

OPINION

by Assoc. Prof. Dr Hristo Ilkov Hristov, lecturer in European Union Law and Protection of the Fundamental Rights at the Faculty of Law, Sofia University 'St Kliment Ohridski'

concerning: a doctoral thesis for the award of the academic and scientific degree of 'Doctor' in the field of higher education 3. 'Social, Economic and Legal Sciences', professional field 3.6. 'Law', scientific specialisation 'Constitutional Law', by Philip Robert Samuilov, a full-time doctoral student on the 'Constitutional Law' doctoral programme at New Bulgarian University, on the topic: *'Protection of the fundamental rights of LGBTI people within the constitutional framework of Bulgaria'*

I. Regarding the procedure for the defence of the academic and scientific degree of Doctor

I have been appointed as a member of the academic jury for the defence of Philip Robert Samuilov's doctoral thesis by Order No. 3-RK-220/19 June 2026 of the Rector of New Bulgarian University, issued pursuant to Article 14(3) of the Regulations on the Development of Academic Staff at New Bulgarian University (NBU) and a decision of the Faculty Council of the Faculty of Master's Studies taken at its meeting No. 9/18 June 2026. This statement has been drawn up in fulfilment of the role assigned to me in the procedure.

Submitted as part of the procedure are a dissertation comprising 292 pages, an abstract, a curriculum vitae and details of four publications directly related to the subject of the research. The materials submitted provide grounds for concluding that the formal requirements for holding the public defence have been met and that the results of the doctoral research have received the necessary publicity.

II. Regarding the doctoral candidate

Philip Robert Samuilov graduated with a degree in Law from the New Bulgarian University (NBU) in 2022 and completed a Master's programme in 'Human Rights and the

Rule of Law’ at the University of Miskolc in 2025. Since 2023, he has been a PhD student in constitutional law at NBU. His professional experience includes working as a legal expert at the LGBTI organisation ‘Deistvie’, as well as teaching Public international law at NBU.

The PhD candidate’s CV and publications reveal a consistent interest in human rights, equality and non-discrimination, constitutional issues and the interaction between national and European standards of protection. His participation in national and international academic forums, as well as his excellent command of English and German, have provided a solid foundation for working with a wide range of foreign-language sources.

His practical experience in the field of protecting the rights of LGBTI people contributes to an understanding of real-world legal issues, whilst at the same time requiring particular academic self-reflection. In this thesis, this particular stance is openly stated and is combined with a commitment to substantiating arguments through statutory sources, case law and elements of comparative legal analysis.

III. Regarding the presented doctoral thesis

1. Subject, relevance and significance of the research

The doctoral thesis is devoted to an undeniably topical and socially significant issue. The protection of the fundamental rights of LGBTI people lies at the intersection between the constitutional principles of equality, the rule of law, human dignity and the protection of fundamental rights, on the one hand, and sensitive issues relating to family law, civil status, education, criminal law protection and international protection, on the other. The chosen topic also has a distinct European dimension due to the interplay between the Constitution, the European Convention on Human Rights and European Union law in relation to the issues under consideration.

The relevance of this research stems from the lack of adequate legislation in Bulgarian law, the development of the case law of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (the Court of Justice of the EU), the ongoing implementation of judgments handed down in cases involving Bulgaria concerning the family life of same-sex couples, and the contradictory national practice regarding the legal recognition of gender. In this context, the work presented does not address an isolated sectoral issue, but analyses the capacity of the Bulgarian constitutional order to ensure the effective and equal exercise of universally recognised rights.

The central research problem is formulated as a contradiction between formally universal constitutional guarantees and the actual regulatory, institutional and interpretative mechanisms that limit their effect on LGBTI people. The author defines this contradiction as a ‘constitutional paradox’ and argues that the existing shortcomings are not a collection of

random legislative gaps, but a manifestation of a deeper pattern of normative exclusion, underpinned by formalist and originalist approaches in legal doctrine and case law.

The chosen topic undoubtedly represents a new area of research within Bulgarian legal doctrine. Certain aspects of it have been examined in works on anti-discrimination, family, constitutional and EU law, but this thesis brings them together in a comprehensive analysis of the constitutional status of LGBTI people, incorporating a historical perspective, comparative research, supranational standards and a detailed review of the Bulgarian judiciary.

2. Objectives, research thesis and main lines of analysis

The main objective of this study is to identify the causes of shortcomings in the protection of the rights of LGBTI people, to assess their compatibility with constitutional and supranational standards, and to propose legislative solutions. This objective is pursued through several sequential tasks: clarification of the conceptual framework; tracing the historical genesis; a horizontal comparison of selected national models; a vertical comparison with the case law of the European Court of Human Rights and the Court of Justice of the European Union; an analysis of the Bulgarian constitutional and legal framework; and a critical review of the case law of the Constitutional Court and the national courts.

Within the scope of the study, the author develops several interrelated ideas:

- the absence of explicit legal regulation is not necessarily neutral, but may function as a mechanism of normative exclusion and give rise to persistent legal uncertainty;
- the constitutional concepts of equality, dignity and private life should be interpreted in an evolutionary manner and in dialogue with international and supranational standards;
- invoking national constitutional identity and ‘traditional values’ cannot, in itself, justify the restriction of fundamental rights;
- national courts have an independent role to play in addressing gaps in protection through conforming interpretation, effective judicial protection and, where the conditions are met, the application of the principle of the primacy of EU law;
- a coherent legislative framework is required, covering family status, the legal recognition of gender, the bodily integrity of intersex children, hate crimes and the educational environment.

These lines of argument lend unity to the work and allow the individual thematic areas to be viewed as manifestations of a common constitutional problem, rather than as unrelated cases of private or administrative law.

3. Research Methodology

The methodological framework is one of the distinctive features of the thesis. Philip Samuilov combines classical legal-dogmatic analysis with a socio-legal and critical approach. The legal-historical, comparative law, systemic, teleological and casuistic methods are employed. The comparison is developed in two dimensions: horizontally – between selected national legal systems – and vertically – between the Bulgarian legal framework and the standards of the Council of Europe and the European Union.

Of particular interest is the use of a deconstructive reading and analytical elements from queer theory. Through these, the PhD candidate examines not only the content of legal norms, but also the way in which legal language and binary categories can create hierarchies and limit the recognition of certain subjects as full holders of rights. Case-by-case analysis through so-called ‘thick description’ makes it possible to trace the premises, lines of argument and practical consequences of specific court decisions.

This methodological combination is ambitious and, on the whole, productive. It enables one to move beyond a purely descriptive account of the current legal framework. At the same time, the use of critical theories requires a clear distinction between analytical observation and normative assessment. In places, the language of the work – for example, concepts such as ‘structural homophobia’, ‘epistemological violence’, ‘civil death’ or ‘constitutionalism of abuse’ – is highly evaluative. It has heuristic value, but would be even more convincing if every such characterisation were linked to pre-defined legal criteria and to the specific legal consequences of the act in question.

4. Structure of the thesis

The thesis is structured into an introduction, three parts, six chapters and a conclusion. The chosen structural framework may be somewhat more complex and ambitious than is customary for a thesis, but at the same time it corresponds to the subject and objectives of the research and follows a clear logic – from the concepts and historical background, through comparative and supranational standards, to an assessment of the Bulgarian legal framework and case law.

The first part lays the theoretical and historical foundations. Chapter One clarifies the terms ‘sexual orientation’, ‘gender identity’, ‘gender expression’ and ‘sex characteristics’ and introduces the SOGIESC framework. Chapter Two traces the legal framework from post-liberation Bulgaria, through the totalitarian period, to the 1991 Constitution. A key

contribution of this study is that the historical material is not treated as a separate digression, but is used to test claims of an immutable national tradition and to explain the origins of contemporary interpretative attitudes.

The second part develops the comparative and domestic legal analysis. Chapter Three compares models of registered partnerships and marital equality, legal recognition of gender, and the protection of intersex people in selected Western, Central and Eastern European legal systems. Chapter Four systematises the standards under Articles 8 and 14 of the ECHR, positive obligations in cases of violence and hate crimes, as well as the relevant guarantees under the Charter of Fundamental Rights of the EU and the case law on freedom of movement and the recognition of civil status.

The third part is most directly focused on Bulgarian law. Chapter Five examines the principles of the primacy of international law, dignity, equality and private life, before analysing anti-discrimination and education legislation and the institutional mechanism of the Commission for Protection against Discrimination. Chapter Six provides a detailed analysis of the Constitutional Court's rulings from 2018 and 2021, the practice regarding the legal recognition of gender, as well as rulings by the Supreme Administrative Court concerning events organised by the LGBTI community and international protection. The conclusion summarises the findings on the tasks set out, identifies four groups of shortcomings and formulates proposals *de lege ferenda*.

It is recommended that, in any future publication of this work, certain repetitions between the introduction, the summaries in the individual chapters and the extended conclusion be reduced, and that the conclusions *de lege lata* be more clearly distinguished from the legislative and legal-policy proposals.

5. Scholarly apparatus and sources used

The thesis is characterised by a broad and diverse body of academic literature. A substantial body of case law has been systematically organised separately. The quantitative scope is combined with the functional use of the sources. Legal doctrine serves to establish the theoretical framework, institutional reports serve to contextualise the national environment, and case law serves to verify the actual effect of legal safeguards.

6. Academic and applied research contributions

The following elements can be identified as Philip Samuilov's most significant original contributions:

1. a comprehensive historical and legal study of the status of LGBTI people in Bulgaria from the post-liberation period to the contemporary constitutional framework. Particularly valuable is the conclusion that today's restrictive models should not automatically be presented as an expression of a continuous and unchanging Bulgarian legal tradition, but must also be viewed through the lens of the legacy of the totalitarian state and the subsequent institutional layers;
2. the development of an integrated two-dimensional model of comparative legal analysis. The horizontal comparison between different European legal systems and the vertical comparison with supranational standards enable the Bulgarian legal framework to be assessed both in relation to possible legislative solutions and in relation to existing international and European obligations;
3. the systematisation and critical analysis of a substantial body of national case law. A significant contribution is made by examining not only the final outcomes of the cases but also the patterns of argumentation – the mixing of different protected grounds, the use of biological determinism, the invocation of public morality and traditional values, the rejection of a proportionality test, and the varying standards of proof in proceedings concerning international protection;
4. the conceptualisation of 'normative silence' as a legally significant mechanism through which the absence of regulation can produce specific adverse consequences – non-recognition of family ties, uncertainty regarding civil status, impeded access to protection and the emergence of cross-border 'limping' legal relationships;
5. the introduction into Bulgarian constitutional legal analysis of deconstructive and intersectional tools and their use to critique ostensibly neutral legal categories. Although this approach is open to academic debate, its consistent application lends originality to the work and opens up new perspectives for research into equality and legal subjectivity;
6. the formulation of a coherent set of academic and practical proposals: legal regulation of civil unions or registered partnerships; a swift and accessible procedure for legal recognition of gender; protection of intersex children against irreversible interventions without informed consent; strengthening of criminal law protection against hate crimes; and the repeal of the restrictions introduced in the Pre-school and School Education Act in 2024.

These contributions have both academic-theoretical and practical value. They systematise fragmented material, offer an original explanatory framework and outline specific avenues for legislative change.

7. Critical remarks and questions

The positive assessment set out above does not preclude certain critical remarks, which do not affect the overall academic value of the work but may be useful for its future development.

Firstly, some key concepts and theses are formulated in language that is overly categorical or laden with journalistic rhetoric. Terms such as ‘abdication’ by the courts, ‘structural homophobia’, ‘legal separatism’ and ‘civil death’ should be used with caution and linked to clearly defined legal indicators. A more measured analytical language would enhance the work’s persuasiveness even for readers who do not initially share its critical perspective.

Secondly, the argument regarding the national judge’s obligation to set aside any national provision or interpretative decision that conflicts with the Charter requires further clarification. The principle of primacy presupposes the existence of a specific conflict with directly applicable provisions of EU law, whilst the Charter is binding on Member States when they apply Union law within the meaning of Article 51(1). Therefore, for each matter analysed, the specific link with EU law should first be established, and a distinction should be drawn between the consequences of primacy, the corresponding interpretation, direct effect and effective judicial protection.

Thirdly, the comparative law analysis is well-founded and comprehensive, but the criteria for selecting countries and the limits of the transferability of the relevant models to the Bulgarian constitutional context could be set out even more clearly. Similarly, the proposals *de lege ferenda* would benefit from a more detailed elaboration of the institutional design and transitional provisions, particularly regarding parenthood, social security and inheritance, civil status registers, and the relationship with existing family law institutions.

Fourthly, when presenting the historical genesis and causal links between the totalitarian legacy and contemporary practice, it is important to maintain a distinction between proven continuity, probable influence and the author’s interpretation. The existence of historical continuity does not in itself always establish causality.

In this context, I would pose the following questions to the PhD candidate:

1. how should the scope of application of the Charter of Fundamental Rights of the EU be defined in national proceedings for the legal recognition of gender and the recognition of family relationships, where the specific case has no cross-border element?
2. what legal criteria allow us to distinguish between a mere legislative gap and ‘regulatory silence’ functioning as a form of discriminatory exclusion?

3. what minimum model for the legal recognition of same-sex couples would fulfil the positive obligations under the ECHR without necessarily presupposing full equivalence between registered partnerships and marriage?

IV. Conclusion

Bearing in mind the topicality and significance of the chosen topic, the coherent structure of the study, the original and productive methodological framework, the extensive scholarly apparatus, the in-depth analysis of case law, and the established academic and applied contributions, I give a positive assessment of the doctoral thesis presented by Philip Robert Samuilov.

The thesis demonstrates that the doctoral candidate possesses in-depth theoretical knowledge in the field of constitutional law and human rights, as well as the ability to conduct independent academic research. The thesis contains original academic findings and practical proposals which contribute to the development of Bulgarian legal doctrine and to the debate on the effective protection of the fundamental rights of LGBTI people in Bulgaria.

I consider that the thesis and the publications presented meet the requirements of the Law on the Development of Academic Staff in the Republic of Bulgaria, the Regulations for its implementation and the relevant internal regulations of New Bulgarian University.

In view of the above, I propose that the members of the academic jury award Philip Robert Samuilov the academic and research degree of ‘Doctor’ in Higher Education Field 3, ‘Social, Economic and Legal Sciences’, professional area 3.6. ‘Law’, scientific specialisation ‘Constitutional Law’.

Hvoina, 11 September 2026

Assoc. Prof. Dr Hristo Hristev
Member of the Academic Jury