

OPINION

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REGARDING: The materials submitted for participation in the competition for the academic position of "Associate Professor", announced by Plovdiv University Paisii Hilendarski, State Gazette, issue 57 of 26.06.2020 in the field of higher education

3. Social, economic and legal sciences, professional field

3.6. Law, scientific specialty: Constitutional law

The only candidate in the competition for "Associate Professor" in the professional field 3.6 Law, specialty Constitutional Law, announced in the State Gazette, issue 57 of 26.06.2020 by the University of Plovdiv "Paisii Hilendarski" for the needs of the Faculty of Law, is Assistant Professor Radoslava Dimitrova Yankulova, PhD.

1. General presentation of the procedure

On the basis of Order No. P33-4341/08.09.2020 of the Rector of PU Paisii Hilendarski, I was appointed a member of the academic jury for the academic position of "Associate Professor" at PU in the field of higher education 3. Social, economic and legal sciences, professional field: 3.6 Law (Constitutional law).

The only candidate who applied to participate in the announced competition is Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD. The set of materials presented by her on paper and electronic media complies with the legal requirements and the Regulations for the development of the academic staff at Plovdiv University Paisii Hilendarski. At its first meeting, the Academic Jury decided that Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD covers the minimum required points by groups of indicators, regulated in Regulations on the Implementation of the Academic Staff Development Act of Republic of Bulgaria, and on this basis is allowed to participate in the competition for the academic position of "Associate Professor" in the professional field 3.6. Law (Constitutional law).

2. Brief description of the candidate

Radoslava Dimitrova Yankulova was born in 1986. She graduated with honours in Law from the Faculty of Law of Plovdiv University Paisii Hilendarski.

Radoslava Yankulova was a full-time doctoral student at the Institute of State and Law at the Bulgarian Academy of Sciences. She successfully defended her doctoral dissertation and obtained the Educational and Academic Degree "Doctor of Law" in 2014. In the same year, after a competition, she started working as a Chief Assistant at the Law Faculty of Plovdiv University Paisii Hilendarski. There were no claims to her work as a chief assistant. The rich pedagogical experience of the candidate is more than enough for promotion to a higher teaching position.

Radoslava Yankulova has specialized in Switzerland, Great Britain, Austria and the Federal Republic of Germany. She is a member of the editorial board of the specialized online legal journal *Studia Iuris* of the Faculty of Law of Plovdiv University Paisii Hilendarski. An additional proof for the professional qualities of the candidate is her work as a senior legal expert in the Constitutional Court of Republic of Bulgaria.

3. Description of the scientific works of the candidate for participation in the competition

Chief Assistant Professor Radoslava Yankulova, PhD participates in this competition, presenting a total of 12 publications, of which: 1 monograph and 11 articles.

All works submitted for participation in the competition have been published after the date of acquisition of the educational and scientific degree "Doctor of Law", meet the requirements of Art. 24, para 1, item 3 of the Academic Staff Development Act of Republic of Bulgaria, and Art. 53, para 1, item 3 of Regulations on the Implementation of the Academic Staff Development Act of Republic of Bulgaria, and are subject to review.

4. Analysis of the scientific works submitted for participation in the competition

The main scientific work of Chief Assistant Professor Radoslava Yankulova, PhD presented for participation in the competition, i.e. "Constitutional Justice and Protection of Fundamental Rights" (Sofia, Ciela Norma AD, 2020, 215p., ISBN 978-954-28-3195-2) is dedicated to constitutional justice as a mechanism for the protection of fundamental rights. The work includes three chapters, and a detailed bibliography.

The monograph examines the protection of fundamental rights, which has become the meaning and purpose of the functioning of every modern constitutional jurisdiction. The author presents in detail the mechanisms for putting in place the control over constitutionality, including by the individual citizen. The emphasis is on the institution of the constitutional complaint and its comparative legal framework in countries with traditions in the field of constitutional justice. The author also outlines the contours of future incorporation of constitutional complaint in the legal order of the Republic of Bulgaria.

Chapter one of the monograph highlights the three leading models for the protection of citizens' rights and freedoms. After retrospectively tracing the phases during which the doctrine of the

fundamental rights of citizens was born and evolved, the author concludes that the degree of their protection in positive law is a defining testament to the democratic maturity of any society. In the context of constitutional justice as a mechanism for protection of fundamental rights, a comparative legal study of the institute of incidental control over constitutionality has been made. The analysis of foreign experience is extremely useful, not only for clarifying the essential characteristics of this institute and for getting acquainted with foreign experience, but also for outlining the trends for possible revision of the constitutional framework in our country. The importance of the set of resources available to citizens to seek protection of their rights before the Constitutional Court, in addition to the vertical order, in the relationship "state-citizens", is illustrated through the prism of the doctrine of indirect action of fundamental rights on third parties.

Chapter two is devoted to the direct access of citizens to constitutional justice. The genesis of the institute of the constitutional complaint is traced and the different criteria for classification of the types of constitutional complaint are indicated. Despite the existing variants of the individual constitutional complaint in a comparative aspect, the author manages to present in a synthesized form the essential characteristics of the institute. This chapter of the monograph also analyses in depth the positive legal framework of the constitutional complaint in a number of European countries.

Chapter Three of the monograph examines the available powers of the Bulgarian Constitutional Court, through which the protection of the rights of citizens guaranteed in the Basic Law is achieved. An important point of contribution is that the classical power of the Constitutional Court to rule on the conformity of international treaties concluded by the Republic of Bulgaria with the Constitution before their ratification, is analysed by the author in the context of the doctrine of constitutional identity, where the core values are reflected and encoded in the fundamental rights of citizens, which is permanent and does not lend itself to remodelling under the weight of supranational processes and influences.

This chapter of the monograph summarizes the leading doctrinal arguments, both in support and against the introduction of a constitutional complaint in the Bulgarian legal system. The author argues that the debate "for" or "against" the constitutional complaint should give way to a constructive dialogue on the model of individual protection through constitutional justice in Republic of Bulgaria.

The exposition is well structured, and the analyses and the specific conclusions are balanced, taking into account both the trends in the constitutional law doctrine, and the foreseeable challenges in connection with the presented matter. Significant volume of literature was used, as the citations are not pro-forma, but reflect a thorough and detailed knowledge of the respective works. The author demonstrates a good knowledge of the current legal framework and the various legal

institutes and has the ability to present and defend her opinions. The exposition is also characterized by a high degree of language literacy, both general and legal.

The monograph has many specific contributions, mentioning only some of them: **1)** the forms of indirect access of citizens to constitutional justice are considered in detail; **2)** in the context of the incidental control for constitutionality, the tendency for decentralization of the control for compliance of the laws with the Constitution has been traced, catalyzed by factors of national and supranational origin; **3)** the doctrine of the horizontal effect of fundamental rights is analyzed; **4)** through the prism of the case law of the Court of Justice of the European Union the mechanisms for protection of fundamental rights in the territory of the European Union are considered; **5)** the models of constitutional complaint in Germany, Austria and Spain, are presented, and which were followed during the introduction of the institute in other countries, as well as the mechanisms for direct access of citizens to constitutional justice in the Czech Republic, Poland and Croatia which in the 1990s, like Bulgaria, took the path of democratic transformation; **6)** the elements of the Bulgarian constitutional identity are highlighted; **7)** the case law of the European Court of Human Rights is analysed regarding the constitutional complaint as a domestic remedy, which should be exhausted before filing a complaint to the ECtHR; **8)** the parameters of future introduction of a constitutional complaint in the legal order of the Republic of Bulgaria are outlined *de lege ferenda*.

The following remarks and recommendations can be addressed to the monographic work, which is in the focus of the presented scientific products:

It can be noticed that the author did not adhere to the structure, which has become a classic for the scientific genre monograph, including an introduction, exposition and conclusion. I believe that the scientific work would benefit from the presence of introductory words and a concluding analysis given its focus on a wider readership.

The statement is accompanied by a detailed presentation of the practice of the Constitutional Court in exercising its interpretative power, as well as of its power to rule on the conformity of laws with the Constitution. At the same time, however, this part of the exposition could have been supplemented with more analysis of the practice of our constitutional jurisdiction, as well as with the opinions of the author on it.

Chapter three of the monograph abounds in *de lege ferenda* proposals, which together form a complete model of a constitutional complaint. Some of these proposals are presented rather schematically, which is why I would recommend Yankulova, PhD to support them with more legal argumentation in future revisions of the monograph.

These critical remarks and recommendations cannot change the conclusion that the candidate Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD has sufficient scientific and teaching qualities to acquire the academic position of "Associate Professor".

In addition to the presented monograph "Constitutional Justice and the Protection of Fundamental Rights", Radoslava Yankulova, PhD participated in the competition with several articles that were published in legal periodicals and collections, namely: **„Outlook for constitutional justice as an instrument for protection and defence of the Constitution“** - Studia Iuris, Issue 1/2014, ISSN 2367-5314; **„The constitutional complaint as a means of protection of religious freedoms before the Federal Constitutional Court of Germany“** - In: Current aspects of religious tolerance in Bulgaria, EcoPrint, 2014, ISBN 978-619-7109-04-7; **„Horizontal action of fundamental rights in the light of the marriage contract - the German experience“** - In: Family Relations in a Changing World, Sofia, Sibi, 2014, ISBN 978-954-730-889-3; **„The rights of children and their place in the Bulgarian constitutional model“** - Legal Thought, vol. No. 2/2015, ISSN 1310-7348; **„Protection of fundamental rights through constitutional justice in Republic of Bulgaria 800 years after Magna Carta“** - Studia Iuris, Issue 2/2015, ISSN 2367-5314; **„Voting rights also for people with intellectual disabilities and mental health problems?“** - Legal Thought, vol. No. 3/2016, ISSN 1310-7348; **„Prohibition in the practice of the European constitutional courts“** - Legal Thought, vol. No. 3/2017, ISSN 1310-7348; **„Referendum as an object of constitutional control“** - In: Law - Traditions and Outlook, Sofia, Ciela, 2018, ISBN 978-954-28-2625-5; **„For the indirect access of citizens to constitutional justice“** - Studia Iuris, Issue 2/2018, ISSN 2367-5314; **„Voting rights for people with intellectual disabilities and mental health problems - international standards“** - Legal Thought, vol. No. 2/2019, ISSN 1310-7348; **„Constitutional justice and the protection of fundamental rights“** - In: Scientific readings dedicated to the 140th anniversary of the adoption of the Tarnovo Constitution, Sofia, Ciela, 2019, ISBN 978-954-28-3043-6.

The eleven articles presented are devoted to topics in the field of constitutional law, constitutional justice, and the protection of human rights, and the theoretical constructions expressed in them are well argued. They reveal the diverse scientific interests of Chief Assistant Professor Radoslava Yankulova, PhD and contain contributions that deserve attention and support. Six of the articles ("Outlook for Constitutional Justice as an Instrument for Protection and Defence of the Constitution"- Studia Iuris, Issue 1/2014, ISSN 2367-5314; "The Constitutional Complaint as a Means of Protection of Religious Freedoms before the Federal Constitutional Court of Germany" - In: Current aspects of religious tolerance in Bulgaria, EcoPrint, 2014, ISBN 978-619-7109-04-7 "Horizontal action of fundamental rights in the light of the marriage contract - the German experience" - In: Family Relations in a Changing World, Sofia, Sibi, 2014, ISBN 978-954-730-889-3

"Protection of Fundamental Rights Through Constitutional Justice in Republic of Bulgaria 800 years after Magna Carta" - Studia Iuris, Issue 2/2015, ISSN 2367-5314; "For the Indirect Access of Citizens to Constitutional Justice" - Studia Iuris, Issue 2/2018, ISSN 2367-5314; "Constitutional Justice and the Protection of Fundamental Rights" - In: Scientific Readings devoted to 140-year anniversary of the adoption of the Tarnovo Constitution, Sofia, Ciela, 2019, ISBN 978-954-28-3043-6) were incorporated and further developed subsequently in the monograph "Constitutional Justice and the Protection of Fundamental Rights" and form part of the content of the thesis presented for the purpose of attaining an academic rank.

5. Conclusion

The documents and materials submitted by Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD meet the requirements of the Academic Staff Development Act of Republic of Bulgaria (ASDARB), the Regulations for Implementation of the ASDARB and the Regulations for the Development of the Academic Staff of Plovdiv University Paisii Hilendarski.

The candidate in the competition has submitted a sufficient number of scientific papers published after the materials used in the defence of Educational and Scientific Degree "Doctor". The quantity and quality of scientific production and the fulfilment of scientometric requirements are indisputable. The work of the candidate contains original scientific and applied contributions. She demonstrates extensive knowledge and opportunities for analysis. Her theoretical developments are directly oriented to the educational work, and some of them have practical applicability. The developments also have serious scientific significance. The scientific and teaching qualification of Chief Assistant Professor Radoslava Yankulova, PhD is undoubted. The results achieved by her in the teaching and research activities comply with the regulatory requirements.

After getting acquainted with the materials and scientific works presented in the competition, analysis of their significance and the scientific and applied contributions contained in them, **I find it reasonable to give my positive assessment and recommend** to the Academic Jury to propose to the Faculty Council of the Faculty of Law at Plovdiv University Paisii Hilendarski to elect Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD for the academic position of "Associate Professor" in the field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law (Constitutional law).

The Opinion was prepared by:

(Assoc. Prof. Bogdan Yordanov, PhD)

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