: first, national courts exhibit "institutional passivity" toward indirect discrimination, and second, the Commission for Protection Against Discrimination (CPAD) acts as a passive registrar, avoiding proactive intervention against structural problems.

An example of the structural deficits, occupying a central place in the chapter, is the constitutional critique of the amendments to the Pre-school and School Education Act (State Gazette, Issue 69 of 2024). Arguments are presented regarding the violation of law-making principles, expressed in the lack of an impact assessment and the disproportion between demographic motives and the educational subject matter. It is demonstrated that the legal definition of "non-traditional sexual orientation" is in direct collision with the PADA, and the concept of "promotion" functions as an instrument for a ban on knowledge and for administrative repression. To highlight the scale of the legislative regression, it is juxtaposed with the CJEU judgment against Hungary (C-769/22) to prove a direct violation of EU values. The passivity of the presidential institution (failure to exercise a veto) is also criticized, which exhausts the protective mechanisms of the rule of law.

This entire theoretical and normative analysis finds its confirmation through an analysis of the case involving the canceled drag workshop at the Student House (2025). Through the decisions of the Administrative Court Sofia-City and the Supreme Administrative Court, the phenomenon of "structural homophobia" within the judicial system is revealed. The court affirms the "heckler's veto" (as an abdication of the state monopoly on violence), utilizes administrative formalism as an instrument for "othering," and validates societal prejudices (the presumption of an a priori "corrupting" effect), masking the exclusion behind procedural arguments of security.

2.4.2. Chapter Six: Practice of the Constitutional Court and National Courts – Casuistic Analysis

As a continuation of the theoretical and normative model, the sixth chapter of the dissertation offers a detailed casuistic analysis of national adjudicatory activity. The exposition traces the institutional regression toward legal formalism and biological determinism, while revealing the mechanism through which the supreme courts transform the Constitution from an instrument for the protection of rights into a means of social exclusion.

At the center of the casuistic overview initially stands the jurisprudence of the Bulgarian Constitutional Court, with the focus placed on two landmark decisions. The critical deconstruction of the reasoning behind Decision No. 13/2018 illuminates the manner in which the court constructs the concept of traditional human society as a constitutional imperative. A severe methodological flaw is revealed, and it is demonstrated that the CC creates a constitutional myth based on inaccurate perceptions of biology. This act institutionalizes the naturalistic fallacy and turns into an instrument for the dehumanization of persons outside the binary model. The logical escalation of this restrictive logical line finds expression in Decision No. 15/2021, which represents an act of absolute dogmatic fixation of meaning. Through it, the court acts as a quasi-constituent power, absolutizes biological determinism, and utilizes national identity as a territorial shield against supranational law. This approach places trans and intersex persons in a state of legal uncertainty and leads to the conclusion of a crisis of expertise and the judicial institutionalization of deprivation of rights.

The isolationist constitutional doctrine inevitably reflects upon the jurisprudence of the general courts. Regarding legal gender recognition, the regressive transformation in the jurisprudence of the Supreme Court of Cassation is traced. A transition is observed from humanistic decisions prior to 2021 to the absolute prohibition imposed by Interpretative Decision No. 2/2023. The refusal of the Supreme Court of Cassation to recognize gender identity is qualified as an institutional abdication that directly infringes upon human dignity and violates the binding standards of the ECtHR established in the cases of *Y.T.* and *P.H. v. Bulgaria*.

In parallel with this trend in civil adjudication, the research conducts a chronological analysis of the jurisprudence of the Supreme Administrative Court in the period 2019–2025 in cases relating to the recognition of same-sex families. The evolution is described from strict textualism and a refusal to recognize marriage, through the creation of a fragmented

legal subject, to overt institutional conservatism that utilizes public order as a blanket barrier against supranational norms.

The administrative legal analysis also encompasses the contradictory jurisprudence of the Supreme Administrative Court regarding the granting of refugee status to LGBTIQ+ persons. A serious inconsistency in adjudication is noted: while in some hypotheses the court progressively accounts for state repression in countries such as the Russian Federation, in others, a regression toward formalism and a requirement for past physical violence is observed. This lack of predictability not only creates legal uncertainty for those seeking protection but also affirms the overall conclusion of a systemic human rights deficit in the national judicial system.

3. Conclusion

The concluding part of the dissertation synthesizes the results of the conducted research and confirms the initial hypothesis regarding the existence of a profound structural constitutional paradox within the Bulgarian legal order. This paradox is expressed in the acute incompatibility between the formally proclaimed principles of equality and the rule of law, and the factual state of normative silence, which functions as an active mechanism for the institutional marginalization of LGBTI persons. On a theoretical level, the research concludes that traditional legal positivism is methodologically insufficient for uncovering the ideological structures of exclusion. Instead, through the application of a deconstructive reading, it is proven that seemingly neutral legal concepts such as public order and good morals are instrumentalized to impose a heteronormative and binary model.

The conceptual conclusion finds its historical anchor in the analysis, which refutes the myth of the primordial legal conservatism of the Bulgarian state. Tracing the normative genesis establishes that the liberal foundation in post-Liberation law was more progressive than a number of Western systems, and contemporary institutional inertia is the product of totalitarian legacies. By transposing these findings to a comparative legal and supranational level, a clash is observed between the evolutive constitutional model of the European space and the restrictive formalistic originalism adopted by national legal systems. As the sole legal resolution to this collision, the analysis proves that the Bulgarian judge faces the inalienable obligation to disapply any national norm or interpretative decision of the Constitutional Court that contradicts the imperatives of the Charter of Fundamental Rights of the EU.

Against this backdrop, the casuistic overview of national jurisprudence unequivocally illuminates the phenomenon of structural homophobia. It is established that through technocratic formalism and biological determinism, the courts abdicate their role as a guarantor of human rights and transform the LGBTIQ+ subject into an individual deprived of full legal personhood. With these key findings, the work fulfills its primary scientific objective, offering not only a critical reading of the existing deficits but also a dogmatic foundation for overcoming them in the spirit of contemporary European constitutionalism.

4. Scientific and Applied Contributions of the Thesis

4.1. Scientific-Theoretical Contributions

The work is distinguished by the application of an original scientific methodology to the researched issues, integrating the deconstructive approach to examine the systemic tension between applicable positive law and institutional factology. By adopting an organic, integrative approach to human rights, the limitations of classical legal positivism are overcome, and the framework provides an analytical tool for revealing the latent mechanisms of normative exclusion of vulnerable groups. The conceptual foundation is aligned with the evolutive standards of the ECtHR and the CJEU, thereby overcoming the dogmatic conflation of fundamental categories (such as sex, gender, gender identity, sexual orientation, and sex characteristics) and building a stable foundation for lawful and anti-discriminatory law enforcement in unison with European standards.

The main scientific-theoretical contributions building upon this methodology can be systematized in several key directions. Primarily, the dissertation accomplishes the first comprehensive historical-legal study of the status of LGBTI persons in Bulgaria within Bulgarian legal doctrine. The retrospective overview from the post-Liberation period to the adoption of the current constitution refutes the mythologems of the primordial legal conservatism of the Bulgarian state, as the analysis proves that contemporary restrictive law enforcement is the result of a totalitarian legacy. Furthermore, the research conducts an in-depth comparative constitutional study of selected legal systems. Through the functional method, the approaches of Western and Eastern European countries are systematized, thereby deconstructing the narrative of "cultural exceptionalism." The analysis derives a clear typology of constitutional models and demonstrates that the degree of protection of

fundamental rights is a matter of sovereign democratic choice rather than insurmountable historical predetermination.

Building upon this, the dissertation develops a novel two-dimensional—horizontal and vertical—analysis of human rights standards for Bulgarian legal science. The research details the structural collision between the restrictive national framework and the evolutive supranational legal order of the EU and the Council of Europe. It not only establishes dogmatic incompatibility but also substantiates the procedural obligation of the national judge to act as a guarantor of the primacy of EU law by disapplying conflicting domestic norms. Ultimately, the work executes a large-scale and critical casuistic analysis of current jurisprudence. Through the method of thick description, the reasoning of the Constitutional Court and the supreme courts is subjected to critical scrutiny. This microanalysis illuminates the phenomenon of judicial formalism and reveals the dogmatic mechanisms leading to "structural homophobia" and the abdication of the courts from their human rights protection function, as a result of which the subject is deprived of full legal personhood.

4.2. Applied Scientific Contributions (Proposals *de lege ferenda*)

Building upon these theoretical foundations, the applied scientific contributions of the dissertation are expressed in the systematization of key deficits in legal protection and the formulation of a comprehensive model of *de lege ferenda* proposals for their resolution. In the field of family law, the research proposes overcoming the normative vacuum that condemns same-sex couples to legal uncertainty and generates the phenomenon of "limping" legal relations during cross-border movement, through the adoption of a special law on civil unions or registered partnerships. This act should regulate the full spectrum of property and non-property rights, providing a status comparable to that of marriage. Regarding civil status and bodily integrity, the work advocates for the introduction of a fast, transparent, and accessible administrative procedure for legal gender recognition, based entirely on the principle of declarative self-determination and completely decoupled from requirements for medical interventions. Concurrently, it insists upon the introduction of an explicit statutory prohibition against performing irreversible normalizing surgical interventions on intersex children without their informed consent. In the realm of substantive criminal law, the dissertation suggests overcoming the fragmented protection against hate crimes by supplementing the respective qualified offenses in the Penal Code with the explicit inclusion of the grounds of "gender identity" and "sex characteristics." Finally, in the field of

educational legislation, the immediate repeal of the discriminatory provisions in the Pre-school and School Education Act (State Gazette, Issue 69 of 2024), which restrict "non-traditional sexual orientation," is postulated as a mandatory condition for restoring the rule of law and guaranteeing compliance with EU law and freedom of expression.

5. Future Research

A natural continuation of the present dissertation involves the directions for the future development of scientific research in the examined subject matter, which are oriented toward deepening the analysis in specific and still insufficiently explored legal spheres. As an immediate research task emerges the necessity for an independent medical-legal analysis of the status of intersex persons in Bulgaria. This specific segment requires a focused investigation into the balance between the boundaries of parental authority, the right to bodily integrity, and the overcoming of medical paternalism. Beyond the issues of individual autonomy, the research horizon should encompass the study of complex cross-border cases related to parental rights in same-sex families. The specific hypotheses of assisted reproduction and adoption generate conflicts between legal systems, wherein the current legal vacuum immediately threatens the best interests of the child. On a macrosocial level, a prospective direction for future scientific inquiry is linked to the economic analysis of law and discrimination. This interdisciplinary approach would allow for the quantitative measurement of the negative consequences that the social and normative exclusion of LGBTIQ+ persons inflicts upon the national economy, demographic processes, and the investment environment.

6. Publication Related to the Topic of the Thesis

- From Legal Vacuum to Self-Determination: A Comparative Analysis of Legal Gender Recognition in Bulgaria and Germany. *Yearbook of the Law Department of New Bulgarian University 2024: Year Thirteen*. Sofia: New Bulgarian University Publishing House, 2026. [forthcoming]
- Discrimination Based on Sexual Orientation and Gender Identity in Bulgaria. *Proceedings of the International Scientific Conference, April 19–20, 2024, NBU. Protection Against Discrimination in Bulgaria, Europe, and the World*.

Forum "Legal Studies" Series. Book Three. Sofia: New Bulgarian University Publishing House, 2025, pp. 440–453.

- Legal-Historical Overview of LGBTIQ+ Rights in the 19th and 20th Centuries on the Territory of Present-Day Republic of Bulgaria. *Yearbook of the Law Department of New Bulgarian University 2023: Year Twelve.* Sofia: New Bulgarian University Publishing House, 2024, pp. 176–195.
- Domestic Violence in Same-Sex Couples. *The Reform of Protection Against Domestic Violence. Proceedings of a Scientific Conference.* Sofia: Bulgarian Academy of Sciences. Institute for the State and the Law, 2024, pp. 231–245.