CONSTITUTIONAL TRADITIONS – THE BULGARIAN PERSPECTIVE

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Abstract

The term "constitutional tradition" is undefined by legislation and jurisprudence. Considered as a notion of common knowledge, it nevertheless raises questions as to its ideological scope and content. This paper focuses briefly on the different theories for the scope of constitutional tradition and its relationship with national/constitutional identity. It traces the evolution of Bulgarian constitutional history on the basis of which some key elements inherent in the national constitutional model are deduced. Then it places Bulgarian constitutional tradition within the larger context of the membership in the European Union. The article cites several judgments of the Constitutional court which refer to constitutional tradition and draws conclusions for its significance.

DEFINITION AND SCOPE OF CONSTITUTIONAL TRADITION

In the absence of a legal or jurisprudential definition of constitutional tradition the doctrine suggests at least three ways of understanding this term according to its scope. Under the broadest interpretation of constitutional tradition, it may encompass all historically repeating elements of the constitutional model including the practice of its application. Constitutional tradition may also be focused on the distinctive features of the historical evolution of a given constitutional system which differentiate it from the others. Finally, in a narrow sense it may be limited to the fundamental characteristics of the constitutional system which persist over time, the core principles and values of the constitutional order such as the form of government, the constitutional status of individuals etc.[2]

First, the broadness of the term constitutional tradition conditions a comprehensive approach to its scope which should include not only the specific elements of a given constitutional model or the fundamental values and principles which determine its main substance but also all other subsidiary characteristics which have stood the test of time and have become an integral part of the national judicial and social practice. There is no objective justification for the opposite.

Besides, the Bulgarian constitutional court although abstaining from giving a definition to constitutional tradition has referred to various constitutional elements which have enjoyed a certain degree of stability throughout Bulgarian constitutional history and were therefore considered as traditional.[3] Although some of them can be qualified as fundamental and distinctive for Bulgarian constitutional evolution such as the principle of division of powers[4] or ethnical tolerance[5] others account for subsidiary characteristics of the Constitution.[6]

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[2] Belov, M., "Bulgarian Constitutional Identity", Sibi, 2017, p. 62

[3] A commentary of the jurisprudence of the Bulgarian Constitutional court referring to constitutional tradition will be made further in this article.

[4] Judgment № 6 from 22.04.1993 on const. case №4 from 1993

[5] Judgment № 2 from 11.02.1998 on const. case №15 from 1997

[6] Judgment № 1 from 19.01.2010 on const. case №14 from 2009 – on the power of the National Assembly to give amnesty

This implies that constitutional traditions cannot be limited to previously specified elements of the Constitution considered as fundamental. Constitutional tradition is a complex phenomenon whose elements can hardly be deduced *prima facie*. Its application requires an extensive analysis of the historical, legal and social background of the relevant constitutional texts.

Finally, a narrow definition of constitutional tradition including only the distinctive features of a given constitutional order is more suitable to designate constitutional identity[7]. Limiting the scope of constitutional tradition to the core principles and values of the Constitution risks to omit some of its accessory characteristics whose repetitive application, however, might serve as an important point of reference in case law and a source of better understanding of the evolution of constitutional law.

Constitutional identity has acquired a particular importance as a point of reference in the case law of the Court of Justice of the European Union. The specific relationship between EU law and national constitutional traditions and identity will be briefly analyzed further in the article. Here the focus will be placed on the meaning of constitutional identity and its relationship with tradition.

Constitutional identity[8] is an integral part of national identity which represents the specific features inherent in a given political community which have developed over time and most importantly - which are conditioned by the specific historic, cultural and behavioral features of a nation. In that respect, it is true that national identity and constitutional identity are conditioned by tradition because they are both formed in the context of the evolution of national being. Constitutional tradition, however, has a wider scope of application than constitutional identity since it incorporates not only the distinctive elements of the national constitutional system but also any other regulation that has existed for a significant period of time.

On the basis of the above considerations constitutional tradition must be interpreted broadly and therefore might encompass various elements such as legal principles and values, particular norms and even institutional arrangements. It should be kept in mind, however, that traditions might live and die and thus some repetitive practices might not reach the present. What is of particular interest for this article are the elements of constitutional tradition that survived until present times and the "journey" which conditioned their current regulation.

Concerning the constitutional values and principles the preamble of the Bulgarian Constitution refers to the "respect for universal human values of liberty, peace, humanism, equality, justice and tolerance". Chapter one enumerates the main principles of the Constitution including the republican form of government, the direct applicability of constitutional norms, political pluralism, the respect for freedom, equality and dignity of all Bulgarian citizens etc.

Although values and principles are often used as interchangeable terms some scholars draw a distinction between them. They accept that constitutional principles are abstract legal rules with strong normative value which determine the content and interpretation of the whole legal regulation in a given legal system. Constitutional values, on the other hand, are broader ideological concepts which gave rise to the adoption of constitutional principles.[9] Values have a culturally determined meaning which has been formed in the context of a long-standing tradition conditioned by the specific history, culture and mores of a given community. Principles are constitutional rules which are considered to be a manifestation of the values recognized and approved by the community.

[7] Belov, op. cit. 1, p. 62-63;

[8] Some scholars argue that the unamendable or hardly amendable provisions of the Constitution (such as art. 158 of the Bulgarian Constitution) are an important part of constitutional identity: Bliznashki, G., "The Constitution - Nature, Functions and Supremacy", St. Kliment Ohridski Univeristy Publisher, 2018, p. 234. The author of this study supports the opposite line of reasoning requiring a concrete analysis of constitutional texts from a historic and cultural perspective in order to define constitutional identity: Belov, op.cit. 2, p. 70, 194

[9] Belov, M., "Nature of Constitutional Values and Principles " in Groysman, S., "Law and Rights. Articles in honor of Prof. Rosen Tashev", St. Kliment Ohridski University Publisher, 2016, 89-102, at 90-94

Although principles have a universal reach their legitimacy will depend on their compatibility with these commonly accepted values. [10]

In that respect, Belov gives the example of the principle of the rule of law which is based on the constitutional values of humanism, equality and justice. He also points political pluralism, democracy and separation of powers which require the existence of tolerance as a constitutional value. The principle of sovereignty is conditioned by peace and equality and so on.[11]

This differentiation between values and principles is conditional since it does not provide for a firm criterion separating the two categories. For instance, equality is usually considered as a fundamental constitutional principle although it might also be regarded as a value which forms the basis for the existence of numerous other principles. Nevertheless, the usefulness of the differentiation between values and principles consists in the possibility to understand that constitutional norms and principles are not created for their own sake but are a projection of fundamental ideas which have developed long before their codification.

OVERVIEW OF BULGARIAN CONSTITUTIONAL HISTORY

The first Bulgarian Constitution signed in Veliko Tarnovo in 1879 marked the beginning of Bulgarian constitutional tradition after the liberation from the Ottoman domination. As a reflection of the longstanding egalitarian and democratic values in Bulgarian society, the Constitution from Tarnovo is among the most liberal and progressive of its time. It provided for a wide array of fundamental rights and freedoms among which a universal, direct and equal suffrage right of all male citizens without any educational or proprietary restraints. Citizens disposed also of other political rights such as the right to participate in political parties, the freedom of opinion and assembly etc. In that way citizens had the possibility not only to actively participate in state government by applying for the highest state offices or by electing freely their representatives but they also could exercise effective political control over state institutions.[12] The organization of the new independent Bulgarian state was based on the principles of separation of powers with a local self-government.[13] One of the most distinctive feature of the first Constitution, which was also subject to the most ardent discussions in the process of its adoption, was the unicameral structure of the parliament.

The next Bulgarian Constitution of 1947 was adopted after a coup d'état having the aim of imposing a new form of government based on the soviet model. After a referendum Bulgaria was proclaimed a "people's republic with a representative government" where the sovereignty belonged to the people.[14] Although the first socialist ideologies proclaimed equality of all regardless of their social state, the actual situation was quite different. Within a society "dominated by the working class" a new group of high-ranked members of the communist party emerged. They held the most prestigious state positions and disposed of various benefits not available to other citizens.[15] The whole state power was concentrated in the governing communist party. The National Assembly formally had the prerogative to exercise political control over the executive but it was actually

[10] Jacobsohn, G. J., "Constitutional Values and Principles" in Rosenfeld, M. and Sajó, A., "The Oxford Handbook of Comparative Constitutional Law", Oxford University Press, 2012, p. 6-7 of the article
[11] Belov, op.cit. 1, p. 94
[12] Bliznashki, G., "The Constitution - Nature, Functions and Supremacy", St. Kliment Ohridski Univeristy Publisher, 2018, p. 221
[13] Ibid., p. 220
[14] Ibid., p. 172
[15] Mihailova, E "The Constitution of the People's Republic of Bulgaria from 1947", NBU University journal, issue 20, 2017, https://universitetskidnevnik.nbu.bg/%D0%B4%D0%B8%D0%BC%D0%B8%D1%82%D1%80%D0%BE%D0%B2%D1%81%D0%BA%D0%B0%D1%82%D0%B0-%D0%BA%D0%BE%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D0%B8%D1%8F-1947-%D0%B3/

responsible before the governing bodies of the party.[16] Private property was quite limited, political pluralism and freedom of opinion – suspended.

The Constitution from 1971 was adopted in order to reaffirm the supremacy of the communist party in Bulgaria. It did not introduce any significant changes in the regulation of the state and society. It contained strong ideological propaganda by explicitly stating that the state and the communist party had become one whole entity. A State Council was established. It acquired significant legislative powers and practically acted as a substitute to the National Assembly.[17]

The political changes after the 10.11.1989 marked the restoration of democratic and liberal constitutional tradition in Bulgaria. The last Constitution from 1991 reiterated the principle of national sovereignty where the political will of the people is expressed by a unicameral parliament and a Constitutional court. A system of separated powers, which exercise mutual control through a variety of checks and balances, was introduced. The preamble of the Constitution set out the goal of establishing a democratic, social state based on the rule of law. Political pluralism became a fundamental principle in contrast to the former totalitarian cult to the governing party.[18]

The Constitution from 1991 was adopted in a period of transition and as such had to provide for a stable democratic model that could withstand future political tensions. Therefore, it introduced a balanced political model which reconciled the opposing views presented in the context of the discussions prior to its adoption. It should be kept in mind however that the Constitution was not conceived as a "Constitution of a transitional period" but as a liberal Basic law aiming to set the foundations of a modern democratic state. In order to achieve this it drew on the latest trends in constitutionalism but also tried to reconcile them with national tradition and specifics.

Some of the traditional elements which conditioned Bulgarian constitutional development up until its modern state will be analyzed below.[19]

ELEMENTS OF CONSTITUTIONAL TRADITION

The republican form of government was introduced in Bulgaria for the first time in the beginning of the 1990s. During the rest of its constitutional history Bulgaria has been either a monarchy or a communist republic. The latter political regime was totalitarian with little respect for democracy, political accountability and human rights. Therefore, it would be unreasonable to speak of a longstanding republican tradition in Bulgaria.

Nevertheless, there is not a strong monarchist tradition either. This is due to the country's particular historic and constitutional development. In Bulgaria there is no traditional aristocracy, a privileged class which draws its supremacy from noble birth. As historians point out, the ottoman invaders eliminated most of the aristocracy right after the instauration of their power on the Balkans. Besides, the century long foreign domination levelled the differences in society and contributed to its relative homogeneity.

It is true that during the national movement in the XVIII century a new class emerged in Bulgarian lands - rich merchants who traded across the Ottoman Empire and Europe. They accumulated sufficient resources to be able to afford a luxurious lifestyle and often maintained friendly relations with the governors. However, the division between the different classes in Bulgarian society was not that harsh since they were all more or less considered as unprivileged and subordinate to the governing ethos in the Empire. Besides, high social position was not conditioned by noble titles but it was rather the product of one's own work and accomplishments although usually associated with close ties with the Ottomans and a detachment from the revolutionary zeal.

[16] Stoychev, S., "Constitutional Law", 5th edition, Ciela, 2002, p. 134
[17] Drumeva, E. "Constitutional Law", 5th edition, Ciela, 2018, p. 175
[18] Ibid., p. 177-178
[19] Some of these distinct features of Bulgarian mentality and constitutional structure were, among others, proposed by Belov, M., op. cit. 1, p. 164-173

The relative homogeneity of Bulgarian society and its egalitarian views created a rather specific attitude towards the monarchy. Although after the liberation Bulgaria was proclaimed a Prtincedom as the only possible solution for a newly formed state in Europe of the XIXth century, the constitutional model was conceived primarily as a form of leadership aimed at future "unification of the nation, torn apart by the Treaty of Berlin". In other words the Monarch was conceived much more as a leader to unification than as a founder of a dynastry or ruler by divine right.

For instance, the Tarnovo Constitution provided for vast prerogatives of the unicameral parliament in order to strengthen the role of the people in the government and to limit the powers of the monarch. It also guaranteed equality by providing for a universal suffrage right with no electoral qualifications and a universal right to free education. In addition, the monopoly of the Grand National assembly over the amendment of the Tarnovo Constitution is a manifestation of the principle of national sovereignty which, as a part of all four Bulgarian Constitutions, might also be qualified as traditional.[20]

Concerning the unicameral structure of the parliament, it has been subject to ardent discussions in the dawn of Bulgarian constitutionalism. Although the establishment of a second chamber consisting of an educated and experienced elite seemed reasonable in the end of the XIX century, the unicameral legislature has been chosen as most adequate for Bulgarian society. Although the second chamber in unitary states is a balancing instrument[21] and could add some expert guidance to the legislative process it was considered unacceptable for Bulgarian egalitarian tradition. Thus, the attributes traditional for Bulgarian mentality were decisive in the elaboration of the national parliamentary model. Since unicameralism has turned into a tradition one might conclude that those attributes have marked the whole constitutional development of Bulgarian parliamentary government.

In addition, an important argument in favour of the adequacy of a unicameral parliament is the fact that there has never been a federalist tradition in Bulgaria. Apart from the relatively small territory and population of Bulgaria, the unitary state structure is perceived as a guarantee for the political integrity of a nation who has fought for centuries in order to live independently on a territory in the "periphery of Europe where the clash of civilizations is not an abstract metaphor but a political routine"[22]. A federal structure was considered inadequate to the tradition of a nation which felt that its territory did not encompass its true historical, ethnic and moral borders.

So egalitarianism and relative social homogeneity as traditional values have become the basis for the particular Bulgarian constitutional regulation and have defined its basic traits. The universal suffrage right (reserved to men), the unicameral legislature and the unitary state structure as a projection of those values have become stable characteristics of the Bulgarian constitutional model which have remained unchanged all through its evolution.

In addition, the long-standing egalitarian tradition in Bulgarian society has an influence on its general attitude towards cultural, ethnic and religious differences. In the course of centuries Bulgarians have shared their territory with people of different ethnicity, culture and religion which along with their sense of equality has formed a particular tolerability to differences. This particularity of Bulgarian mentality has marked constitutional evolution. The Tarnovo Constitution proclaims tolerance as one of its founding principles. This constitutional tradition is resumed by the Constitution from 1991 which puts tolerance among its main goals stated in the Preamble. An illustration of this principle as part of Bulgarian constitutional tradition is the historic exploit of the whole Bulgarian society and the Bulgarian Orthodox Church who united around the cause of the salvation of Bulgarian Jews during World War II although Bulgaria was allied to Germany. It was an act of opposition of all diverse segments of society and state against an outrageous and inhumane

[20] Belov, M., op. cit. 1, p. 165
[21] Drumeva, op.cit. 16, p. 342
[22] Bliznashki, op. cit. 7, p. 234

policy. This is not the only act of tolerance of Bulgarians who willingly accepted and integrated the Armenian refugees in 1915.

Also notable is the opposition of Bulgarians to the policy adopted by the communist party in the mid-80s aimed at the forced assimilation of the Turkish minority known as "the revival process". In particular, the protection of human rights including those of the repressed Turkish minority were part of the ideology of the dissident groups, which were formed in the context of the Perestroika such as the Independent Association of Human Rights' Defense, the Independent Trade Union Podkrepa etc. In 1989, many people suffering from the so called "revival process" joined the Independent Human Rights Society in order to claim their rights[23]. The wave of social discontent towards discrimination played an important part for the start of the anti-communist movement in the late 80s. The end of the communist government was generally marked by an urge for democracy and human rights protection and not by extreme nationalism.

The specific attitude towards the monarchy it can be traced up until modern times in the particular constitutional regulation of the presidential figure. Traditionally, the directly elected head of state is seen as a substitute of the monarch in republican states. As such he embodies the unity of the state and has prerogatives in all three separated state powers[24]. The presidential institution introduced by the Constitution of 1991 i.e. a directly elected president who practically does not have executive prerogatives was first introduced in Ireland and Finland and has turned to be the preferred model for most of the countries of Central and Eastern Europe. It fits well into the constitutional tradition of Bulgaria which was marked by certain skepticism to the monarchic institute.

The Bulgarian president has a limited role within the particular national constitutional model. His functions are mainly related to the balancing of the three branches of power by trying to prevent hasty and ill-founded political decisions.[25] The scope of his prerogatives, however, does not allow him to participate fully and on an equal basis with the other political actors in the decision making process.

A tool to exercise some form of control over the legislature is the power of the president to seize the Constitutional court in case of unconstitutionality of laws. He is also entitled to appoint ¼ of the members of the Constitutional court. However, he does not dispose of the right to legislative initiative except for the amendment of the Constitution and his veto can be overcome with an absolute majority of the Parliament.

The president is also involved in the activity of the executive. However, some of his powers might be exercised only by proposal of the Council of ministers such as the appointment of the chiefs of diplomatic missions or the endorsement of changes in the boundaries and the capitals of the territorial units.

He launches the procedure of the formation of the government but his intervention is in most cases that of mediation, as distinct from the decisive role of the Parliament. It should be kept in mind, however, that the president has the power to intervene when after three attempts no agreement can be reached on the formation of the government. He is empowered to appoint an interim government, to dissolve the Parliament and to schedule elections (art. 99(5) of the Constitution). Thus, the president becomes the leading political actor in times of crisis and is entrusted with the task to maintain the balance of powers in the complex political situation.

In the area of competence of the judiciary the president also has few possibilities to intervene. He appoints and releases of duty the Presidents of the Supreme Court of Cassation, of the

[23] Philip Dimitrov, "Revisiting the Beginning of the Bulgarian Transition 25 years after the First UDF Government", American Research Center in Sofia, 2016, p. 6; 14-16

[24] Drumeva, op. cit. 16, p. 425, 426

[25] Monova, Ts., "Constitutional status of the president of the Republic of Bulgaria", https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjH1b3lvP_jAhUO0qYKHQkBC7UQFjAAegQIARAC&url=https%3A%2F%2Flaw.nbu.bg%2Fdownload%2Flaw-jurnal%2Fstatii3%2Flaw-journal1-2011-4.pdf&usg=AOvVaw26eC2CBSu1LVFRKazMXBb3

Supreme Administrative Court, and the Prosecutor General on a motion by the Plenum of the Supreme Judicial Council. The President may not refuse to decree any such appointment or release upon a second motion. He is also empowered to exercise the right to pardon.

The rest of his prerogatives such as the power to promulgate laws, to schedule elections, to appoint members of state bodies, to act as representative of the state in international relations, to command the armed forces etc. only confirm the concept of his moderate balancing role[26].

The limited powers of the president seem to fit into Bulgarian constitutional tradition marked by the leading idea of reinforcing the prerogatives of the parliament as a nationwide representative body. It is the Tarnovo Constitution that first sought to establish a strong parliament disposing of sufficient mechanisms to oppose to the monarch. In modern times the Bulgarian president seen as an incarnation of some of the functions of the monarch in the republican state is a representative figure with little participation in decision making. The particular role of the president also fits well into the tradition of division of power and the capacity of institutions to effectively challenge each other through a system of checks and balances.

It is also worth noting that the parliamentary form of government was chosen by the drafters of the Constitution from 1991 as the most adequate for a country transitioning from socialism to democracy. The establishment of a presidential republic in a country with an unstable democratic tradition such as Bulgaria risks of turning into an authoritarian regime masked behind a democratic facade.[27]

CONSTITUTIONAL TRADITIONS AND EVOLUTION

The Constitution as an act governing the fundamental relations in a society, should dispose of stability ensuring the integrity of the particular national constitutional model. However, the stability of the Basic law must be reconciled with the necessity to be up-to-date with the constant evolution of societal values. In that respect, the Constitution of 1991 draws a distinction between norms which represent the core of the Constitution, the fundamental matters which enjoy the highest degree of stability and the rest of the constitutional norms whose amendment is rendered relatively easier. Article 158 read in conjunction with Art. 155 of the Supreme Law draws a distinction between rules which can be amended by the Ordinary National Assembly under a special procedure requiring high qualified majorities and a “Constitutional core” of essential norms whose amendment falls within the competence of the Grand National Assembly. The Grand National Assembly consists of 400 members (while the Ordinary Assembly counts 240) and has the exclusive prerogative to adopt a new Constitution, to rule on any changes of the territory of the Republic of Bulgaria and ratify any international instrument envisaging such a change, to rule on any changes of the state structure or form of government, to amend the rules governing the direct applicability of the Constitution, the legal force of international treaties and the possibility to circumvent fundamental rights (Art. 158). All other constitutional norms can be amended by the Ordinary National Assembly following a special more complicated procedure.

This guarantees sufficient stability of constitutional rules especially those governing the most substantial elements necessary for the proper functioning of the state and its relations with citizens. At the same time the fact that the parliament has the power to resolve issues of constitutional order facilitates their adaptation to changing social realities.

In order to delimit the scope of the prerogatives of the Grand National Assembly to adopt changes in the form of government the Constitutional Court was seized with a request for interpretation of this term. (Judgment № 3 from 10.04.2003 on const. case № 22/2002). The Court decided that the form of government should be interpreted broadly. “Therefore the form of government is determined not only by the character of the state as a parliamentary or presidential republic or a monarchy. It also incorporates the whole constitutional system of higher state

[26] Drumeva, E., op.cit. 16, p. 425
[27] Bliznashki, G., op.cit. 7, p. 255

institutions - the National Assembly, the President and Vice President, the Council of Ministers, the Constitutional Court and the bodies of the judiciary, their existence, their place in the state hierarchy, the organization, the conditions, the way they are formed and their mandate. The form of government also includes the activities and powers assigned to these bodies by the Constitution, insofar as their change might affect the institutional balance with respect to the basic principles on which state sovereignty is built, the supremacy of the basic law, political pluralism, the separation of powers, the rule of law and the independence of the judiciary."

The practical implications of this judgment are substantial since it hampers the amendment of a vast array of constitutional norms regulating the relations between the highest state authorities by the Ordinary national assembly. Bulgarian constitutional experience shows that beside the burdensome procedure to convene the Grand National assembly there is little political will to turn to this widely representative body having full discretion over the Constitution. Therefore, the broad interpretation of the form of government is a means to strengthen the rigidity of the Constitution. Some scholars argue that the monopoly of the Grand National assembly over the interaction between the highest state authorities is an impediment to the judicial reform of Bulgaria and generally to the improvement of the political situation.[28]

However, the pursuit of a more rigid Constitution might be associated with the wish to preserve the recently restored democratic values and the fear of upsetting the frail institutional balance. Having in mind that our tradition relates to instability, violation of the Constitution and absence of democracy, the wish to strengthen the stability of the Supreme Law seems reasonable even though it might stand in the way evolution. As the Court points out "the supreme institutions established by it [the Constitution], the place, formation and structure of their bodies, as well as the basic powers conferred on them and their balance, are the basis of the state and should not be susceptible to amendment in the easily changing political and parliamentary environment in a period of transition".

In addition, the rigidity of the Constitution can be seen as traditional for Bulgaria. Although the Tarnovo Constitution did not contain any unamendable provisions it can be qualified as rigid since it could be amended only by the Grand National Assembly. Under this procedure it was amended twice – in 1893 and in 1911. Its rigidity, however, might be among the reasons for it to be suspended on several occasions – between 1881-1883 by Prince Aleksander Batenberg, in 1923 and in 1934.[29]

The Constitutional court underlines in judgment 3/2003 that the norms which fall within the competence of the Grand National Assembly are only those which determine the particular place and role of the highest state authorities in the Bulgarian constitutional model and their mutual interaction. All subsidiary characteristics of these bodies which do not affect the institutional balance and the fundamental principles of the Constitution can be subject of amendment by the Ordinary National Assembly.

In that respect, the judgment is in line with the concept of the constituent power which must stand outside of the system of state bodies and ensure a wide representation of the interests of the people. The Ordinary national assembly, although a nationwide representative legislative body, is one of the main actors on the political scene and as such cannot be considered as fully impartial in regulating the structure and functioning of the constitutional system it is part of. Therefore, limiting its prerogatives to amend the Constitution can be justified on grounds of stability and balance of the Constitutional order.

[28] Open Society Institute, Citizens convent for changes in the Constitution "Is the Bulgarian Constitutional Court Model Successful?", 04.10.2005, p. 15-20;http://www.osf.bg/cyeds/downloads/Transcript_04_October_2005.pdf
[29] Drumeva, op. cit. 16, p. 171.

PRACTICAL APPLICATION OF NATIONAL CONSTITUTIONAL TRADITIONS

Constitutional tradition is an important point of reference of the Bulgarian Constitutional Court when dealing with national cases concerning the interpretation of the Constitution or the assessment of the constitutionality of laws. Tradition is used as a valuable interpretative source as it reflects "the evolution of community values and illustrates the common belief system".[30] Therefore, the court relies on tradition in its practice in order to interpret the principle of separation of powers[31], to reiterate the constitutional duty of the Bulgarian state to support art and culture,[32], to protect national minorities[33], to stress the obligatory character of the oath of the Members of the Parliament[34], to comment on the power of the parliament to give amnesty[35] etc. The analysis of the cited jurisprudence shows that the Constitutional Court relies on constitutional tradition mainly in order to give a supplementary authoritative power to its judgments based on written legislation. Thus, tradition is not "envisioned as an opportunity to enlarge the universe of protected freedoms by supplementing enumerated rights with rights that have developed over time, through traditional recognition"[36] but is rather a supplement which strengthens the court's argumentation and gives the judgment legitimacy and stability. Tradition in Bulgarian constitutional jurisprudence is not by itself an argument justifying derogation from existing legislation but a point of reference in the interpretation of the Constitutional provisions.

EUROPEAN RELEVANCE

The European Union is neither a federal state nor a classic international organization. It reunites states which have agreed to transfer some of their prerogatives to the Union as a supranational body and to be subject to sanctions in case of violation of the duties stemming from this particular legal order. However, Member States preserve their sovereignty. This is illustrated by the principle of conferral[37] and their guaranteed monopoly over essential state functions such as ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security (Art. 4, para. 2 TEU). As a Union of sovereign states it does not aim to obliterate the identity of each one but to ensure cooperation on a level playing field. This is the idea behind the obligation of the Union to respect national identities of Member States, "inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government" (Art. 4, para. 2 TEU).

The CJEU has assumed the responsibility of applying this provision and takes national identity into consideration when assessing the legality of EU measures. Thus, national identity might serve as a ground for derogation from certain legal obligations of Member States derived from Union legislation in cases where the latter impinges upon this protected area[38]. This means that while generally EU law has primacy over national law the core principles and values which form national constitutional identity are capable of limiting its scope of action.

Although the Bulgarian Constitutional court relied on constitutional tradition and identity in order to prevent the ratification of the Istanbul convention[39] Bulgaria has not yet had the occasion to

[30]Brown, R.L., "Tradition and Insight", The Yale Law Journal, Vol. 103, No. 1 (Oct., 1993), pp. 177-222, p. 181
[31] Judgment № 6 from 22.04.1993 on const. case №4 from 1993
[32] Judgment № 1 from 31.03.2011 on const. case №22 from 2010
[33] Judgment № 2 from 11.02.1998 on const. case №15 from 1997
[34] Judgment № 1 from 16.01.1992 on const. case №18 from 1991
[35] Judgment № 1 from 19.01.2010 on const. case №14 from 2009
[36] Brown, R.L., op.cit. 29, p. 201
[37] Under this fundamental principle of EU law, laid down in Article 5 of the Treaty on European Union, the EU acts only within the limits of the competences that EU countries have conferred upon it in the Treaties. These competences are defined in Articles 2–6 of the Treaty on the Functioning of the EU. Competences not conferred on the EU by the Treaties thus remain with EU countries.
[38]Judgment of 22.12.2010 Ilonka Sayn-Wittgenstein, C-208/09, paras. 81-95; Judgment of 14.10.2004 Omega, C-36/02, paras. 23-41
[39] Judgement № 13 of 27.07.2018 on const. case № 3/2018

invoke its constitutional identity in the context of its obligations deriving from EU law. However, as has been illustrated above some constitutional values, principles and institutional arrangements enjoy a specific interpretation in Bulgaria. As was confirmed by the CJEU in its landmark judgments *Omega* and *Sayn-Wittgenstein* it is not excluded that due to religious, historic and cultural considerations a Member State might choose to interpret and protect a fundamental right or a legitimate interest in a different manner than others.[40] Such a particular interpretation inevitably has its manifestation in national legislation whose validity as opposed to the primacy of EU law might depend on the reliance on constitutional identity. This is an illustration of the importance of national constitutions and their interpretation for the way national and EU law interact. Therefore, an assessment of national identity should be integrated in the legal analysis of the competent national bodies in the context of the application of EU law.

In addition, national constitutional traditions are an important interpretative source in EU jurisprudence which derives from them the general principles respected by the Union. It was the CJEU that first turned to Member States' legal traditions in order to fill the legislative gaps in EU law by relying on the common legal principles inherent in any community based on the rule of law. With the Treaty of Maastricht they were officially recognized as a source of primary EU law enjoying the highest legal value.[41]

Since the general legal principles are the basis of the system of EU law one might conclude that national constitutional tradition from which they are derived is also a constituent element of the EU legal order. The Union itself was built on the basis of the fundamental categories of national constitutional traditions. Therefore, the understanding of national constitutional traditions is of particular importance for the application of EU law.

Some scholars see a relation between the obligation of the European Union to respect the constitutional identity of Member States and the strong reliance of the EU legal order on the general principles common to Member States' constitutional traditions:

"...constitutional identity does not include all norms, all principles contained in the Constitution, but only the essential ones...

The essential constitutional principles are part of the constitutional identity of the EU itself, part of the "constitutional core" of the EU, its primary law. And a Union legal act can only be valid if it does not contradict the Union constitutional corpus, i.e. it cannot contradict the basic constitutional principles of the Member States!"[42]

It is true that constitutional identity is based on the essential principles and values inherent in a given political community. However, EU jurisprudence often turns to constitutional identity as a manifestation either of the adherence to particular national concepts which are absent in other

[40] Judgment of 22.12.2010 Ilonka Sayn-Wittgenstein, C-208/09, para. 91; Judgment of 14.10.2004 Omega, C-36/02, paras. 37, 38

[41]Currently Art. 6, para. 3 TEU. For an analysis of the jurisprudence of the ECJ and the EU legislation referring to constitutional traditions and constitutional identity of Member States see: Mouton, J.-D., "Revaluation of the correlation between the Constitutional law of the EU and the Constitutional law of the MS? (A New Development in the Concept of Union Citizenship in the case law of the Court of Justice)" in Semov, A., Lectures of the International Master's Program Law of the European Union, Sofia University, Volume III Fundamental Rights and Non Discrimination, p. 168-244; available at: http://www.eubg.eu/upload/files/26514622_%D0%9B%D0%B5%D0%BA%D1%86%D0%B8%D0%B8%20%D0%BF%D0%BE%20%D0%9F%D1%80%D0%B0%D0%B2%D0%BE%20%D0%BD%D0%B0%20%D0%95%D0%A1%20-%20%D1%82%D0%BE%D0%BC%20%D0%86%D0%86%D0%86%20-%20%D0%9E%D1%81%D0%BD%D0%BE%D0%B2%D0%BD%D0%B2%D0%B8%20%D0%BF%D1%80%D0%B0%D0%B2%D0%B0%20%D0%B8%20%D0%BD%D0%B5%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B0%D1%86%D0%B8%D1%8F.pdf

[42] Mouton, ibid., p. 235

Member States[43] or of the specific interpretation of a common legal principle which might differ from the one adopted by other states.[44] I.e. constitutional identity describes what is particular and specific, sometimes even unique for national legal systems. The same understanding of the scope of constitutional identity was presented earlier in this article.

On the other hand, when the Court relies on the general legal principles common to Member States' constitutional traditions it seeks to establish the interpretation adopted by all or most Member States or at least the one against which there is little or no opposition. The Court aims to establish the principles on which a sufficient degree of consensus is reached between Member States in order to rely on them as a primary source of EU law. Consequently, the general principles of EU law include those which enjoy a sufficiently unified interpretation in Member States.

Therefore, the methodology of assessment of national identity substantially differs from the way the CJEU analyses the constitutional traditions of Member States in order to derive their common elements. However, the obligation of the Union to respect national identity stated in art. 4, para. 2 TEU might be seen as a part of the constitutional core of the EU just like the general principles common to Member States. The genesis of this obligation can be sought into the essence of the European Union which is a community based on 28 national legal systems which does not only aim to acquire what is common between them but also integrates and respects their unique traits.

CONCLUSION

Tradition is a bridge between the past and the present. It is the result of past assessments and decisions which have proven to be resistant to political and social changes and have reached modern times. Constitutional tradition is a manifestation of every nation's struggle to achieve a sound and just political government and designates the evolution of the ideas and concrete arrangements taken in the course of the realization of this goal. Bulgarian constitutional tradition is inevitably a reflection of the country's turbulent history. It is marked by revolutionary ideas, liberal and democratic aspirations but also by oppressive regimes. It was argued in this article that the values and principles inherent in Bulgarian mentality have transcended different constitutional regimes in order to reach full constitutional recognition in newest times. Thus, the last Bulgarian Constitution acts as a vital link between these traditional concepts and the most progressive constitutional arrangements of its time. Like previous Constitutions, it attempts to reconcile foreign ideas with national specifics in order to achieve the most adequate regulation. The Constitution of 1991 sets the foundations of a new democratic tradition which although quite recent has been willingly accepted and applied in a stable manner.

Constitutional tradition is not only an interpretative source in national jurisprudence but it has also become an inseparable part of the European legal order and as such a valuable tool for Member States when substantial state interests are at stake. With the membership of Bulgaria in the European Union Bulgarian democratic tradition, although quite recent, has been integrated into the European legal order. Although the development of EU law cannot be qualified as tradition *strictu sensu* it reunites the common traditions of its Members and enriches them with its autonomous concepts and objectives. This unique legal order influences national tradition by transforming and enriching it. On the basis of these mutually dependent and mutually reinforcing traditions national identity emerges as a protected area of national sovereignty which cannot be impinged upon.

[43] Judgment of 12 September 2006 Kingdom of Spain v United Kingdom of Great Britain and Northern Ireland; C-145/04 – On the rules in United Kingdom allowing to citizens of the Commonwealth to vote in elections, including European ones

[44] Judgment of 22.12.2010, Ilonka Sayn-Wittgenstein, C-208/09 – on the republican tradition in Austria in relation to the abolition of noble titles; Judgment of 14.10.2004 Omega, C-36/02 – on the particular interpretation of human dignity in Germany; Judgment of 5.03.2009 Uteca C-222/07 – on the special protection of linguistic diversity in Spain.

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