

## The constitutional standing of philosophical and non-religious beliefs in Bulgaria

Konstytucyjna pozycja przekonań światopoglądowych i niewyznaniowych w Bułgarii

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**Abstract:** This paper explores freedom of philosophical and non-religious beliefs in Bulgaria. It outlines the constitutional framework of this freedom both in the contemporary Bulgarian constitutional model based on the current 1991 Constitution and in Bulgarian constitutional history as well as previous fundamental laws – the 1879, 1947, and 1971 Constitutions. The paper explores both the legal and socio-legal aspects of freedom of philosophical and non-religious beliefs, analysing the role of normative ideologies in the context of secularism – specifically, the largely secular Bulgarian society. The paper demonstrates the relationship between freedom of philosophical and non-religious beliefs and freedom of religion in Bulgaria. Attention is devoted to organised philosophical and non-religious beliefs. The article explains why freedom of philosophical and non-religious beliefs is protected as an individual and not as a collective right. The paper also explores the practical problems of the philosophical and non-religious beliefs in Bulgaria.

**Key words:** philosophical beliefs; non-religious beliefs; freedom of thought; freedom of conscience; secularism

**Streszczenie:** Przedmiotem rozważań zawartych w niniejszym artykule jest wolność przekonań światopoglądowych i niewyznaniowych w Bułgarii. Ukazano w nim konstytucyjne podstawy tej wolności zarówno we współczesnym systemie konstytucyjnym, bazującym na Konstytucji z 1991 r., jak i w bułgarskiej historii konstytucyjnej oraz poprzednich ustawach zasadniczych – Konstytucjach z 1879, 1947 oraz z 1971 r. Badaniem objęto prawne i socjologiczno-prawne aspekty wolności przekonań światopoglądowych i niewyznaniowych, a stawiane pytania dotyczą roli ideologii normatywnych w zsekularyzowanym kontekście – w tym przypadku, wyraźnie świeckim społeczeństwie Bułgarii. Autor wykazuje istnienie związku pomiędzy wolnością przekonań światopoglądowych i niewyznaniowych oraz wolnością religii. Uwaga skoncentrowana jest na takich przekonaniach światopoglądowych i niewyznaniowych, które mają charakter zorganizowany. Wyjaśnia się przy tym przyczyny, dla których wolność przekonań światopoglądowych i niewyznaniowych jest chroniona z wykorzystaniem konstrukcji prawa przysługującego jednostkom, a nie prawa kolektywnego. Osobne uwagi poświęcono praktycznym problemom, które związane są z wyznawaniem omawianych przekonań w Bułgarii.

**Słowa kluczowe:** przekonania światopoglądowe; przekonania niewyznaniowe; wolność myśli; wolność sumienia; świeckość

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## Introduction

This paper aims to explore the freedom of philosophical and non-religious beliefs. It provides a case study focused on the constitutional system of Bulgaria. This country might be of interest for the comparative study of law and religion due to the fact that it has been influenced by three civilisational models, each with its own ideas of moral autonomy and freedom of independent judgement, as well as a range of philosophical beliefs. The three models form three Weltanschauungs (worldviews) – European, Ottoman, and Soviet-type communist socio-legal cultures.<sup>1</sup>

In this paper, I analyse the evolution of the freedom of philosophical and non-religious beliefs in Bulgarian constitutional history. I explore its relationship with freedom of religion and conscience. I offer an outline of the legal design and the socio-legal dilemmas related to freedom of philosophical and non-religious beliefs in the contemporary Bulgarian constitutional order. This is done with a view to particular concepts of normativity – or normative ideologies – that serve as framing concepts of the country's symbolic-imaginary constitutionalism.<sup>2</sup>

The paper demonstrates the embeddedness of ideas about freedom of philosophical and non-religious beliefs in the context of secularism that predominates Bulgarian constitutional anthropology. Moreover, it shows the main factors that impact the design of freedom of philosophical and non-religious beliefs in the Bulgarian constitutional and socio-legal order. It also explores the relationship between the right to religious freedom and the right to non-belief in Bulgarian constitutionalism and Bulgarian constitutional history.<sup>3</sup>

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<sup>1</sup> For a fundamental analysis of the interplay between the religious and the secular in the Balkans and Bulgaria, see: Evstatiev, Eickelman 2022, 27–48.

<sup>2</sup> Belov 2022, 156–169.

<sup>3</sup> See: Belov 2021a, 171–194; Belov 2021b, 187–221.

## 1. Freedom of philosophical and non-religious beliefs in the Bulgarian constitutional order and its repercussions in the socio-legal realm

The national debate on philosophical and non-religious beliefs in Bulgaria is rather limited. It is limited both in terms of theory and public discourse. Such limitations exist in the constitutional domain, as well as in discourses on law and religion that impact different areas of law. Indeed, philosophical and non-religious beliefs are considered to be relevant to constitutional debates, mostly as part of larger discussions on religious freedom. Thus, freedom to such beliefs has definitely been overshadowed by freedom of religion. It would not be an exaggeration to say that freedom of philosophical and non-religious beliefs represents part of the “missing constitution” in both theory and practice. This remains the case despite the fact that this freedom has relatively extensive standing in the written constitution, being explicitly provided for in several constitutional texts.<sup>4</sup>

During the early years of transition from communism to democracy, the public debate was predominated by the theme of de-communisation. It concerned the replacement of communist ideas, Marxism, paternalism, and etatism with the normative ideologies of the liberal democracy supplemented by other supportive normative ideologies.<sup>5</sup> This discourse contained reasoning related to liberalism, the welfare state, and global neoliberalism. More recently, the above-mentioned discourse has been paralleled, upgraded, and gradually replaced by debates centred on the cleavages of “neoliberalism vs. neo-conservatism” and “globalism vs. neo-nationalism.” During the years of the COVID-19 pandemic, there has been a rise in and intense clash between pro- and anti-vaccination movements, both based on a specific set of non-religious beliefs.

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<sup>4</sup> Very limited analysis of the philosophical and non-religious beliefs mostly in the context of freedom of thought and freedom of religion and thus overshadowed by them can be found in Drumeva 2013, 244–245; Iliev 2015, 72–85. These works all largely explore freedom of religious beliefs while only mentioning its non-religious counterpart – freedom of philosophical and non-religious beliefs. A possible reason for this could be that Bulgarian society is highly secular and became extremely detached from religion during communism; thus, protecting philosophical and non-religious beliefs was, to an extent, unproblematic during the years of transition, while the reestablishment of real freedom of religion was of much greater concern.

<sup>5</sup> Regarding the concept of normative ideology, see: Belov 2022.

Apart from the discourses largely devoted to political ideologies, a national debate on philosophical and non-religious beliefs in Bulgaria is limited. Bioethical discussions that usually fuel contemporary philosophical debates and engage both religious and non-religious beliefs are not intense. Instead, they are limited to the elitist and self-enclosed scientific discourse.

However, there are two exceptions to this. The first is the intense debate on gender issues that has been triggered by the non-ratification of the Istanbul Convention<sup>6</sup> by the Republic of Bulgaria. The core of the debate has been the binarity or plurality of gender and the concept of marriage according to the Bulgarian Constitution.<sup>7</sup>

The second exception concerns the introduction of anti-pandemic measures in the context of the COVID-19 pandemic. It has produced a massive cleavage between vaxxers and anti-vaxxers – the people in favour or against the vaccines in general and the COVID-19 vaccines in particular. This debate has involved a range of philosophical beliefs related to the essence, scope, and limits of liberty, autonomy, and self-determination. Similar to many countries around the world, the polarisation of society around these two groups has rapidly gained an ideological dimension and has resulted in pro-vaccination and anti-vaccination movements based on particular ideologies. These pro-vaxx or anti-vaxx ideologies have gradually and partially gained the shape of philosophical and non-religious beliefs.

## 2. Normative ideologies in a largely secular society

Bulgarian society is largely secular. According to Article 13 para. 3 of the Constitution, Eastern Orthodox Christianity is a traditional religion in the Republic of Bulgaria. However, the Constitution also proclaims in Article 13 paras. 1 and 2 that religious denominations shall be free and religious institutions shall be separate from the state. The country's statistical surveys differentiate citizens into multiple groups according to their religion,

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<sup>6</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011. *Council of Europe Treaty Series* No. 210. Available at: <https://rm.coe.int/168008482e> [accessed: 29 May 2023].

<sup>7</sup> Конституция от 12.07.1991; hereinafter also: 1991 Constitution. Available at: <https://www.parliament.bg/bg/const> [accessed: 20 April 2023].

with Eastern Orthodox Christianity being considerably predominant. Nevertheless, the Bulgarian people generally define themselves in terms of religion more on the grounds of tradition, habits, and feelings of historic belongingness and not so much on intrinsically religious reasons. In other words, while most people define themselves as Christians, Muslims or belonging to other religious groups, they indeed have largely secular attitudes towards the state, society, and social relations.

Consequently, Christian Orthodoxy and other religions (particularly Islam and Judaism) comprise an important part of the heritage of Bulgarian society. Such religions are typically practiced as part of a given tradition and tied to a specific social and group identity, as well as to sacral intentions in some cases. Hence, Bulgarian society is composed of various religious communities, with the clear majority being Christian Orthodox; nevertheless, there is also a substantial group of non-believers, some of whom are atheists or practice religious rites for other cultural-traditional reasons. Most people in Bulgaria participate in religious practices only for formal occasions (e.g., big holidays such as Christmas, Easter, Bayram, Hanukkah, etc.). This is especially true among the Christian Orthodox majority, with believers mainly participating in religious activities for traditional rather than genuinely religious reasons.<sup>8</sup>

This is why the map of normative beliefs in Bulgaria consists mainly of secular ideologies. Marxism and communism were the official beliefs in the period of 1947–1989. Indeed, it is difficult to determine due to lack of sufficient data the extent to which these beliefs received substantial social support or were simply imposed official ideologies. Feminism is an ideology that has also been intensely promoted by the state. The full equality of men and women in all spheres of life was a key priority of the communist government and the Bulgarian Communist Party.<sup>9</sup>

After 1989, some parts of Bulgarian society have continued to adhere to leftist ideologies (e.g., Marxism, communism, socialism, and social democracy). In recent years, though, in times of constitutional polycrisis and when the rule of law and constitutionalism are in a state of flux,<sup>10</sup>

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<sup>8</sup> An original approach to the religious cultural heritage in post-atheist and post-communist Bulgaria is proposed in Kalkandjieva 2022, 134–160.

<sup>9</sup> For more about feminism in Bulgaria, see: Daskalova, De Haan, Loutfi 2006.

<sup>10</sup> See: Belov 2022.

nationalism has been on the rise. Until recently, this ideology had been quite limited. Now, it serves mostly as a response to concerns stemming from perceived crisis (mis)management by public power institutions and growing anxiety among some parts of the population resulting from pandemic-related, financial, economic, and migration challenges to the constitutional and political order.

The predominant ideology in contemporary Bulgaria appears to be liberalism.<sup>11</sup> However, liberalism has taken different forms – liberal-democratic, liberal, libertarian, and neo-liberal – and has been used in conjunction with a range of other ideologies. For example, neoliberal approaches have massively affected the philosophy of economic transition. Nevertheless, a predominant part of the society seems to believe in a highly awkward mix of ideas that are often scarcely compatible, including liberalism, state paternalism, individualism, and versions of egalitarianism. There has also been a rise in nationalism, which had until recently remained a rather limited ideology.

It is interesting to note that egalitarianism, which was not only inherited from the period of communism (1944–1989) but also has deep roots in the period before the reinstatement of modern Bulgarian statehood in 1878,<sup>12</sup> coexists with individualism, mostly in the form of consumerist individualism established during the period of transition from communism to democracy after 1989. Both egalitarianism and individualism have deeply influenced the shape of the landscapes of philosophical and non-religious beliefs throughout Bulgarian constitutional history.<sup>13</sup> Hence, these two normative ideologies that have typically had an uneasy coexistence are now parallel parts of the Bulgarian constitutional anthropology.

Traditionally the ideological code of Bulgarian society is moderation. This is a feature that makes fully fledged democracy and liberal society impossible, as well as prevents sincere and extreme forms of authoritarianism. Unfortunately, Bulgarian society has inherited egalitarianism from its Ottoman and communist past while still adhering to radical

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<sup>11</sup> For a highly interesting analysis of the interplay between liberalism, atheism, and ethno-phyletism in the constitutive phase of the Bulgarian nation before and after the liberation from Ottoman rule, see: Denkov, Vulchev, Gueorguieva 2020, 9–33.

<sup>12</sup> Until 1878, the Bulgarian territories were part of the Ottoman Empire.

<sup>13</sup> For more information about the shapes of Bulgarian constitutional identity, see: Belov 2017.

individualism and egoism borrowed from the currently predominant neoliberalism. This leads to a strange mixture of sometimes contradictory ideologies – for example, a belief in the need for substantial equality but also in unrestrained individualism, or distrust in state and public institutions combined with resilient forms of paternalistic attitudes.

Finally, the predominant anthropological mood of Bulgarian society apart from moderation is scepticism. Scepticism is both implicit in diffuse ideologies and widely used in practice. It takes the form of rule scepticism, institutional scepticism, and substantial (result-oriented) scepticism. Rule scepticism and institutional scepticism concern the formal legal model, whereas substantial scepticism is focused on the “law in action” and socio-legal practices.

The concept of alternative spirituality is not recognised as a theoretical, legal, or socio-legal concept by the Bulgarian constitutional science. Thus, it must be defined in the negative as an antipode of religion as mainstream spirituality. In fact, in Bulgaria, non-religion in its different forms, such as atheism<sup>14</sup> and non-belief, constitutes the overarching mainstream spirituality, whereas religion is the alternative spirituality. Apart from this general finding, there are different institutionalised forms of spirituality (e.g., the masonry), which are practiced in the country. Nevertheless, it is difficult to assess how widespread these institutionalised forms of spirituality are due to the partially non-public character of these practices. A typical Bulgarian quasi-religious belief is so-called Danovism – a mixture of religious, bioethical, and psychological ideas and practices shared by a community of followers of Petar Danov.<sup>15</sup> He was a spiritual leader who practiced during the interwar period. This quasi-religious movement also has international followers, but its appeal is largely limited to Bulgaria.

Compared to religious beliefs, philosophical and non-religious beliefs are naturally embedded in secularism. Thus, secularism serves as an overarching paradigm in such a context. Secularism is a constitutional

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<sup>14</sup> Dimitar Denkov, Georgi Vulchev, and Valentina Gueorguieva distinguish three forms of atheism that emerged in the course of the development of Bulgarian modernity. These are the literary-poetic, the political, and scientific atheism. See: Denkov, Vulchev, Gueorguieva 2020, 16.

<sup>15</sup> For more about the Danovism, see: Tončeva 2015; Bončo 2002, 415. For the unofficial and implicit promotion of Danovism and other occult and mystic movements in late communism due to the influence of Lyudmila Zhivkova (the daughter of the communist leader Todor Zhivkov), see: Denkov, Vulchev, Gueorguieva 2020, 19–20.

principle that is in parallel with the secular character of the state. Secularism is also the general intellectual paradigm under which philosophical and non-religious beliefs are subsumed in counter-position to religion and religious beliefs. However, apart from this counter-position, philosophical and non-religious beliefs are not necessarily interrelated with secularism.

### **3. Relationship between the right to religious freedom and the right to non-belief in Bulgarian constitutionalism and Bulgarian constitutional history**

Freedom of philosophical and non-religious beliefs has never been considered a form of religious freedom in Bulgaria. It has either not been provided for as a separate human right in the constitutional text although implicitly safeguarded by other constitutional rights (e.g., in the 1879 Tarnovo Constitution)<sup>16</sup> or have been regulated both as a separate constitutional right from religious freedom as well as in conjunction with it (e.g., in the 1947,<sup>17</sup> 1971,<sup>18</sup> and 1991 Constitutions).

Freedom of philosophical and non-religious beliefs was generally de-facto safeguarded in socio-political practice in the period from 1879 to 1944, albeit with substantial curtailment and limitations during World War II. Subsequently, it was suppressed during the communist regime (1944–1989). This freedom has largely been safeguarded both in law and practice since 1989, especially after the adoption of the 1991 Constitution. The freedom of philosophical and non-religious beliefs has been addressed as a distinct right, although it has typically been subsumed into discussions of the freedom of conscience and thought. Nevertheless, it has also been included in the triad of freedom of thought, conscience, and religion due to the fact that these are considered to be the three main forms of the expression of human beliefs. The current 1991 Constitution uses in

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<sup>16</sup> For the constitutional principles and constitutional rights and freedoms in the first Bulgarian Constitution, see: Belov 2015, 859–897; Belov 2013, 41–57.

<sup>17</sup> Конституция на Народна република България от 6.12.1947 г.; hereinafter: 1947 Constitution. Available at: <https://www.parliament.bg/bg/18> [accessed: 20 April 2023].

<sup>18</sup> Конституция на Република България от 18.05.1971 г.; hereinafter: 1971 Constitution. Available at: <https://www.parliament.bg/bg/19> [accessed: 20 April 2023].



Article 37 para. 1 the formulas “freedom of conscience, freedom of thought and choice of religion and of religious or atheistic views” and “freedom of conscience and religion.”

It has to be considered, at least on the basis of the data that I have at my disposal, that non-believers have thus far not made any claims for the recognition of their beliefs in the name of freedom of religion. If such claims have been raised, it has been done with recourse to freedom of thought and conscience or via other rights that might secure such positions – for example, information and communication rights or freedom of association and assembly.

The first Bulgarian Constitution – the 1879 Tarnovo Constitution – provided for freedom of religion. Nevertheless, it did not contain any provisions related to freedom of philosophical and non-religious beliefs. These beliefs were not prohibited but simply did not have constitutional status and consequently enjoyed no constitutional protection. The reason for this is that 19th-century constitutionalism was preoccupied with freedom of religion and not as much with freedom of philosophical and non-religious beliefs despite the increasing importance of the latter.

Indirect safeguards on freedom of philosophical and non-religious beliefs include freedom of education, freedom of assembly, and the indemnity of MPs for their speeches in the Parliament. Although not explicitly mentioned in the respective constitutional provisions, these constitutional rights and the safeguard for the independence of MPs are also indirect safeguards for freedom of philosophical and non-religious beliefs, which can be defended in Parliament, taught and discussed in schools, and disseminated and debated in a range of possible types of assemblies. The same is true for freedom of the press, which was proclaimed and safeguarded in the Tarnovo Constitution in a liberal-democratic manner, although it was infringed on via numerous legislative provisions and in the course of socio-political practice.

The first communist Constitution of 1947 is also the first Bulgarian Constitution that explicitly proclaim freedom of conscience together with freedom of religion. The misuse of religion for political purposes and the establishment of political organisations on a religious basis is prohibited in this document. The 1947 Constitution requires that education must be secular and in a “democratic and progressive spirit.”

The dissemination of fascist, antidemocratic, and imperialist ideology is prohibited.

The second communist constitution — the 1971 Constitution — is much more indoctrinated. It is entirely obsessed with the imposition of official communist ideology. This ideology also predetermines the framework for freedom of philosophical and non-religious beliefs, which is curtailed and legally restricted to official and permitted forms of thought. Indeed, the same is true for the period of the validity of the 1947 Constitution, but from 1947 to 1971, the severe restrictions in freedom of philosophical and non-religious beliefs stemmed from political practice and ordinary legislation and did not have such manifest and clear constitutional standing.

The 1971 Constitution requires that all societal organisations must work towards the establishment of “socialist consciousness.” This was political imperative; it clearly constitutes the general formula for the permitted scope of philosophical and non-religious beliefs that predetermines the spectrum of, or more precisely the lack of, ideological pluralism. While the guidelines of ideology were set by the Bulgarian Communist Party in this Constitution, the role of the so called Fatherlands Front (an organisation that included all official political organisations) was to serve, according to Article 11 of the 1971 Constitution, as “a mass school for patriotic and communist education of the population.” Moreover, according to Article 39 of the 1971 Constitution, the education of the youth in the communist spirit is an obligation of the whole society. Furthermore, a range of educational and ideological tasks are ascribed to the family, school, state institutions, and societal organisations. Article 45 para. 3 provides that education should be grounded on the achievements of modern science and Marxist–Leninist ideology.

The 1971 Constitution provides for freedom of conscience and freedom of religion. It allows for the performance of religious ritual as well as explicitly permits anti-religious propaganda. The separation of the state from the church and religion and thus the principle of the secular state are also constitutionally proclaimed.

In sum, freedom of non-religious philosophical beliefs is proclaimed for first time in Bulgaria by the communist constitutions of 1947 and 1971. Unfortunately, this was done as part of the Marxist ideological framework,

with a predominantly negative attitude towards religion and freedom of religion (despite its constitutional proclamation) as well as rigid and wide-ranging limits to ideal and ideological pluralism. Hence, the communist period was marked by the rise of atheism and secularism,<sup>19</sup> while freedom of non-religious and philosophical beliefs was nominal, fictitious, or limited to general legal declarations, and the practice of such beliefs was largely restrained.<sup>20</sup>

The current 1991 Constitution provides for and protects freedom of philosophical and non-religious beliefs in multiple ways and in a range of provisions. According to Article 6 of the Constitution, no discrimination is allowed on the basis of religious or non-religious beliefs. Furthermore, Article 11 provides for the principle of political pluralism and prohibits the proclamation of any ideology as an official ideology of the state. This provision is a clear rejection of the establishment of official normative ideologies by the two communist constitutions. Moreover, Article 13 provides for the principle of the secular state. It declares that Eastern Orthodox Christianity is the traditional religion of Bulgaria, but there is no official religion, and the principles of the separation of religion and state and religious pluralism shall prevail. The Constitution prohibits the use of religious or non-religious convictions and beliefs for political purposes.

The most important constitutional provisions regarding freedom of philosophical and non-religious beliefs are Articles 37 and 38 of the 1991 Constitution. According to Article 37, freedom of conscience, freedom of thought, and freedom of religion and religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers. The limitations to the freedom of conscience and religion are set in Article 37 para. 2 of the 1991 Constitution. According to it the freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.

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<sup>19</sup> For a comparison between communist atheism and Western secularism, see: Metodiev 2022, 115–134.

<sup>20</sup> For the state atheism and the usage of the past during the period of 1944–1989, see: Denkov, Vulchev, Gueorguieva 2020, 15–20.

Central role for the protection of the freedom of philosophical and non-religious beliefs is played also by Article 38 of the Constitution. According to it, no one shall be persecuted or restricted in his rights because of his views, nor shall be obligated or forced to provide information about his own or another person's views.<sup>21</sup> Furthermore, freedom of philosophical and non-religious beliefs is related also to freedom of opinion and the right to information. This is because information and communication rights set out in Articles 39–41 of the 1991 Constitution are the instruments for forming and disseminating philosophical and non-religious beliefs.<sup>22</sup>

There is no case law of the European Court of Human Rights that has affected the Bulgarian Constitution or legislation and the national approach to freedom of philosophical and non-religious beliefs. There have been numerous Court decisions against Bulgaria related to freedom of religion,<sup>23</sup> but they have not concerned freedom of philosophical and non-religious beliefs. The same is true for the rules of international law protecting philosophical and non-religious beliefs.

#### 4. Organised philosophical and non-religious beliefs: The protection of the right to non-belief as a collective right

The Bulgarian constitutional order and the Bulgarian legislation do not recognise any form of collective rights. Indeed, they recognise collective forms of practicing individual rights (e.g., associations, assemblies, etc.). However, there is widespread consensus in the literature that these rights

<sup>21</sup> Dimitar Denkov, Georgi Vulchev, and Valentina Gueorguieva differentiate between three phases of secularity and desecularisation in contemporary Bulgaria (1989–2018). These are the “religious boom” of the 1990s, the coexistence of new religious practices, old (socialist) atheism, and other secular inspirations, as well as the recent intensification of religious dogmatism running parallel to the growing popularity of ethnic nationalism and the rise of the alt-right. See: Denkov, Vulchev, Gueorguieva 2020, 20–21.

<sup>22</sup> Tančev 2003, 397–398.

<sup>23</sup> For more recent case law, see, e.g., judgement of 13 December 2022, *Tonchev and Others v. Bulgaria*, No. 56862/15; judgement of 20 April 2021, *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, No. 56751/13; judgement of 20 April 2021, *Independent Orthodox Church and Zahariev v. Bulgaria*, No. 76620/14; judgement of 10 November 2020, *The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, No. 5301/11; and judgement of 23 March 2017, *Genov v. Bulgaria*, No. 40524/08. Judgements available at: <https://hudoc.echr.coe.int> [accessed: 29.05.2023].

remain individual rights that are simply being practiced in a collective form. Thus, no legal protection is provided for philosophical and non-religious beliefs as comprising a collective right. Only the individual human rights through which the philosophical and non-religious beliefs are practiced enjoy legal protection. There are different forms of protection that are available to philosophical and non-religious believers. They can appeal acts of administration infringing upon their rights in front of the superior administrative authorities. Moreover, they may approach the national ombudsman. The most intense form of protection is offered by the judiciary, which includes both the courts and state prosecutor's office. Unfortunately, there is no direct constitutional complaint through which the interested parties can immediately approach the Constitutional Court. Thus, they can obtain the Constitutional Court's protection only via the medium of the ombudsman or the Supreme Bar Association, which can eventually use their competence to approach the Constitutional Court. Finally, there is a Commission for Protection against Discrimination, a specialised administrative body that serves as a safeguard of freedom of conscience and thus of freedom of philosophical and non-religious beliefs. This commission was established and provided for by the Protection against Discrimination Act, which was adopted in 2004.<sup>24</sup>

Philosophical and non-confessional beliefs can be expressed, practiced, and disseminated in two main ways. First, this can take a non-institutionalised form, although this type of practice is difficult to systematically research due to its dispersed character. Second, such beliefs can be represented via different organisational forms. Typically, this is done via non-governmental organisations using freedom of association as their organisation form.

The period since the reestablishment of modern Bulgarian statehood (1879–1934) has witnessed the proliferation of pluralism of philosophical and non-religious beliefs, which increasingly spread alongside the emergence and gradual establishment of modern Bulgarian civil society. The scope and number of such beliefs has increased exponentially and in parallel with the cultural and educational development of Bulgarian society. After

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<sup>24</sup> Protection against Discrimination Act [Закон за защита от дискриминация] adopted in 2004 (enacted 1.01.2004), State Gazette No. 86 of 30 September 2003.

the coup d'état that took place on 19 May 1934, the state's intervention in civil society and the public sphere largely increased. This has resulted in the establishment of state-controlled official associations in different spheres of civil society. Indeed, most of them concerned freedom of association in the sphere of media, labour and social welfare protection, and art, among others. However, this has also indirectly affected the modes and channels for the spread of religious and philosophical ideas. After the entry of Bulgaria into World War II, censorship and state influence on the practice of philosophical and non-religious beliefs rose tremendously.<sup>25</sup>

State control over forms of expression of philosophical and non-religious beliefs continued and was severe during communism (1944–1989). Pluralism of philosophical and non-religious beliefs was restored in 1989 and entrenched in the 1991 Constitution. Article 53 para. 1 of the 1971 Constitution was amended in 1990 to provide that citizens enjoy freedom of conscience and religion. Citizens are thus allowed also to practice religious or atheistic propaganda. The wording of this amendment was still visibly influenced by communist constitutional rhetoric, especially in terms of the right to propaganda. According to Article 37 of the 1991 Constitution, freedom of conscience, freedom of thought, and choice of religion and of religious or atheistic views shall be inviolable. Moreover, the state shall assist in the maintenance of tolerance and respect among believers of different denominations and among believers and non-believers.

There is a wide range of philosophical and non-confessional associations present in Bulgaria. Their diversity ranges from scientific associations to NGOs, even including quasi-religious organisations such as masonic lodges. Some of them have party political leaning, e.g., associations promoting various political ideologies and ideas. Others are of a purely scientific nature. Further still, there are organisations that function as grassroots pressure groups for the promotion of different ideals, ideologies, beliefs, and interests.

Philosophical and non-confessional associations play a social role at the national level. They have a multitude of functions that are performed separately or in conjunction with one another. These associations form public opinion, promote educational goals, enhance competition among ideas and ideals, as well as shape the national ideals and ideological,

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<sup>25</sup> See: Belov 2015, 859–897.

conceptual, and imaginary landscapes. Such associations also function as pressure groups for the promotion of their aims and ideals. Nevertheless, there is no safeguarded place or role for them in their relations with both the state and religious organisations. Moreover, no concrete institutionalised forms or results can be identified as clear-cut examples of the pivotal or systematic role of philosophical and non-confessional associations on a national level.

## 5. Practical problems of philosophical and non-religious beliefs

Freedom of association has been provided for by all four Bulgarian constitutions. During the period of the 1879 Tarnovo Constitution, this right played an important role in structuring and organising the emergent civil society in newly liberated Bulgaria. In fact, some non-religious societal organisations were of pivotal importance in the establishment of Bulgarian civil society in the course of the 19th century, even before the reestablishment of modern Bulgarian statehood. There were some cultural societies that have aimed at spreading modernisation, knowledge, and national-cultural awareness in line with the concepts of rationalism and the Enlightenment. In particular, the network of the so-called *chitaliste* (“reading society,” “читалище” in Bulgarian) functioned as a neuron network for the Bulgarian intellectual and political revival. Notably, the Bulgarian Academy of Sciences was established in 1869 – ten years before the reestablishment of Bulgarian statehood.

Although Christian Orthodoxy was formative for the national identity and served as an instrument for the construction of modern Bulgarian spirituality until World War II, the emergent Bulgarian society and state had largely secular. Indeed, the Orthodox Church was proclaimed as predominant by the Tarnovo Constitution, which also recognised freedom of belief for other religious denominations. Furthermore, there were lessons in orthodox religion in schools. Nevertheless, the state was separated from the church, and civil society was structured mostly according to secular organisations. Thus, Christian Orthodoxy served much more as a formant of national identity and belongingness than as an active element in the construction and functioning of public life and debate.

Hence, there were two pillars of the formative phase of the intellectual-spiritual design of Bulgarian statehood – the Orthodox Church and a range of non-religious and non-confessional organisations. The latter included the Bulgarian Academy of Sciences, the “reading societies,” and various clubs and non-governmental organisations, some of which leaned towards or were affiliated with various political movements.

During the communist period (1947–1989), religion was not prohibited, but it was widely out of favour. Both communist constitutions provided freedom of religion and conscience. Article 78 of the 1947 Constitution provided that citizens have freedom of conscience and religion, as well as freedom to perform religious rites. Furthermore, according to this Constitution, the church was separate from the state, and the misuse of religion for political purposes including the establishment of political organisations based on religion was prohibited. According to Article 53 of the 1971 Constitution, citizens enjoyed freedom of conscience and religion. They had the right to perform religious rites and conduct antireligious propaganda. The separation of the state from the church and the prohibitions for the misuse of religion for political purposes and the forming of political parties on religious grounds were preserved.

Religious organisations – the Orthodox Church included – were marginalised. Only official and traditional religious denominations, e.g., Orthodox Christianity, Islam, and Judaism – were half-heartedly permitted. This does not mean that the public discourse was based on a network of philosophical and non-belief organisations leading to free deliberation in a religiously detached context. The role of religion as a dominant ideology (although traditionally weaker in Bulgaria in comparison to other Orthodox states such as Greece, Romania, or Russia) was replaced by the official communist ideology. Thus, there was no space for philosophical and non-religious beliefs other than Marxism (or in the language of the official ideology, Marxism–Leninism). This is despite the formal proclamation of freedom of association and freedom of assembly by both communist constitutions – the 1947 and the 1971 Constitutions of the People’s Republic of Bulgaria. Moreover, religious teaching in schools was replaced with highly ideological teaching in a context indoctrinated with communist ideology.

The 1991 Constitution provides for a wide range of human rights that enable the practice of philosophical and non-religious beliefs. The current



Bulgarian Constitution pays tribute to Christian Orthodoxy as a traditional religion (replacing the “dominant religion” formula used by the Tarnovo Constitution) while allowing for wide-ranging freedom of other religious or non-religious beliefs. Philosophical and non-confessional organisations are formed, organised, and operate on the basis of the proclamation in Articles 37 and 38 as well as freedom of association provided by Article 44 of the 1991 Bulgarian Constitution. Philosophical and non-religious beliefs are practices both in organised and non-organised ways. This entails practices that result in the establishment of different organisations, societies, etc., aimed at promoting a given organisation’s beliefs. Moreover, freedom of assembly as well as freedom of opinion and information are also tools for such practices.

Since 1947, education in Bulgaria has been fully detached from religion. After 1989, democracy was restored, and since 1991, when the current Bulgarian Constitution was adopted, no compulsory religious education exists. Thus, Bulgarian education remains largely secular and open to the pluralism of philosophical ideas.

The right to spiritual assistance for philosophical and non-religious believers has never been provided for in Bulgarian legislation. Freedom of conscience and non-religious beliefs is provided for by the 1947, 1971, and 1991 Constitutions. However, no general right to assistance, advice, or aid for forming or expressing philosophical or non-religious beliefs exists. Such assistance is practically accomplished and is among the targets of many NGOs<sup>26</sup> and various cultural or educational organisations. Nevertheless, it has never been provided for as a legal right by constitutional or ordinary legislation. The educational system on all levels is among the main formants of philosophical and non-religious beliefs in parallel with traditional and new media and the family.

Criminal protection of philosophical and non-religious beliefs is also not provided for by Bulgarian legislation. This is in contrast with the criminal protection of religious or political beliefs offered by the Criminal Code.<sup>27</sup> Hence, philosophical and non-religious beliefs are protected insofar as they can be subsumed into or associated with political beliefs. The reason

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<sup>26</sup> See: Cenkov, Âl’mov, Galev, Antonov, Enčeva 2010, 7.

<sup>27</sup> Criminal Code [Наказателен кодекс] (enacted 1.05.1968), State Gazette No. 26 of 2 April 1968.

for this is that Bulgarian legislation offers special protection of beliefs that are deemed traditionally vulnerable to different forms of violence, e.g., religious and political beliefs.

The only form of criminal protection offered to philosophical or other non-religious beliefs is granted by Article 172 of the Criminal Code. It provides protection against discrimination based on such beliefs when applying for a job. The means for protection against such discrimination are the criminal procedure commenced by the state prosecutor's office and the administrative procedure that is available for claimants in front of the Commission for Protection against Discrimination.

Baptism is not required as a prerequisite for any aspect of civic status by the state or Bulgarian legislation. Religious marriage is optional and can be concluded only after a couple is secularly married. The legal consequences of marriage are related only to the state and not the religious marriage. There is no need for children to be baptised. Thus, non-baptism is the legal norm, while baptism is simply an option available to believers. The administration of baptism is governed by the rules of the religious communities who are also responsible for administering the related data in their registers. There are no legal norms concerning the recognition of baptism by the various religious and denominational communities.

The main bioethical issues on which philosophical and non-confessional associations have taken an official position are issues of gender. These associations have participated in the overall social debate in the media and on different deliberative platforms. They have also been constituted as *amicus curiae* in cases in front of the Constitutional Court and offered the opportunity to provide an advisory opinion on the issues of sex and gender according to the Bulgarian 1991 Constitution in parallel with the main official religious denominations (e.g., various Christian, Muslim, and Jewish denominations). This was a debate largely triggered by the non-ratification of the Istanbul Convention by the Republic of Bulgaria. Philosophical and non-confessional associations have also been active in the sphere of ecology and environmental protection.

It is extremely difficult to summarise the attitudes of traditional religious denominations with regard to individual and organised philosophical and non-religious beliefs. Generally, there is a mood of tolerance, reconciliation, and peaceful coexistence for several reasons. Bulgarian society has always

been based on religious tolerance. Both the state and religious denominations have tolerated freedom of conscience and the pluralism of beliefs apart from the communist period, when Marxism was imposed as the official ideology of the state. The period of communism massively promoted atheism and non-religious beliefs. Thus, after the fall of communism, religious denominations have been rather passive and self-restrained, not expanding in the spheres of secularism. The only exceptions are some forms of radical Islam, which have been promoted in some geographically remote parts of Bulgaria.<sup>28</sup>

The best example of a dialogue between religious denominations and philosophical and non-confessional associations at the national level is that which took place to save the Bulgarian Jewish population during World War II with the aid of the Bulgarian Orthodox Church. The active role of its head – the Bulgarian Exarch Stephan – deserves special attention.<sup>29</sup>

## Conclusion

Freedom of philosophical and non-religious beliefs is a permanent part of Bulgarian constitutionalism. It has been implicitly established since the liberation of Bulgaria in 1878–1879 and gained explicit constitutional recognition in the 1947, 1971, and 1991 Constitutions. Nevertheless, the 1947 and 1971 Constitutions, while providing for this freedom, did not actually serve as reliable safeguards for it. On the contrary, during the communist period, freedom of philosophical and non-religious beliefs was massively curtailed and infringed upon in political practice. This was a logical result of the official imposition of a single normative ideology, namely the Marxist–Leninist version of communism.

Freedom of philosophical and non-religious beliefs in Bulgaria has always been provided for in conjunction with freedom of religion. However, it has been largely overshadowed by freedom of religion. Freedom of religion is regulated in much greater detail on the constitutional and legislative levels than philosophical and non-religious beliefs. It is also

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<sup>28</sup> Some years ago, there was also a major case against some radical imams in the city of Pazardzhic. For the origins, developments, and tendencies in the development of Islam in Bulgaria and in Bulgarian society, see: Evstatiev 2022, 74–112.

<sup>29</sup> Conversely, for an analysis of some instances of religious hatred in Bulgaria, see: Ilieva 2011.

much more intensely discussed in theory and in the socio-political discourse in Bulgaria.

In some cases, a lack of legal institutionalisation is not necessarily an indicator of the underdevelopment of certain constitutional phenomena. In other words, this does not mean that the austerity of the legal provisions of freedom of philosophical and non-religious beliefs should lead us to conclude that it is less protected than its counterpart, freedom of religion. In fact, both freedom of religion and freedom of philosophical and non-religious beliefs were endangered and infringed upon during the communist period. Moreover, they have both been generally promoted and secured since the reestablishment of the rule of law and democracy with the 1991 Constitution.

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