

To
Members of the Scientific Juri,
established by Order No. P33-4173 of
August 26, 2020 as amended by Order
No. P33-4341 of September 08, 2020 of
the Rector of the Plovdiv University
“Paisiy Hilendarski” concerning the
competition for occupying an academic
position “Associate Professor” of the
Plovdiv University “Paisiy Hilendarski”
in area of higher education 3. “Social,
Economic and Legal Sciences”,
professional field 3.6. “Law”, scientific
speciality “Constitutional Law”

OPINION

of Prof. DSc. Georgi Penchev – Faculty of Law at the Plovdiv University
“Paisiy Hilendarski”

concerning: the materials, presenting for attendance in competition for
occupying an academic position “associate professor” of the Plovdiv University
“Paisiy Hilendarski” in area of higher education 3. “Social, Economic and Legal
Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional
Law”

Dear Members of the Scientific Juri,

By Order No. P33-4173 of August 26, 2020 as amended by Order No. P33-4341 of September 08, 2020 of the Rector of the Plovdiv University “Paisiy Hilendarski” (PU) I have been appointed as a member of a scientific juri concerning a competition for occupying an academic position “Associate Professor” of the PU in area of higher education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional Law”, announced for the needs of Department “Public Law Sciences” of the Faculty of Law (FL) of PU. I present to you my opinion, prepared on the ground of Art. 26, par. 3 of the Development of the Academic Staff of the Republic of Bulgaria Act (DASRBA – State Gazette (SG), No. 38 of 2010, as amended), Art. 57, par. 2 and 3 and Art. 57a, par. 1 of the Regulation for Implementation of the DARSBA, adopted by Decree of the Council of Ministers No. 202 of September 10, 2010 (RIDARSBA – SG, No. 75 of 2010, as amended) and Art. 68, par. 2 and 3 of the Regulation for Development of the Academic Staff of the Plovdiv University (RDASPU – In: Пловдивски университет „Паисий Хилендарски” [online] [viewed 03.09.2020]. Available from: <http://procedures.uni-plovdiv.bg/docs/praspu2018.pdf>).

1. General presentation of the procedure and candidate

1.1. General presentation of the procedure

The competition on the occupying an academic position “associate professor” of the PU in area of higher education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional Law” for the needs of Department “Public Law Sciences” of the FL at the PU has been announced in SG, No. 57 of June 26, 2020 and in the Internet page of the PU. For attendance in the competition there are presented documents in time only one candidate - Main Assistant Professor (M. Ass. Prof.) PhD Radoslava Dimitrova Yankulova from Department “Public Law Sciences” of FL at the PU. The Commission for Admissibility of the Candidates in the competition with protocol of August 27, 2020 allowed to participation in it M. Ass. Prof. PhD Radoslava Dimitrova Yankulova with the finding that she fulfill the requirements of Art. 65 of RDASPU.

First of all, it should be emphasized that the materials and documents presented by M. Ass. Prof. PhD R. Yankulova in paper and in electronic form is in conformity with Art. 66, par. 2, 4, 5 and 6 of RDASPU, it has been also followed a procedure under Art. 67 of the same Regulation. She has submitted for the competition 12 scientific publications, from which 1 monograph entitled “The Constitutional Procedure and the Protection of Fundamental Rights”, Sofia, “Ciela”, 2020, 216 pp. and 11 scientific articles after obtaining an educational and scientific degree (ESD) “Doctor” in 2014. All presented scientific publications of M. Ass. Prof. PhD R. Yankulova for attendance in the competition are in the field of the constitutional law and constitutional procedure.

1.2. Brief biographical data of the candidate

The M. Ass. Prof. PhD R. Yankulova obtained a law degree in the Faculty of Law at the Plovdiv University “Paisiy Hilendarski” in 2010. During the period 2011-2013 she was a part-time assistant professor in constitutional law at the same faculty, and in 2012 she passed a specialization in the FL at the University of Salzburg, Austria. In 2014, in the Institute for State and Law at the Bulgarian Academy of Sciences (ISL-BAS) she successfully defended a thesis for obtaining an ESD “doctor” (i.e. PhD) in area of higher education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, post graduate programme “Constitutional Law” in thesis title “Constitutional Procedure”. Also in 2014 she was appointed as M. Ass. Prof. in constitutional law in the FL at the PU. In addition, R. Yankulova has participated at a number of national and international scientific conferences and also is currently a legal expert at the Constitutional Court of the Republic of Bulgaria.

1.3. Personal impressions from the candidate

My personal impressions of the candidate in the competition are very good. M. Ass. Prof. PhD R. Yankulova possesses the necessary business (professional and organizational) and moral qualities for exercising his teaching activity in the PU. To her colleagues, incl. of the other faculties of law, the ISL-BAS and legal practice seeks to be polite, careful and correct, and has also earned the reputation of a glamorous lecturer in front of the students.

1.4. Fulfillment of the requirements for holding of academic position

In connection with the fulfillment of the minimum national requirements under Art. 2b, par. 2 and 3 of the DASRBA and Art. 1a, par. 1 of RIDASRBA, my assessment of the number of points achieved by the candidate in the competition, as defined in the appendix to Art. 1a, par. 1 of the RIDASRBA in higher education area 3. "Social, Economic and Legal Sciences", professional field 3.6. "Law" is as follows: by set of indicators A - at minimum 50, execution 50; by set of indicators B - no mandatory minimum, no performance, but not mandatory; by set of indicators B - at minimum 100, execution 100; by set of indicators D - at least 100, execution 110; by set of indicators E - at minimum 50, execution 50; by group of indicators E - there is no mandatory minimum, no performance, but it is not mandatory. From the above it can be stated that M. Ass. Prof. PhD R. Yankulova meets the minimum national requirements for admission to the competition.

2. General characteristics of the activity of the candidate

2.1. Assessment of the educational-pedagogical activity

M. Ass. Prof. PhD R. Yankulova participates actively in the educational and pedagogical activities of the FL at the PU. She is conducting the exercises in compulsory course "Constitutional Law" in the FL at the PU for students in full-time and part-time training. She performs her duties in good faith as a lecturer in the above-mentioned discipline.

2.2. Assessment of the scientific and scientific-applied activity

In the light of the scientific activity of M. Ass. Prof. PhD R. Yankulova it should be mentioned the fact that she presented the monograph "The Constitutional Procedure and the Protection of Fundamental Rights" as a habilitation work. This monographic study of a candidate is a first comprehensive scientific study in our country in this field. It is definitely possible to find that it is filling a gap in our legal literature. At the same time, in the presented 11 articles, the author analyzed a variety of legal issues related to the constitutional procedure. Moreover, the fact that she has published a monograph and 11 scientific articles from 2014 until now is, in my opinion, a very good indicator of both her intense creative activity and her hard work.

2.3. Assessment of scientific and practical results and contributions of the presented for participation in competition scientific production

The scientific results of M. Ass. Prof. PhD R. Yankulova in the field of the constitutional law and constitutional procedure, I assess as an emphatically significant and significant. Among the scientific publications submitted by her

for participation in the competition, in view of their contributions, the most important is to evaluate her habilitation work “The Constitutional Procedure and the Protection of Fundamental Rights”. In structural terms, it is subdivided into three chapters, respectively, Chapter I (pp. 7-69), Chapter II (pp. 70-109), Chapter III (pp. 110-200) and literature used (pp. 201-215), which includes a total of 141 titles, among them 73 in Cyrillic and 68 in Latin. The scientific contributions in this monograph and in the 11 articles presented in the field of constitutional law and constitutional procedure are expressed in the enrichment of existing knowledge through the proposed novelty in the research of a number of legal problems.

The specific scientific and practical results and contributions of the candidate in his habilitation work “The Constitutional Procedure and the Protection of Fundamental Rights” can be outlined as follows:

1. original author’s opinion on the binding importance of fundamental rights to the legislative, executive and judicial powers (p. 13 and p. 46);
2. successful author’s analysis of the main features of the incidental control for constitutionality of a law (p. 30);
3. very well done author’s analysis of the types of the constitutional complaint (pp. 73-75);
4. successful comparative law review of the constitutional complaint models in Europe (pp. 76-109);
5. original author’s proposal *de lege ferenda* for referral to the Constitutional Court by appellate and administrative courts (p. 148);
6. original author’s opinion on the character of the control for constitutionality of the international treaties (pp. 151-154);
7. original author’s proposal *de lege ferenda* for regulation of a constitutional complaint by citizens (“normative constitutional complaint”) (pp. 189-200).

Scientific and applied contributions can also be noted in the articles submitted by the candidate in the competition. Conditionally, they can be divided into two main groups: a) articles related to the topic of habilitation work (10 issues), and b) articles on other topics not related to the topic of habilitation work, but in the field of constitutional procedure (1 issue).

In the circle of the first group of articles related to the topic of habilitation work it is necessary to be indicated, as follows: „The constitutional complaint as a tool of protecting religious freedoms before the Federal Constitutional Court of Germany”, published in collection (coll.) “Current Aspects of Religious Tolerance in Bulgaria”, Sofia, “EcoPrint”, 2014, pp. 134-145; “Horizontal Action of Fundamental Rights in the Light of the Marriage Contract – the German Experience”, published in the coll. “Family Relations in a Changing World”, Sofia, “Sibi”, 2014, pp. 93-105; “Children’s Rights and Their Place in the Bulgarian Constitutional Model”, published in journal (j.) “Legal Thought”, Sofia, 2015, No. 2, pp. 3-23; “Protection of the Fundamental Rights through

Constitutional Justice in the Republic of Bulgaria 800 Years after Magna Charter”, published in j. “Studia Iuris”, Plovdiv, 2015, No. 2, 11 pp.; “Suffrage Rights for People with Intellectual Disabilities and Mental Health Problems?”, published in j. “Legal Thought”, Sofia, 2016, No. 3, pp. 20-38; “The Prohibition in the Practice of the European Constitutional Courts”, published in j. “Legal Thought”, Sofia, 2017, No. 3, pp. 3-26; “The Referendum as an Object of Constitutional Control”, published in coll. “Law – Tradition and Perspectives. Collection. Anniversary Scientific Conference on the Occasion of the 25th Anniversary of the establishment of the Faculty of Law at the Plovdiv University “Paisiy Hilendarski”, Sofia, “Ciela”, 2018, pp. 435-446; “On the Indirect Access of Citizens to Constitutional Justice”, published in j. “Studia Iuris”, Plovdiv, 2018, No. 2, pp. 26-33; “Suffrage for Persons with Intellectual Disabilities and Mental Health Problems – International Standards”, published in j. “Legal Thought”, Sofia, 2019, No. 2, pp. 47-68; “Constitutional Justice and the Protection of Fundamental Rights”, published in coll. “Proceedings Dedicated to the 140th Anniversary of the Adoption of the Tarnovo Constitution, organized by the Faculty of Law of the Plovdiv University “Paisiy Hilendarski”, Sofia, “Ciela”, 2019, pp. 63-70.

To the second group of articles, which are not related to habilitation work and are on another topic, but in the field of constitutional procedure should be mentioned only the article “Perspectives before the constitutional justice as an instrument for protection and defence of the Constitution”, published in j. “Studia Iuris”, Plovdiv, 2014, No. 1, 5 pp.

In the articles „The constitutional complaint as a tool of protecting religious freedoms before the Federal Constitutional Court of Germany” and “Horizontal Action of Fundamental Rights in the Light of the Marriage Contract – the German Experience” with scientific contriburional meaning is the author’s analysis of the German constitutional procedure in the respective two fields.

In the article “Children’s Rights and Their Place in the Bulgarian Constitutional Model” as a scientific contribution can be noted the successful author’s analysis of an interdisciplinary problem that is important for both constitutional and family law, namely children’s rights in the light of the Bulgarian constitutional model. A similar scientific contribution can be highlighted in three other articles regarding to very well-done author’s analysis of another interdisciplinary problem that is important for both constitutional and medical law, namely the legal opportunity for participation in elections of persons with intellectual disabilities and mental health problems, and especially in the articles “Suffrage Rights for People with Intellectual Disabilities and Mental Health Problems?”, “The Prohibition in the Practice of the European Constitutional Courts” and “Suffrage for Persons with Intellectual Disabilities and Mental Health Problems – International Standards”.

In the article “The Referendum as an Object of Constitutional Control” a scientific contriburional meaning has the successful author’s analysis of

significant legal problem, related to the democratization of the public processes in our country, namely referendum as a basis of management decision-making and its constitutional law protection.

The articles “Perspectives before the constitutional justice as an instrument for protection and defence of the Constitution”, “Protection of the Fundamental Rights through Constitutional Justice in the Republic of Bulgaria 800 Years after Magna Charter” and “Constitutional Justice and the Protection of Fundamental Rights” in their entirety can be qualified as a significant scientific contribution due to the very well-done author’s analysis of the constitutional justice in our country.

In the article “On the Indirect Access of Citizens to Constitutional Justice” as a significant scientific-applied contribution can be emphasized a successful author’s analysis of the legal possibility for indirect access of citizens to constitutional justice and suggestions de lege ferenda related to it.

2.4. Assessment of the personal contribution of the candidate

The above mentioned contributions in the scientific production and the results obtained are the personal merit of the candidate for attendance in the competition. They are conditioned by the many years of conscientious and systematic exercised teaching and scientific activity of M. Ass. Prof. PhD R. Yankulova in the FL at the PU.

3. Critical remarks and recommendations

Some critical remarks and recommendations, mainly of editorial nature, can be made to the presented habilitation work as the monograph “The Constitutional Procedure and the Protection of Fundamental Rights”.

3.1. Critical remarks

1. In the structure of the monograph, an introduction and a conclusion could be separated.
2. On some places in footnotes there are not cited the literature sources related to the relevant doctrinal opinions (e.g. at pp. 36, 61, 85, 103).

3.2. Recommendations

1. It is appropriate, in indicating decisions and rulings of the Constitutional Court to be indicated the number and year of SG where they are published (e.g. at pp. 15-17, 19-21, 150-153), as this gives an idea of their entry into force.
2. At p. 58, in the title of item 4 of Chapter One, the kind of the “space” of the European Union had to be explicitly indicated, as in addition to the legal, there is also geographical (territorial) space. Therefore, the word “space” had to be replaced by the words “legal space”.

3.3. Assessment of the impact of the critical remarks and recommendations on the scientific meaning of the habilitation work

The mentioned remarks and recommendations do not at all minimize the importance and usefulness of the habilitation work presented by the candidate. I can definitely say that the monograph of M. Ass. Prof. PhD R. Yankulova “The Constitutional Procedure and the Protection of Fundamental Rights” has all the

qualifications for her habilitation as an associate professor of PU in area of higher education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional Law”, and that in general it represents a significant scientific and applied contribution.

CONCLUSION

In conclusion, after acquaintance with the materials and scientific works presented in the competition, an analysis of their importance and the scientific and scientific-applied contributions contained therein:

1. I consider that M. Ass. Prof. PhD Radoslava Dimitrova Yankulova fully meet the requirements of Art. 24, par. 1 of DASRBA, Art. 53, par. 1 of RIDASRBA and Art. 65, par. 1 and 2 of RDASPU for election to the academic position of “Associate Professor” in area of higher education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional Law”. This finding of mine is motivated by the following: a) the documents and materials submitted by the candidate in the competition meet the requirements of Art. 24, par. 1, points 3 and 4 of DASRBA, Art. 53, par. 1, points 3 and 4 of RIDASRBA and Art. 66, par. 2, 4, 5 and 6 of RDASPU; b) M. Ass. Prof. PhD R. Yankulova submitted a sufficient number of scientific papers published after the materials used in the defense of her thesis for obtaining a PhD degree in 2014, and in works of the candidate there are an original scientific and applied contributions, and a representative part of them are published in her monograph, in journals and scientific collections. Her theoretical works have also a practical applicability and a part of them is directly oriented to the teaching work; c) the scientific and teaching qualification of the candidate in competition is undoubtedly on a high level; d) achieved by M. Ass. Prof. PhD R. Yankulova results in teaching and scientific research activity completely meet also the specific requirements of FL at the PU, and especially point 4 of The Additional Criteria of the Faculty of Law at the Plovdiv University for the Acquisition of Scientific Degrees and Academic Positions, adopted on the basis of Art. 65, par. 3 of RDASPU.

2. I give, on the ground of Art. 26, par. 3 of DASRBA, Art. 57, par. 3 and Art. 57a, par. 1 of RIDASRBA, and Art. 68, par. 3 and Art. 69, par. 1 of RDASPU, positive opinion to the teachers and scientific research activity of M. Ass. Prof. PhD Radoslava Dimitrova Yankulova, which motivates me definitely towards positive conclusion for her to be elected on academic position “Associate Professor”.

3. I recommend to the Scientific Juri, on the ground of Art. 27a, par. 1 of DASRBA, Art. 58, par. 1 of RIDASRBA and Art. 70, par. 1 of RDASPU, to prepare a report with suggestion to the Council of Faculty of the Faculty of Law at the Plovdiv University “Paisiy Hilendarski” to elect Main Assistant Professor PhD Radoslava Dimitrova Yankulova on academic position “Associate Professor” of the Plovdiv University “Paisiy Hilendarski” in area of higher

education 3. “Social, Economic and Legal Sciences”, professional field 3.6. “Law”, scientific speciality “Constitutional Law”, for the needs of the Department “Public Law Sciences” of FL at the PU.

Sofia, 17.09.2020.

Opinion prepared by: (s)

(Prof. DSc. Georgi Penchev)