

REVIEW

by Assoc. Prof. Zornitsa Lyudmilova Yordanova, PhD

**Associate Professor in Constitutional Law at the University of Ruse Angel
Kanchev**

of the materials submitted for participation in a competition for the academic position

“Associate Professor ”

at the University of Plovdiv Paisii Hilendarski

in the field of higher education 3. Social, economic and legal sciences, professional
field 3.6. Law, scientific specialty of Constitutional law

HONOURABLE MEMBERS OF THE SCIENTIFIC JURY,

By order No. P 33-4173/26.08.2020 of the Rector of the University of Plovdiv "Paisii Hilendarski" (PU) I was appointed a member of the scientific jury of the competition for the academic position "Associate Professor" at PU in the field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law, scientific specialty - Constitutional law, for the needs of the Department of Public Law at the Faculty of Law of Plovdiv University. The competition has been announced in the State Gazette, issue 57 of 26.06.2020 and on the website of Plovdiv University "Paisii Hilendarski"

Only one candidate has submitted documents for participation in the competition: Radoslava Yankulova, who currently holds the position of Chief Assistant Professor in Constitutional Law at the Department of Public Law at the Faculty of Law, Plovdiv University.

1. General presentation of the received materials

The set of materials presented by Radoslava Yankulova, PhD for participation in the competition is in accordance with the legal requirements, as well as those of the Regulations for the development of the academic staff of Plovdiv University. The set of documents sent to me electronically includes:

- Application for admission to the competition;
- Curriculum vitae of the candidate;

- Scanned diploma for Educational and Scientific Degree "Doctor ";
- Official certificate on the workload of R. Yankulova, PhD for the academic year 2020/21;
- Abstracts of the scientific papers submitted for review by the candidate (in Bulgarian and English);
- The scientific works of the candidate – a monograph (on paper) and 11 other publications (on electronic media);
- Information from the candidate for fulfilment of the minimum national scientific-metric requirements;
- List of all publications of the candidate - before and after the acquisition of Educational and Scientific Degree “Doctor”.

The candidate Radoslava Yankulova, PhD has submitted for review a total of 12 independent scientific publications, of which one monograph on "Constitutional Justice and the Protection of Fundamental Rights", as well as 11 other publications in scientific journals and proceedings of scientific conferences. All 12 mentioned publications are approved for review, as they were published after the defence of the dissertation of Yankulova PhD. All scientific papers submitted for review were published in our country.

2. Brief biographical data of the candidate

Chief Assistant Professor Radoslava Yankulova, PhD graduated Major Law from the Faculty of Law of Plovdiv University Paisii Hilendarski in 2010. In 2014 she obtained the educational and scientific degree "Doctor of Law" after successfully defending dissertation on "Constitutional process" at the Institute of the State and Law at BAS. Since 2014 she has been appointed on the position of "Chief Assistant Professor" at the Faculty of Law of the University of Plovdiv, and according to the presented official certificate she delivers lectures and seminars on Constitutional Law, as well as lectures in the disciplines: Constitutional Justice, Family and Inheritance Law, and Legal regime of persons with mental illnesses and mental disabilities, she has also delivered lectures on the subject of Children's Rights. Yankulova, PhD is also a member of the editorial board of the specialized law journal *Studia Juris* issued by the Faculty of Law at Plovdiv University. Since 2018, along with her teaching activities, she has been working as a senior legal expert and at the Constitutional Court of Republic of Bulgaria. For the period from 2012 to 2017 she has had a total of 5 specializations abroad.

3. General characteristics of the candidate's activity

3.1. Educational and pedagogical activity

Chief Assistant Professor Radoslava Yankulova, PhD carries out active research and teaching activities at the Plovdiv University Paisii Hilendarski. During the current academic year the candidate will give lectures in 4 disciplines, as well as seminars on Constitutional Law. As mentioned, Yankulova, PhD also participates in the editorial board of the journal *Studia Juris*. She has been an academic mentor on the project "Student Internships" of the Ministry of Education and Science, as well as a moderator of the Student Law Academy, organized on the occasion of the 20th anniversary of the Faculty of Law of Plovdiv University. All of the above demonstrates the commitment of Yankulova PhD to the learning process and student activities at PU P. Hilendarski.

3.2. Scientific and scientific-applied activity of the candidate

The candidate is a chief assistant professor, doctor of law, with a scientific specialty in Constitutional Law, as well as a senior legal expert at the Constitutional Court.

Radoslava Yankulova, PhD participates in the current competition for the academic position of "Associate Professor" in the same specialty with the monograph "Constitutional Justice and Protection of Fundamental Rights", published in the current year 2020. The monographic work meets the requirements of the Academic Staff Development Act of Republic of Bulgaria, with a scientific editor Associate Professor K. Pehlivanov, PhD. The publication has a total volume of 215 pages and contains 3 chapters, a bibliography of 15 pages, including approximately equal numbers of titles in Bulgarian and foreign languages (mostly in English, as well as one source in German), and below the line there are a total of 213 notes.

In addition to the monographic work, further 11 scientific publications were presented for review (articles and reports published in specialized journals and proceedings of scientific conferences): "Outlook for constitutional justice as an instrument for protection and defence of the Constitution"; "Constitutional complaint as an instrument for the protection of religious freedoms before the Federal Constitutional Court of Germany "; "Horizontal effect of the fundamental rights in the light of the marriage contract - the German experience"; "The rights of children and their place in the Bulgarian constitutional model"; "Protection of fundamental rights through constitutional justice in Republic of Bulgaria 800 years after the Magna Carta"; "Voting rights for people with intellectual disabilities and mental health problems?"; "Prohibition in the practice of European constitutional courts"; "Referendum as an object of constitutional control"; "On the indirect access of citizens to constitutional

justice"; "Voting rights for persons with intellectual disabilities and mental health problems - international standards", and "Constitutional justice and protection of fundamental rights" (eponymous with the monograph). The content of 6 of these publications falls into the subject, and is included to a greater or lesser extent in the work for attainment of academic rank, while 5 are not related to the topic of the monograph. All presented articles have been published in Bulgarian periodicals and in Bulgarian language, 4 of which have been presented as reports at scientific conferences, and the remaining 7 have been published in legal scientific journals.

The presented publications testify to the lasting scientific and practical interests of the candidate in the field of constitutional law and justice, as well as the protection of fundamental rights - in national and international context and in the EU legal space as well.

4. Analysis of the presented work for attainment of academic rank

The monograph "Constitutional Justice and Protection of Fundamental Rights" is devoted to the protection of fundamental rights as a main focus of the activities of modern constitutional jurisdictions. The relevance of this topic in modern democratic societies is undoubted. The protection of fundamental rights is the intention and purpose of every constitutional court, and the mechanisms for referring to the Constitutional Court and by the individual citizen contribute to the achievement of this goal. The legal regulation of the Bulgarian constitutional justice is open to development and the author offers possible patterns. The monograph examines in detail the forms of indirect and direct access of citizens to constitutional justice. The main emphasis is placed on the institute of constitutional complaint and its manifestations in a comparative legal aspect, as suggestions were made in connection with the possible future introduction of this institute in our country and the author's concepts about the parameters of this complaint were outlined.

The first chapter of the monograph is devoted to the mechanisms for protection of fundamental rights. The author points out that the consolidation of reliable mechanisms for protection of rights is a "supporting beam" in the structure of every democratic society, and a key indicator of the legal nature of the state. The three main models of protection of human and civil rights and freedoms are outlined: with the first one (who is the oldest) the protection of rights and freedoms is entrusted to the courts from the pillar of general justice; in the second there is established a special administrative protection of rights and freedoms that are violated by state bodies with

their acts or actions, or by other public entities; in the third model, the most recent, the protection of human and civil rights is also carried out by ordinary and administrative courts, but in cases of violation of rights and freedoms guaranteed by the Constitution, citizens are provided also an additional, immediate protection by the Constitutional Court.

The second paragraph in this chapter of the monograph is devoted to constitutional control as an instrument for the protection of fundamental rights. One way to reach the constitutional courts in Europe is to entrust direct access to them to the highest levels of public authority, and for citizens to be able to refer the matter to the Constitutional Court indirectly. This indirect access is an important tool to ensure that individual human rights are respected at the constitutional level. Its common form is the institute of incidental control for constitutionality - the challenge of a law by individuals and legal entities in the course of proceedings in a particular case. The author outlines its characteristics, types, historical development, as well as notes the new trend for decentralization of constitutional control and the factors that contribute to it. Yankulova PhD also pays special attention to the role of the ombudsman as a complementary mechanism for indirect access of citizens to constitutional justice.

Separate paragraphs in the first chapter of the monograph are devoted to the horizontal effect of fundamental rights (examining the doctrine and practice in the Federal Republic of Germany), as well as to the mechanisms for the protection of fundamental rights in the EU. The last 2 paragraphs enrich the work and confirm both the importance of the issue and the lasting interest of the author in it.

Chapter two of the monograph is devoted to the referral of the Constitutional Court by the citizens. It focuses on the constitutional complaint, which is defined as the most powerful means of protecting fundamental rights and freedoms through constitutional justice. The author examines the historical development of this institute in Europe. It has been pointed out that today the constitutional complaint is an element of the constitutional legal system of many countries with similar features, but also with a number of nuances in the regulation - conceptual and / or procedural. The author classifies the types of constitutional complaints on the basis of certain criteria: according to the subject - a genuine constitutional complaint (allowing to attack any act of public authority) and regulative constitutional complaint (addressed against a regulation of law, which served as grounds for issuing a public act); according to the active legitimacy and the nature of the protected interest - an individual constitutional complaint (aimed at

protecting the personal interest of the complainant), a collective constitutional complaint (allowing collective entities to protect their rights) and *actio popularis* (in which the submitter does not it is necessary to prove direct and personal damage from the attacked act). The main characteristics of the institute are presented: the constitutional complaint is a special procedural means for protection only of rights established by the Constitution; the proceedings on it are developed before a specialized court (supreme, constitutional) and has as subject the question of the constitutionality of the attacked act of a public authority; serves to protect directly affected persons (i.e. it is a means of personal protection and not a claim of another's rights); the decision on the complaint has the consequence of restoring justice in the legal sphere of the individual.

The second paragraph of the second chapter of the monograph examines the models of constitutional complaint in Germany, Austria and Spain, as well as the mechanisms for direct access of citizens to constitutional justice in the Czech Republic, Poland and Croatia. The comparative analysis proposed by Yankulova, PhD is logically arranged and covers the following issues: legislation of the constitutional complaint, which rights can be protected through it, which are the legitimate persons to file it, what is the possible object of the constitutional complaint, what are the procedural prerequisites for its admission, what is the procedure for its consideration, and what is the legal effect of the decision on it.

The third chapter of the monograph is devoted to the protection of fundamental rights in the constitutional justice of the Republic of Bulgaria. In it, the author highlights the historical development of constitutional justice in our country, and then examines the hypotheses in which fundamental rights and their protection fall within the scope of the Constitutional Court of Republic of Bulgaria. The powers of the Constitutional Court are outlined when it rules out on issues related to fundamental rights. The author cites the relevant practice of the Court on requests for mandatory interpretation of the Constitution, to establish unconstitutionality of laws and other acts of the National Assembly, as well as and acts of the President, for ruling on the conformity of concluded international treaties with the Constitution before their ratification, as well as for compliance of the laws with the generally recognized norms of the international law and with the international treaties to which Bulgaria is a party.

Yankulova, PhD pays special attention to the interpretive power of the Constitutional Court and its role in protecting fundamental rights. A significant part of the interpretative decisions of the Bulgarian Constitutional Court, examined by the author, are directly related to fundamental rights of citizens - equality, freedom of

religion, communication rights and freedoms, freedom of association, right to strike, right to defence, and general clause for appealability of administrative acts, etc.

Abstract control over the constitutionality of laws is one of the most frequently exercised powers of the Constitutional Court of Republic of Bulgaria. From its establishment until today, the Court has ruled on the constitutionality of legal provisions relating to the following fundamental rights: equality before the law; right to property; communication rights (right to opinion, freedom of the press and other media, right to information); right to work; right to social security; voting right; right to free business initiative; right of association, etc. The author examines in detail the practice of the Constitutional Court in cases initiated at the request of the ombudsman. Special attention is paid to the so-called incidental review of constitutionality, initiated by the Supreme Court of Cassation and the Supreme Administrative Court, presenting the existing in theory and practice considerations "for" and "against" granting the right to lower courts to refer directly to the Constitutional Court¹.

The purpose of the power of the Constitutional Court under Art. 149, para 1, item 4 of the Constitution is not to allow the effect of an international treaty contrary to the Constitution or to suspend the effect of a law contrary to international treaties. In this regard, there is a current tendency for the hierarchization of the relations "international - national constitutional law" to gradually give way in favour of their mutual influence and enrichment. Particular attention is paid here to the concept of constitutional identity, which concept is not defined in the Constitution of Republic of Bulgaria. In connection with the role of the Constitutional Court by its powers in the "external power" to be a guarantor of fundamental rights, the author emphasizes two groups of issues in our Constitution, reserved for resolution by the Grand National Assembly: to change the form of state government and to amend the provisions of Art. 57, para. 1 and 3 as far as the irrevocability and the admissible restrictions in the exercise of the fundamental rights of the citizens are concerned.

The last paragraph of the monograph presents the main considerations "for" and "against" the introduction of a constitutional complaint in Republic of Bulgaria. After analysing the existing arguments in the legal theory and the foreign legal framework, the author shares the proposals expressed in the doctrine for the adoption of the regulative constitutional complaint in our country. She divides the considerations for this into two groups: conceptual and pragmatic. The author proposes a model for

¹ More sources could be added in this field, for example the article of Prof. Pencho Penev "The participation of the courts in the constitutional justice of the Republic of Bulgaria", which is accessible on the following electronic address: <http://conf.uni-ruse.bg/bg/docs/cp12/7/7-10.pdf>.

introduction of a regulative constitutional complaint in our country, outlining its main parameters in the following aspects: acts, subject of a constitutional complaint; rights protected by it; active procedural legitimacy; conditions for admissibility (the infringement of the rights to be "personal", "direct" and "now", to have been exhausted the means for protection by legal means, deadline for filing the appeal, legal interest, lack of an effective decision of the Constitutional Court on the subject); effect of the decision of the Constitutional Court on persons and in the time.

The main contributing points in the monograph can be mentioned as follows:

- The presented three main models for protection of rights and freedoms;
- The conclusion that the protection of fundamental rights is the intention and purpose of the functioning of any constitutional court, and the mechanisms for initiating constitutional control contribute to its achievement;
- The forms of indirect access of the citizens to the Constitutional Court considered in detail;
- The observed tendency for decentralization of the constitutional control;
- The analysis of the doctrine of the horizontal effect of fundamental rights;
- Outlining the mechanisms for protection of fundamental rights in the European Union;
- Highlighting the main features of the constitutional complaint;
- The comparative legal study of the models of constitutional complaint in 6 European countries;
- The analysis of the existing practice of the Constitutional Court of Republic of Bulgaria on the exercise of powers related to the protection of fundamental rights and freedoms;
- The outstanding elements of the Bulgarian constitutional identity, projecting the core of values, encoded in the fundamental rights of the citizens;
- The analysis of the practice of the European constitutional jurisdictions regarding the constitutional identity;
- The presentation of the leading doctrinal considerations "for" and "against" the introduction of a constitutional complaint in the Bulgarian legal system;
- The analysis of the case law of the European Court of Human Rights regarding the constitutional complaint;
- Outlining the parameters of the possible future Bulgarian model of a constitutional complaint.

5. Brief analysis of the presented articles and reports

5.1. In the article "Outlook for constitutional justice as an instrument for protection and defence of the Constitution" the author examines the main challenges before the Constitutional Court regarding the constitutional process, in particular - in the part for referring to the constitutional jurisdiction.

5.2. The article "The Constitutional Complaint as an instrument for protection of Religious Freedoms before the Federal Constitutional Court of Germany" outlines the main parameters of the German model of direct access of citizens to constitutional justice, including: rights protected by a constitutional complaint; active procedural legitimacy; legal acts subject to constitutional complaint. Relevant practice of the Federal Constitutional Court of Germany in the field of religious freedoms is analysed.

5.3. The article "Horizontal action of fundamental rights in the light of the marriage contract - the German experience" shows the tendency to proclaim the basic principles of marriage and the family at the level of the Constitution. Fundamental rights are directly applicable law and their addressee is primarily the state, but in modern legal doctrine it is assumed that they can exceptionally bind a private entity too. The doctrine of indirect action of fundamental rights against third parties is developed and applied in German constitutional practice. The author analyses two decisions of the Federal Constitutional Court of Germany, brought on the basis of individual appeals in which the Court annuls clauses of concluded marriage contracts.

5.4. The article "Children's Rights and Their Place in the Bulgarian Constitutional Model" traces the attitude of the constitutional legislator to children and their rights in the context of the evolutionary development of the idea of children's rights globally and nationally.

5.5. The article "Protection of fundamental rights by constitutional justice in Republic of Bulgaria 800 years after Magna Carta" recalls the basic principles of this document, which have become intransient principles of constitutionalism. The heritage of Magna Carta human rights to be respected and any act of the public authority that harms them, to be invalidated, is what most legitimizes and justifies the existence of constitutional control even today. This function of constitutional justice brings forward the role of the Constitutional Court in the protection of the fundamental rights and freedoms of citizens.

5.6. In the article "Voting rights also for people with intellectual disabilities and mental health problems?" the author argues to what extent the full participation of people with intellectual disabilities or mental health problems in the voting process is compatible with the public function of the voting right. A comparative legal analysis was performed and special attention was paid to the ongoing legal reform in Republic

of Bulgaria related to the Draft law on Individuals and Support Measures, and its impact on the participation of people with disabilities in the political life of the state.

5.7. The article "Prohibition in the Practice of the European Constitutional Courts" aims to analyse the decision of the Bulgarian Constitutional Court on the request of the Ombudsman from 2014 to declare as unconstitutional texts of the Law on Individuals and the Family regarding the prohibition, in connection with fulfilment of the obligations obligatory for Republic of Bulgaria from the ratification of the Convention on the Rights of Persons with Disabilities. A comparison with the practice of other constitutional jurisdictions from Central and Eastern Europe on similar disputes is made.

5.8. In the article "Referendum as an object of constitutional control" the author comments on the two most common forms of judicial control over the referendum: preliminary, directed against the decision of the competent body to put a question to a referendum, and current control concerning the procedure for its production and the validity of the results. The grounds on which the decision of the National Assembly to hold a national referendum may be challenged before the Constitutional Court are considered. Also, the question is analysed of whether it is procedurally admissible to challenge before the Constitutional court the inaction of the National Assembly to rule out a decision on a duly submitted proposal for a national referendum.

5.9. In the article "On the indirect access of citizens to constitutional justice" the emphasis is placed on the specific control of constitutionality as a way to check the compliance of laws with constitutionally guaranteed rights and freedoms. The author analyses also the contemporary trends of decentralization of constitutional control, provoked by the growing influence of global constitutionalism.

5.10. The article "Voting rights for persons with intellectual disabilities and mental health problems - international standards" focuses on the interpretation of Article 29 of the UN Convention on the Rights of Persons with Disabilities in the light of the object and goals of the Convention and the practice of the UN Committee on the rights of people with disabilities. The relationship between Article 29 of the Convention and other international instruments related to the political participation of citizens is analysed, as well as the practice of the States Parties to the Convention in compliance with the requirements of Art. 29.

5.11. In the article "Constitutional Justice and the Protection of Fundamental Rights" the author, after a historical and comparative legal analysis, outlines some of the parameters of the possible future incorporation of the constitutional complaint into the Bulgarian legal order.

6. Assessment of the candidate's personal contribution

I accept that the above contributions contained in the scientific works of the candidate are the result of the personal scientific work of Yankulova PhD. Although based on a number of national and foreign sources, the author systematizes and cites the used scientific tools. As for the reference provided with the citations of the candidate's scientific works, I believe that it is not even complete, as I found other references to articles and reports of Yankulova PhD. The presence of citations exceeding the minimum national requirements is another attestation for the current importance and quality of the scientific papers submitted for review.

7. Critical remarks and recommendations

7.1. The following general critical remarks can be made to the publications of Yankulova PhD, submitted for review:

- In several publications the same reasoning of the candidate is repeated literally, without being edited and possibly expanded according to the development of the constitutional law theory and practice;
- Numerous foreign sources have been used, but not all Bulgarian sources on the problems studied by the author have been indicated and cited;
- The monograph "Constitutional Justice and the Protection of Fundamental Rights" repeats as a title one of the articles presented in this procedure (although without it the number of publications of Yankulova, PhD meets the legal requirements).

7.2. My separate **notes and recommendations to the monographic work** of the candidate are as follows:

- I believe that the system of work could be improved. For example, in the first chapter of the monograph, after the indirect access of the citizens, the direct one can be indicated, thus making the transition to the following chapters.

- The work would only benefit if the comparative legal study was expanded. Of the 27 EU Member States, only six are mentioned in the second chapter of the monograph, and in some places in the exposition examples are given with other countries that have also introduced the constitutional complaint and whose practice could be the subject of study. For the sake of completeness, the development of the constitutional control for the protection of fundamental rights also in non-EU countries can be analysed;

- The exposition does not cover all relevant decisions of the Constitutional Court related to the protection of fundamental rights;

- In some places, errors of a printing and stylistic nature can be found, which, however, are insignificant and can be removed in the event of a future reissue of the work;

- I would recommend the author to expand her presentation and publish a second edition of the monograph, containing a more detailed study of the models of constitutional complaint in the different European countries;

- Another recommendation that can be made regarding the content of the work is to analyse the decisions of the Constitutional Court on requests submitted by the Supreme Bar Council, as well as by the Supreme Court of Cassation and the Supreme Administrative Court on constitutional control on a specific occasion, as the acts of the Court regarding the referral by the Ombudsman are analysed. At the same time, the rejection decisions of the Constitutional Court can also be examined, insofar as their motives also contain considerations related to the degree of protection of fundamental rights, granted by the Bulgarian legislation.

- In my opinion, it would be appropriate for the main proposals *de lege ferenda* and the most important conclusions of the author to be drawn as a conclusion of the monographic work.

These critical remarks and recommendations do not change the overall positive impression of the scientific and teaching activities of the candidate, and do not reduce the merits of the publications submitted for review.

8. Personal impression

I know the candidate Yankulova, PhD from her participation in scientific forums organized by Plovdiv University. She gives the impression of a thorough, diligent and hard-working scientific worker. I have no direct observations on her teaching activity, but her quality as an academic mentor and a member of the editorial board of a journal that also publishes student works speaks of active work with students. Thus, Yankulova PhD fulfils the requirements of ASDARB for combining scientific and teaching activities. In addition, working at the Constitutional Court enables the candidate to strengthen the practical element in student education.

CONCLUSION

The documents and materials submitted by Radoslava Yankulova, PhD in the competition for the academic position of "Associate Professor" **meet all** the

requirements of the Academic Staff Development Act of Republic of Bulgaria (ASDARB), the Regulations for implementation of ASDARB, and the Regulations of Plovdiv University Paisii Hilendarski.

The candidate in the competition has submitted a **sufficient** number of scientific works published after the defence of the educational and qualification degree Doctor. They have been published in journals and scientific collections, and contain original scientific and applied contributions. Yankulova's theoretical developments also have practical applicability. The scientific and teaching qualification of the candidate **is unquestionable.**

The results achieved by Radoslava Yankulova, PhD in the teaching and research activities **fully** comply with the specific requirements of the Faculty of Law, as well as the requirements of the Regulations of Plovdiv University for the implementation of the ASDARB.

After getting acquainted with the materials and scientific papers presented in the competition, analysis of their significance, and the contributions contained in them, I find it reasonable to **give my positive assessment and recommend** to the Scientific Jury to prepare a report-proposal to the Faculty Council of the Faculty of Law to select **Chief Assistant Professor Radoslava Yankulova, PhD for the academic position of Associate Professor** at Plovdiv University Paisii Hilendarski in professional field 3.6. Law, Scientific specialty of Constitutional law.

05.10.2020, town of Ruse

Reviewer:

Assoc. Prof. Zornitsa Yordanova, PhD