

REVIEW

by Prof. Dr. Yanaki Boyanov Stoilov

University of Plovdiv University "P. Hilendarski"

professional direction 3.6. Law (Theory of the State and Law)

for **Veronika Samuilova Doychinova's** dissertation

on the topic: "Migration processes in the context of the theory of the legal system", submitted for obtaining the educational and scientific degree "doctor" in scientific field 3. Social, economic and legal sciences, professional direction 3.6. Law, scientific specialty/doctoral program "Theory of the State and Law" at the Faculty of Law of the University of Plovdiv "P. Hilendarski"

Dear members of the scientific jury,

In my capacity as a member of the scientific jury, formed by Order No. RD-21-1532/20.07.2023 of the Rector of Plovdiv University, I present a review prepared on the basis of Art. 10, para. 1 of the Law on the Development of the Academic Staff of the Republic of Bulgaria and Art. 32, para. from the Regulations for its implementation.

Information about the doctoral student and the materials presented by her:

Veronika Doychinova holds the educational and qualification degree "master" in the specialty "law" from the Faculty of Law and History of the Southwest University "N. Rilski" in Blagoevgrad in 2012. From 2013 until now, she has been an investigative police officer investigating crimes related to violations of the border regime. As a full-time doctoral student in the Department of "Theory and History of Law" at the Faculty of Law of the University of Plovdiv, she works under the supervision of Prof. Dr. B. Cherneva. The doctoral student was dismissed with the right of defense by the Faculty Council on 01.08.2022. The dissertation presented by the doctoral student on the topic "Migration processes in the context of the theory of the legal system" was discussed at a meeting of the department on 04.07.2023. The departmental council proposed to be admitted to public defense. According to the opinion of the Faculty Council, the doctoral student has fulfilled the minimum national requirements in accordance with Art. 9, para. 2 of the Law on the Development of the Academic Staff in the Republic of Bulgaria and the Annex to Art. 1a of the Regulations for its implementation.

Within the framework of the current procedure, V. Doychinova submitted the required materials: dissertation work, abstract, information on scientific contributions, autobiography and five publications in Bulgarian legal publications on the topic of the dissertation work. A declaration of originality of the research is also attached.

Description and general characteristics of the dissertation work:

Doctoral student Veronika Doychinova's dissertation consists of an introduction, three chapters, a conclusion and a bibliography - a total of 246 pages. The bibliography contains 76 titles in Cyrillic, 38 in Latin plus case law and 17 internet sources.

The PhD student views migration as "a social and legal phenomenon of a complex nature, transcending the borders of the nation-state and geographical regions, even continents." Migration is a factor that affects the effectiveness of law. From here on, migration is analyzed as a basic human right regulated in international legal acts.

The dissertation notes the insufficiently clear distinction between the types of migrants: a refugee and an illegal economic migrant. The theory of the legal system makes it possible to trace the influence of migration processes on the development of law in two aspects: on the one hand, the law should regulate all the main manifestations of migration as an object of legal regulation, and on the other hand, it has an impact on the effectiveness of the legal system. Migration processes are considered as a factor that affects the social environment, i.e. on the legal environment.

Migration is characterized as a social factor that participates in the formation of legal normativity. This justifies the use of the normative approach, as well as the legal-sociological, comparative and systemic approach. The author's scientific thesis is that migration processes have a significant impact on the structure, content and functioning of the legal system.

The first chapter deals with issues of validity, the social effectiveness of the legal system and migration. This chapter fulfills a methodological role by trying to clarify and justify the concepts used in the study and the interaction between the phenomena they reflect. V. Doychinova shows a good knowledge of the main modern views, respectively works on the legal system, on its structure and functioning. It tries to answer the question it raises, how migration processes affect the development of the legal system. I share the opinion of the doctoral student (p. 48) and other authors before him, that the legal system is heterogeneous, i.e. it consists of elements of different quality and is not limited to legal norms. A position is advocated that a branch of "migration law" can be distinguished, which stands between administrative and refugee law (p. 52).

The second chapter is about migration as a social factor affecting the legal system. This chapter is the focus of the study. The role of migration as a social factor for the formation of legal systems and for the transmission of legal cultures is emphasized (p. 87). The historical approach is applied to distinguish different periods in which migration took place - starting from the time of the Roman Empire and ending with the military conflicts that caused waves of migrants in the 19-th and 20-th centuries. Attention has been paid to distinguishing different types of migrants, including from the point of view of their legal status. The legal framework defining the status of refugees according to the Geneva Convention and its accompanying acts is examined. Migration is described as a socio-psychological process that includes integration into the new society as a necessary stage in the migration process (p. 93), and the legal expression of integration consists in the adoption of behavior corresponding to the rules of a given national legal system.

The dissertation examines migration law simultaneously in the field of international public law, the legal system of the European Union and within the framework of national law (administrative law). It is gradually becoming a branch of law, which is facilitated by the legislation being created.

The third chapter deals with the protection of migrants' rights. Migrants are generally treated as a vulnerable group of persons subject to special protection (p. 153). The need to protect the rights of migrants at the global, regional and national levels is justified. A review is made of the practice of the European Court of Human Rights for Bulgaria related to this problem, especially for the judicial appeal of extradition orders. A contradiction was found between the Dublin Regulation on the right to asylum and the obligation to protect European borders (the Schengen Borders Code). Such a problem is found when comparing the Decision of the Council of the European Union and that for temporary protection from 2021 in connection with the war in Ukraine.

According to V. Doychinova, the right to leave the country applies to both citizens and migrants, and its qualification as a special right applies to migrant workers (p. 188). There is an obligation on migrants to present themselves to the authorities to claim protection. But at the same time, failure to fulfill this obligation does not deprive them of the right to request protection (p. 197). It is interesting to pay special attention to this question in possible further work on the subject.

Migrants are classified into several groups depending on the reasons that led to migration: forced migration, where individuals seek asylum, and voluntary migration, through which they seek a better life (p. 200). In the first case, it is about security. A proposal is made to define a migrant in an unregulated situation in the national and European legal framework. However, this begs the question, if the situation is unregulated, does it still lend itself to some definition, because otherwise it would appear that any person can claim the status of a migrant. The author notes the existence of secondary migration in the sense of the Dublin Regulation (2013 EU Regulation), but does not offer any solution.

The dissertation student has managed to combine the general theoretical approach to the researched topic with entering into the branch issues, which is imperative in view of the chosen topic. The research was carried out independently, and I did not find any plagiarism.

The abstract accurately reflects and summarizes the content of the research. It outlines the most important results and contributions the author has reached.

Contributions of the study to science and practice:

- The use of the theory of the legal system to explain migration processes in the context of the existing legal system is justified;
- It has been established that migration processes test the functioning and development of the legal system;

- Clarifications have been made in concepts falling within the scope of the topic. These are: migration process, migrant, incl. illegal migrant, etc. Some of the proposals in this direction have a practical significance. It is suggested, for example, that depending on the legal profile of the migrant (granted status under the Asylum and Refugees Act, migrants in the procedure for granting protection, migrants with denied or terminated status, etc.) to determine his rights and obligations;

- In the legal framework of migration - at the national and especially at the international level - the difference, and hence the consequences of whether the relevant persons comply with the requirements for receiving protection or not, must be taken into account;

- A proposal has been made to codify the system of acts regulating entry, residence, exit from the territory of the country (it is more accurate to say the state) and the status of persons who are not Bulgarian citizens.

Critical notes and recommendations:

- The main problem in the migration policy and especially in its legal framework is that it does not take enough account of the need to balance the systems in a broader plan. In this case, it is the noted drive to help migrants by giving them access to a country and its society, on the one hand, and the actual capacity of that same society to integrate migrants without forcibly assimilating them, on the other. However, this implies the implementation of a complex of measures in various policy areas not only at the national level, but from the point of view of the legal regime of migration - balancing the rights and obligations of migrants, which modern international and national law underestimate. In search of such a balanced approach, we should ask ourselves whether it is not simplistic to equate migrants with each other just because they come from the territory of one country and share the same leading causes that caused migration. Does this mean that every migrant must be unconditionally treated as belonging to some vulnerable group, regardless of his financial, professional, family and other situation?;

- I am not sure that one of the attempts to introduce specific content into existing terms is sufficiently justified. According to the author, "effectiveness is expressed in the social efficiency of the legal system" (p. 32), then it is said that an effective legal system is the effective legal system, and efficiency is a manifestation of the social effectiveness of the legal system (p. 38). Making a logical connection between these judgments, it emerges that the effective legal system is effective, and efficient is the one that achieves certain social goals. Is it not clearer to ask how the existing legal system through its functioning and change can become more socially effective, instead of duplicating the meaning of different words - an active and effective legal system? From the category of terminology notes, it is also my recommendation to distinguish between "status" and "status", and hence between migrant status and migrant status. I further believe that it is more accurate to say that the prohibition of discrimination is a manifestation of the principle of equality rather than to speak of a right of non-discrimination. But if the last note is more a matter of the terminology used than a matter of substance, then equating a statutory right (a right validly recognized in a given legal system)

with an available, subject-owned right tends to blur the distinction between objective and subjective right. Always with a view to conceptual and terminological refinement of the research, I pose the question that human rights are one thing as a moral and political ideal and another as a legal category. In the first case, they are rather a political argument and such de lege ferenda, and in the second - a measure of due behavior on the part of the state;

- I share what the author wrote, that refugees, persons with humanitarian status and granted temporary protection are migrants with acquired administrative legal status and reside legally on the territory of the state. From here, a clear distinction must be made between the legal status - refugee, person seeking international protection and illegal migrant, on the one hand, and the reasons that led to migration - economic, environmental, health, etc., on the other;

- It is hardly necessary in the conclusion to list the international acts that regulate migration, most of which have been mentioned and commented on in the previous presentation;

- A number of sentences contain words and expressions that do not agree in gender, number, etc. This does not change the meaning embedded in the text, but lowers the linguistic and stylistic quality of the work. With another careful reading before submitting the work, the author would probably have avoided these inaccuracies,

Conclusion:

The doctoral student has reached the required educational level in the developed topic and shows the ability to independently conduct scientific research. The dissertation contains theoretical and scientific-applied results. Also taking into account the topicality of the topic, the scope and innovations in its research and the critical comments and recommendations made, I arrive at a positive assessment of the dissertation work. Therefore, I propose to the scientific jury to vote for Veronika Samuilova Doychinova to receive the educational and scientific degree "doctor" in the field of higher education 3. "Social, economic and legal sciences", professional direction 3.6. "Right"; in the scientific specialty/doctoral program "Theory of the State and Law".

04.10.2023

Prof. Dr. Yanaki Stoilov