



CONSTITUTIONAL LAW OF 2 EU MEMBER STATES: BULGARIA AND ROMANIA

The 2007 Enlargement

Constantijn Kortmann

Joseph Fleuren

Wim Voermans

(Eds)



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by

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Foreword

In September 2004, Kluwer Legal Publishers published *Constitutional Law of 15 EU Member States*, edited by Lucas Prakke and Constantijn Kortmann. It was a translation of the sixth edition of the Dutch book *Het staatsrecht van de landen van de Europese Unie*, edited by Lucas Prakke and Constantijn Kortmann, which appeared in the spring of 2004.

Shortly before the English edition appeared, the European Union was enlarged with ten new Member States. It was, of course, a logical step to set about describing these Member States too, in order to provide a complete picture of the most important elements of the constitutional systems of all twenty-five Member States.

The editors were fortunate to find authors from the ten new Member States willing to write about the constitutional system of their country directly in English, although this was not always their mother tongue. Moreover, in doing so they were willing to use the same systematic approach as for the original book. The linguistic revision of these contributions was in the hands of a number of the translators who worked on the original book: Alison McDonnell, Hugh Quigley, Kath Starsmore, Pete Thomas.

This supplement describes the constitutional systems of Bulgaria and Romania, which joined the European Union in 2007. We are grateful to the authors and to the language editor of this volume, Alison McDonnell.

We also express our gratitude to the organizations that have made this publication possible through their financial support: the Royal Netherlands Academy of Arts and Sciences, and the Nijmegen and Leiden Faculties of Law.

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Constantijn Kortmann
Joseph Fleuren
Wim Voermans

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The Republic of Bulgaria

Evgeni Tanchev

Martin Belov

I. Historical Introduction

Founded in 681, Bulgaria is one of the oldest states in Europe. Though the Bulgarian state has existed for more than 13 centuries it has enjoyed independence only for half that time. Through the course of its history, there have been 3 Bulgarian tsardoms, 2 republics as well as 4 written constitutions.

The different civilizations which settled in the Balkans before the Bulgarian sovereign state was founded in 681 have influenced the subsequent Bulgarian culture and tradition. Due to its unique geographical location on the Balkan Peninsula linking Europe and Asia, and the fact that it is a place where state borders constantly shifted through the ages, Bulgarian soil has been a crossroad of peoples, civilizations and states – most of which had some influence.

During the early medieval Great Migration, dozens of tribes¹ crossed the lands now comprising Bulgaria, each one leaving its traces. Some of them later went to the West and were involved in the formation of the contemporary European nations. Of all these migrations, the Slavic invasion was the most significant. In the early 7th century Slavs had already colonized almost the whole peninsula, reaching as far as the Peloponnese. The predecessors of the Serbs, Croats and Slovenians settled in the Northwest Balkans, and the Slav tribes of the Bulgarian group in the remaining regions.

During the second half of the 7th century the area surrounding the Danube delta was invaded by the Proto-Bulgarians – a people of Turk origin, with statehood traditions reaching back a long time. The Bulgars were governed by hereditary khans. Some members of the aristocracy, bearing military titles, formed a governing class. Bulgars were monotheistic, worshipping their supreme deity Tangra.² Making an alliance with the Slav tribes, they formed the backbone of the new state and founded their state on the Balkans, named after them – Bulgaria – which signed her first peace treaty with Byzantium and was recognized as an independent state in 681.

The Proto-Bulgarian aristocracy became the state-forming element, whose role was analogous to the role played by the Ruriks and Vikings in Kievan Russia, or the Normans of William the Conqueror in England. Irrespective of their key positions in the feudal aristocratic hierarchy, Proto-Bulgarians were gradually slavized, like the other ethnic groups, Thracians included. Though there are some claims that Bulgaria was founded

1 Most numerous of them Slavic, Proto Bulgarian, Germanic and Hun.

2 The migration of Proto-Bulgars to the European continent started as early as the 2nd century when branches of Bulgars settled on the plains between the Caspian and the Black Sea. Between 351 and 389, some of these crossed the Caucasus and settled in Armenia. Swept by the Hun wave at the beginning of the 4th century, numerous other Bulgarian tribes broke loose from their settlements in central Asia to migrate to the fertile lands along the lower valleys of the Donets and the Don rivers and the Azov seashore. Some of these remained for centuries in their new settlements, whereas others moved on with the Huns towards Central Europe, settling in Pannonia.

in the 6th century, the year of 681 has been officially acknowledged as birth date of the Bulgarian state on the Balkans.³

In the medieval period (681-1396) there were two Bulgarian tsardoms. The First Bulgarian Tsardom lasted from 681 till 1018. In the first two centuries the monarch bore the name of "khan" and proto-Bulgarians and Slavs were independent elements of the population of the new state. Crucial to Bulgarian nation-building and independence from the Catholic world and Byzantine Empire was the establishment of a common religion and a new alphabet. Under Boris I, Bulgaria was converted to Christianity (865), and in the 10th century, Bulgarian Prince Simeon received a royal sceptre.⁴ Bulgaria was recognized as a tsardom by the Pope and the Holy Roman Emperor.

Besides breaking the 'political monopoly' of Byzantium in Eastern Europe, Bulgaria also broke the monopoly of Latin, Greek and Hebrew as the exclusive 'holy languages' of Christendom. Along with the introduction of Christianity as a common religion shared with Byzantium and Rome, Knyaz Boris I the Baptist gained approval by both the Pope and the Patriarch of Constantinople for the Church language in Bulgaria being the spoken language of the country. In Western Europe it was only much later that the holy books became accessible to the common people, with Martin Luther's 1534 Bible in German, and the 1611 King James Version of the Bible in English.

Boris commissioned the creation of the Cyrillic alphabet, and set up schools of higher education in Preslav and Ohrid run by St. Naum and St. Kliment respectively, where church books were translated into Bulgarian, and clergymen were educated for the country's 20,000 churches. Thus in the 9th-10th centuries, and especially during the so called 'Golden Age of Bulgarian culture' under Boris and his son Tsar Simeon I the Great, Bulgaria became the cradle of the Cyrillic alphabet and Bulgarian Slavonic culture which in the ensuing centuries spread to Byzantium, Serbia, Bosnia, Croatia, Transylvania, Walachia and Moldavia, as well as to Kievan Rus and the Principality of Moscow (predecessors of Russia, Ukraine, and Belarus).

The first translations of the Holy Scriptures from Greek into Slavonic were done in the Old-Bulgarian tongue. Old-Bulgarian became the language of church, literature and administration in a number of Slavic and non-Slavic countries. After further evolution, the Old-Bulgarian alphabet, now known as the Cyrillic script, is now used in Bulgaria, Serbia, Belarus, the Ukraine, Russia, etc. In 1018 A.D. Emperor Basil II Bulgaroctonus conquered Bulgaria and made it a province of the Byzantine Empire.

The Second Bulgarian Tsardom (1185-1396) was established after a successful uprising of the Bulgarian aristocracy. The reign of the Assen dynasty began. The city of Tarno-

3 Another theory suggests that the date may be 632 since the state of Great Bulgaria may have been continuous within the Dunabian Bulgarian state. The theory is that although Great Bulgaria lost much territory to the Khazars, it managed to defeat them in the early 670s, and Khan Asparuh conquered Moesia and Dobrudzha from Byzantium in 680. In 632, the Bulgars, led by Khan Kubrat formed an independent state, often called Great Bulgaria (also known as Onoguria). It was located between the lower course of the Danube river to the west, the Black Sea and the Azov Sea to the south, the Kuban river to the east, and the Donets river to the north. The capital was Phanagoria, on the Azov. Bulgar tribe, led by Khan Asparuh, the successor to Khan Kubrat, moved west, occupying today's southern Bessarabia. After a successful war with Byzantium in 680, Asparuh's khanate conquered the eastern part of Moesia and Dobrudzha (the lands between the Balkan mountains, the Danube and the Black Sea) and was recognized as an independent state under the subsequent treaty signed with the Byzantine Empire in 681. That year is usually considered to be the year of the establishment of present-day Bulgaria.

4 According to another theory the first Bulgarian tsar is Peter, who was the son of Simeon.

vo was chosen to become the capital of the second Bulgarian Tsardom. Following a period of Byzantine domination in 1018-1185, Bulgaria regained her independence and role of major regional power in rivalry with the Kingdom of Hungary and the Byzantine Empire, the latter in turn overtaken by the Crusader Latin Empire of Constantinople in 1204-61. Bulgaria extended to the Black Sea, Aegean Sea, Adriatic Sea, Bosnia, Hungary, and the Carpathian Mountains. The Second Bulgarian Tsardom prospered under Tsar Kaloyan and his successors Ivan Assen II and Svetoslav Terter, to enjoy under Ivan Alexander a period of cultural renaissance known as "the Second Golden Age of Bulgarian culture". The capital Tarnovo became a political, economic, cultural and religious centre seen as 'the Third Rome' in contrast to Constantinople's decline after the Byzantine heartland in Asia Minor was lost to the Turks during the late 11th century. A number of monasteries and churches were built or renovated, literary activities flourished, and Bulgarian artists started to create realistic images – as those of Boyana Church in Sofia – already in the mid-13th century, some decades before Giotto and the early Italian Renaissance.

Balkan history took a new turn with the Ottoman conquest, which was facilitated by a feudal fragmentation plaguing the region in the late 14th century. In particular, Bulgaria split into the Tsardoms of Tarnovo and Vidin, the Principality of Dobrudzha, the vassal Principalities of Walachia and Moldavia (which remained autonomous under the Ottomans), and several smaller feudal possessions in Macedonia. The last Bulgarian state to fall was the Vidin Tsardom in 1422.

The tsardom was fated by history to play an important part in the period of Ottoman Muslim invasion. At the price of its independence, Bulgaria slowed up the Sultans' expansion to Europe.

Bulgaria was an Ottoman province for five centuries. With Bulgaria's conquest by the Ottoman Turks, the Bulgarian aristocracy was liquidated, Bulgarian administration was eliminated, and the Sultans, who, for a long time, made no difference between the individual peoples inhabiting the Balkans, deprived the Bulgarian church of its autonomy and patriarchal authority and made it subject to the dominion of the Greek Constantinople Patriarchate. During this period, the ordinary Bulgarian peasants, craftsmen, tradesmen and clergymen went through hard trials, which formed in them the awareness of being responsible for their own identity, nationality, faith, spiritual tradition, culture, history.

The Bulgarian people maintained and ensured the growth of their monasteries and Christian churches, restored their towns, further developed their crafts and trade, created a municipally supported educational system (remarkable in the context of its time), generated their unique folklore. They produced spiritual and political leaders on a European scale, developed the modern Bulgarian literary language, regained their church autonomy (1870), and organized their national liberation movement, which reached its peak in the April uprising of 1876. Though during the preceding four centuries there were many outbreaks of military resistance, and mutinies took place against Ottoman despotism and dependence, it was the 1876 uprising that had a world-wide response. Cruel repressions, atrocities, mass massacres of the civil population in whole cities and villages triggered a reaction of public opinion especially in Russia, France, the United Kingdom and United States. The suppression of the 1876 April uprising was the immediate reason underlying a large-scale international concern by foreign governments, which culminated in the Russian-Turkish War of 1877-78.

The Third Bulgarian Tsardom stemmed from the San Stefano Peace Treaty signed on 3 March 1878. This Treaty re-established Bulgaria in its ethnic boundaries determined by a special international committee, but it was revised only a few months later by the

then Great Powers – Germany, Great Britain, France, Austro-Hungary and Russia. This took place at the Berlin Congress, as it came to be known, which harmed, in varying degrees, the interests of all the Balkan nations. It created the knot of complications which made the Balkans the powder-keg of Europe. Exactly here lie the roots of the process which in later times became internationally known as Balkanization.⁵ Therefore, the notorious Balkanization was not produced by the specific mentality or, respectively, characteristics of the Balkan peoples and countries; it was rather a direct result of the arbitrary acts of the Great Powers.

In conformity with the resolutions of the Berlin Congress, the territory of Moesia and the district of Sofia formed the Principality of Bulgaria. South Bulgaria was proclaimed to be an autonomous province named Eastern Rumelia. Macedonia remained within the confines of the Ottoman Empire. Until World War II the unification of the Bulgarian people continued to be a dominant concern in both the foreign and the domestic policy of Bulgaria. Bulgaria succeeded in restoring South Bulgaria through a bloodless coup in 1885, as well as part of Macedonia – after the Balkan Wars of 1912-1913. The unrealized ideal of national unification predetermined Bulgaria's joining the Central Powers in World War I, and Germany, in World War II. The dream of reacquiring Macedonia (divided between Greece and Serbia), was paid by the Bulgarian people with two insurrections and four wars. However, official Bulgaria, as well as the wide public, accepts reality as it is today. The national question of the Bulgarian people may be settled in the context of United Europe.

Between 1878 and 1946 the Bulgarian nation-state was a constitutional monarchy with a democratic governmental system and a rapidly growing economy. The processes of development, however, were interrupted by Tsar Ferdinand's brinkmanship, which led to the catastrophes of 1913 (when the nation had to wage war simultaneously against Serbia, Montenegro, Greece, Turkey and Romania), and of 1918 (against the Entente states). Twice – in 1923 and 1934 – the democratically elected governments were overthrown by coups and authoritarian regimes were established. The 1930s were a period of stable economic development in the country's modern history. On the whole, Bulgaria's military involvement in World War II boiled down to the occupation of Macedonia. Bulgaria was Germany's only ally that did not allow the destruction of its Jews. Owing to Tsar Boris III and the Bulgarian governments, no hostilities were waged on Bulgarian territory. Following the invasion of the Red Army in early September 1944, the Bulgarian army fought against the Nazis, reaching as far as Austria.

In consequence of the agreements between Stalin, Churchill and Roosevelt, after World War II Bulgaria fell under the sphere of influence of the Soviet Union. Thanks to its centralized resources, Bulgaria was able to solve, with relative success, the relevant problems of industrialization, education and social welfare. In the course of several decades the country became one of the main economic partners of the former Soviet Union. Bulgarian commodities were sold on markets stretching from the Baltic region to the Pacific. This large-scale growth was accomplished by a bureaucratic and authoritarian state machine to the detriment of citizens' rights and freedoms.

The economy was militarized and unilaterally bound to the Soviet market and the Soviet raw material supplies. Non-governmental organizations did not exist. Individual

5 The term "balkanization" is used to describe a confused, fragmented and chaotic status of a certain polity, state or whole region.

enterprise was restrained. In several cases the Bulgarian Communist Party authorities resorted to repressive actions, namely:

- I-in the elimination of their political opposition;
- I-in the forced (ordered by Stalin) Macedonization of the Bulgarian population living in the Pirin Macedonia region, when Bulgarians were forbidden to speak the literary Bulgarian language and were taught a concocted Macedonian tongue;
- I-in the nationalization of industry and large urban real estate;
- I-in the collectivization of agriculture;
- I-in the so-called “vazroditelen/revival/process”, when ethnic Turks were forcibly bulgarized and not permitted to speak Turkish or practise their Muslim rituals.

II. Constitutions in the History of Bulgaria

The history of Bulgaria's written constitutions is relatively short and starts with the establishment of the Third Bulgarian Tsardom, after the country acquired its independence from the Ottoman Empire. In less than 13 decades Bulgaria has adopted four constitutions.

At first glance, it seems that the present 1991 Constitution of Bulgaria is reactive⁶ like most of the fundamental laws enacted in the emerging democracies. Since it is a landmark for the break with the totalitarian past and a fresh start for building democracy, there is no real need to look at the constitutional history. But it is the historical past that forms the background to the constitutional climate and nurtures a certain type of legal and political culture which is a product of slow changes in the process of evolution. Further, one should never forget that any piece of constitution-making, be it a failure or chef d'oeuvre, is oriented to the shaping of future political processes, but it emerges as a reflection of the experience of the past.

The 1991 Constitution of the Republic of Bulgaria is the fourth fundamental law adopted in the country's history since the liberation from the Ottoman Empire in 1878, ending five centuries of dependent existence of the Bulgarian nation.

The Tarnovo 1879 Constitution was drafted by a Grand National Assembly and was not a constitution given by a monarch or by a metropolitan. Strangely enough, the draft introduced by the Russian emperor's representative⁷ did not follow the governmental model of Tsarist Russia but was influenced by the 1831 constitution of the Kingdom of Belgium, which by the standards of the time was one of the best pieces of classical liberal constitution-making.⁸ In proclaiming democratic principles the Tarnovo constitution even went beyond its analogue, especially in guaranteeing an extensive catalogue

6 The term reactive constitutions was introduced by V. Bogdanor (ed.), *Constitutions in Democratic Politics*, Aldershot, 1988, 6-9.

7 On the elaboration of Rimski Korsakov's draft and the proceedings of the Grand National Assembly in Tarnovo see S. Balamezov's *Droit constitutionnel comparé et bulgaire*, 1935, Sofia, vol. I, 114-176; L. Vladikin, *Tarnovo Constitution*, Sofia, 1995; I. Markov, *On the Foreign Influence during the Creation of the Tarnovo Constitution*, 1956 (in Bulgarian).

8 In tracing the influence of liberal democratic constitutionalism during the first and second generation Constitutional instruments, one should mention the connecting line between the Belgian 1831 Constitution, influenced by the 1812 Spanish Constitution of Cadiz, which bear the imprint of the 1791 French Constitution - which in its own way reflected the spirit of the 1787 US Federal Constitution. It is worth noting that the 1831 Belgian constitution exerted substantial influence over 19th century constitution-making in the Balkans and particularly in Greece and Serbia after they acquired their independence from the Ottoman empire and on the first constitutions that were adopted in Romania. See A. E. Dick Howard, *How Ideas Travel, Constitution making in Eastern Europe*.