

OPINION

From: Assoc. Prof. Veselina Kanatova-Buchkova, PhD

Institute of the State and Law at BAS

Public Law Section

Administrative law and administrative process

Regarding: Competition for the academic position of "Associate Professor" in Constitutional Law in the scientific field 3.6 Law at Plovdiv University Paisii Hilendarski

Grounds for presenting the Opinion: Participation in the composition of the scientific jury for the competition for the academic position of "Associate Professor" in the professional field 3.6 Law (Constitutional Law) at PU Paisii Hilendarski on the grounds of order No. R 33-4173/26.08.2020 of the Rector of Plovdiv University.

Only one candidate participates in the competition, namely Chief Assistant Professor Radoslava Dimitrova Yankulova, PhD with a thesis for attainment of an academic rank on "Constitutional Justice and the Protection of Fundamental Rights".

I. Information about the candidate.

The candidate was born in 1986. She graduated in Law from Plovdiv University Paisii Hilendarski. She works as a lecturer in Constitutional Law, Chief Assistant Professor. Doctor of Law since 2014 with a dissertation title "Constitutional Process". Chief Assistant Professor Radoslava Yankulova, PhD is a member of the editorial board of the specialized online journal *Studia Juris* of the Faculty of Law of the University of Plovdiv and a senior legal expert at the Constitutional Court of Republic of Bulgaria. She has numerous international specializations and publications in the field of Constitutional law.

II. General description of the presented work.

Chief Assistant Professor Radoslava Yankulova, PhD participates in the competition with a monograph on "Constitutional Justice and the Protection of Fundamental Rights". The work examines the issue of protection of fundamental rights of citizens established in the

Constitution of Republic of Bulgaria through the prism of the powers of the Constitutional Court. The relevance of the study stems from the specifics of modern society and the need for additional legal remedies to protect the fundamental rights of citizens, in cases where the common national courts do not provide it. The current importance of the dissertation is related to the main subject of research - the institute of the constitutional complaint, its application in a comparative legal aspect, as well as the prerequisites for its introduction into the national legal order. This circumstance in itself justifies the contribution of the research both in theoretical and practical terms.

The presented work consists of a total of 200 pages, it is structured in three chapters, together with a list of references with more than 70 titles by Bulgarian and foreign authors.

The first chapter analyses the basic mechanisms for protection of the fundamental rights of citizens, among which is undoubtedly their protection through the common and special (administrative) justice. Here is stated the principle laid down in the decisions of the Constitutional Court that access to justice, which fully guarantees the right to defence, can be limited only if it infringes a recognized public interest. The public interest is the legitimate reason for such a limitation. As for the special protection by the administrative court and the interpretation of the term “infringement” within the meaning of Art. 120, para. 2 of the Constitution of Republic of Bulgaria, it should be noted that the infringement is related to the legal effect of the administrative act in the field of persons, and not to the violation of regulations of a higher rank, as adopted on page 19. This is so, as the inconsistency of the administrative act with regulations of a higher rank determines its illegality, but if it does not act in the legal sphere of the persons, the right to challenge does not arise despite the defect in it. Interesting in this regard would be the issue of the limitation of the general clause for appeal of administrative acts under Art. 120, para. 2 Constitution of Republic of Bulgaria and the consequences of the lack of compliance by the legislator with the basic constitutional principles of the rule of law and the protection of fundamental rights (p. 20). What happens when the legislator, under the pretext of protecting the particularly important interests of citizens and society, restricts their fundamental right to protection against illegal acts of the executive power? Indirect access to constitutional justice is thoroughly examined in the monograph, and I recommend further study of the question on the CJEU's work (p. 39) on the protection of fundamental rights and freedoms, given the fact that its decisions have a declaratory effect on the interpreted provision, which enables the court to apply the interpretation of the decision back in time, thus giving a fuller and more comprehensive

protection of the rights of individuals, regardless of the activity or passivity of the legislator to repeal the regulation, which is contrary to EU law. Moreover, in its case law, the CJEU recognizes that rules of the European Convention for the Protection of Human Rights and Fundamental Freedoms should be applied directly by national courts as part of Union law, and in the event of a conflict between domestic provisions and those of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the rules of the Convention prevail. Interesting from a practical and theoretical point of view are the described examples of the horizontal effect of regulations of the Constitution on private law entities, and the protection of fundamental rights given by the Federal Constitutional Court in respect of private law contracts, which have been declared unconstitutional.

The second chapter examines in detail the institute of the constitutional complaint. A thorough comparative legal analysis of the origin and development of the constitutional complaint is made, as a contribution point of the research is the deduction of criteria on the basis of which the main types of constitutional complaints are outlined.

The third chapter of the study concerns the powers of the Constitutional Court related to the protection of fundamental rights. The first main power of the Constitutional court for mandatory interpretation of the Constitution is a fundamental issue of theory and case law regarding the obligatory nature of this interpretation for the courts and its precedence over other interpretative acts adopted by the Supreme Administrative Court and the Supreme Court of Cassation according to the Law on Judiciary. In this sense, in addition to the above-mentioned preventive nature, the interpretative acts of the Constitutional court are a source of legal regulations, applicable even before the domestic legislation. The mentioned effect of the interpretative acts of the Constitutional Court is evident from the study on the interpretation of fundamental rights established in the Constitution of Republic of Bulgaria, which I recommend to be further developed in view of the legal effect of the cited interpretative decisions in the practice of courts. At a high scientific level is the study of abstract control over the constitutionality of laws. I recommend the author to present her own view on the possibility of the national ombudsman to refer to the Constitutional Court to establish the non-compliance of a law with regulations of international rank and international treaties to which Bulgaria is a party (p.122). On the issue of incidental control of constitutionality in a particular case, which currently belongs only to panels of the Supreme Court of Cassation or the Supreme Administrative Court, it should be borne in mind that amendments to the Administrative Procedure Code during 2019 in many cases deprived citizens of a two-

instance court protection by amending special laws, according to which the decision of the first instance administrative courts is final and not subject to appeal to the Supreme Administrative Court. In view of the argument put forward for the admissibility of other courts to refer to the Constitutional Court, it is possible to consider amending the Constitution of Republic of Bulgaria in this regard, and allow the court that decides the case per se to have the right to incidental control for constitutionality. In this sense, I share the proposal made *de lege ferenda* with this correction concerning the final function of the court (p. 148). A contribution of the study is the question of the nature of the individual constitutional complaint as a "internal instrument", which should be exhausted in order to refer to the European Court of Human Rights, in comparative terms, as well as the author's proposals for the adoption of the regulative constitutional complaint in our country, and the requirements for its application.

In conclusion, without a doubt a positive conclusion can be substantiated for the scientific capabilities of Chief Assistant Professor Radoslava Yankulova, PhD who meets all the requirements of Art. 53 of the Academic staff Development Act of Republic of Bulgaria. That is why I propose to the scientific jury to award her and to take the academic position of "Associate Professor" in Constitutional Law in the field of higher education 3.6 "Law" at the Faculty of Law at Plovdiv University Paisii Hilendarski.

Assoc. Professor Veselina Kanatova-Buchkova, PhD