

OPINION

by prof. Gabriela Belova Belova-Ganeva, PhD – Head of the Department “International Law and International Relations” and Deputy-Dean of the Legal-Historical Faculty at the South-West University “Neofit Rilski”, professor in the professional field 3.6. Law (International law and international relations)

on the scientific works, presented in the selection procedure for the academic position Associate Professor in the professional field 3.6. Law (Constitutional law), announced by New Bulgarian University in State Gazette, No. 41/18.05.2021, with a single candidate Chief Assistant Professor Deyana Dimitrova Marcheva, PhD.

I. Assessment of the compliance with the minimum national requirements and with the requirements of NBU

Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, has submitted her documents for participation in the selection procedure for the academic position Associate Professor, announced by NBU in State Gazette, No. 41/18.05.2021, within the legal deadline. They show that the candidate has fulfilled the minimum national requirements, set in the Development of the Academic Staff in the Republic of Bulgaria Act (DASRBA), and the additional requirements of New Bulgarian University for election on the academic position Associate Professor in the professional field 3.6. Law.

Dr. Deyana Marcheva has presented diploma No. SU 2011 – 77 / 23.12.2011 that certifies the obtainment of the educational and scientific degree “PhD” in Law. In this selection procedure she participates with the monograph from 2021 with the title “The Constitutional Principle of the Rule of Law”. The individual assessment table and its attachments demonstrate that she has occupied the position Chief Assistant Professor for more than two years. The legal requirement for the lack of a proved plagiarism in the candidate’s scientific work is also fulfilled. Sufficient proofs have been submitted to show that the academic, teaching, social and administrative work of the candidate meets the requirements under Art. 2b of DASRBA and under Art. 58, para 1 of the NBU Regulation for the Development of the Academic Staff.

The application of Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, is in line with the minimum national requirements and the requirement of NBU, and in many indicators the presented materials considerably exceed the necessary scores number.

II. Research work and results

Dr. Deyana Marcheva takes part in the selection procedure for Association Professor in

constitutional law, announced in State Gazette, No. 41/18.05.2021, with a monographic research work and twenty-one articles, written in the time period 2013-2020. None of the presented materials has repeated the ones, presented for the obtainment of the educational and scientific PhD degree.

In accordance with the requirement of Art. 24, para 1, p. 3 of DASRBA she has submitted the published monograph on the topic “The Constitutional Principle of the Rule of Law”. Sofia: NBU Publ. House, 2021. ISBN 978-619-233-145-0. Its volume is 429 pages, including the bibliography, an index of the abbreviations and a resume in English. The work represents a successful attempt to analyze and draw theoretical and practical conclusions with regards to the constitutional principle of the rule of law in its different aspects, in different time periods of the development of humanity, as well as in Bulgaria under the four constitutions adopted up to date. The author has clarified the limitations of the traditional historical approach and has justified the need for a genealogical approach to the rule of law ideas.

The scientific research conforms to the established requirements in the tradition of Bulgarian legal science – a well-organized internal structure; logic and consequence within the writing; formulation and reasoning of the author’s theses. The monographic work is undoubtedly a scientific novelty. One of the monograph’s contribution points is the analysis of the adoption of the Constitution of 1991 and the highlighting of the academic context in which the constitutional principle of the rule of law has emerged, and why a critical project is necessary to distinguish it from the socialist legality. At the same time it renders systematic the basic ideas in the law literature of the 80-ties and the 90-ties of the XX century that refer to the socialist rule of law.

The analysis of the author of the constitutional law literature after the adoption of the Constitution of 1991 is characterized by originality, and the same is true about her conclusion that until the end of the 90ties of the XX century the principle under Art. 4, para 1 of the Constitutions is interpreted in different ways, diverging in two basic readings – the principle of legality and the principle of the rule of law.

I consider an indisputable scientific contribution the analysis of the case-law of the Constitutional Court of the Republic Bulgaria (the CC) on the application of the rule of law principle by differing between the CC’s approach before Decision No.1/27.01.2005 on the constitutional case No.8/2004 and afterwards. The author critically reviews the jurisprudence of the CC on the constitutional principle of the rule of law, and particularly the method to render it to a collection of formal and material elements in a way that leaves to the background the understanding of the law as an opposition to the arbitrariness and as a limitation of power. It also points out key aspects of the rule of law that have not been discussed in the case of the CC – the availability of effective remedies for each individual rights, the possibility of the courts to carry out judicial review over violations of the principle of the rule of law by public authorities. It is these author’s considerations that are in line with the arrangements in the law of the Council of Europe and the EU law that distinguish between, on one side, the institutional and procedural requirements, such as constitutionality control of the laws, as an objective of each state in order to achieve rule of law; and on other side, the material requirements to the essence of the legal rules applied to individuals that should comply with certain ideas, such as human rights (Resolution 1594 adopted on 23th Nov 2007 by the Standing Committee acting on behalf of the Parliamentary Assembly). It is no accident that the rule of law is one of the basic values of EU. After concluding that it needs an instrument to cope with the threats to the rule of law in 2014 the European Commission has adopted a framework for initiating the procedure under Art. 7 of the TEU against a Member State, the most severe sanction being suspension of the voting rights.

The monograph draws the attention to the key violations of the rule of law principle by the Bulgarian legislator, as pointed out by the CC within the constitutionality control. It also underlines the idea that public authorities tend to multiply and complicate their institutions, and thus the loopholes to circumvent the known limitations set by the law, and this in itself calls for expansion and densifying of the rule of law guarantees with emphases on due process, human rights, information and informational technologies etc.

I find greatly convincing the analysis of the abuses with the concept of law in the Nazi debates on Rechtsstaat, including the attempts for construction of “national” and “national-socialist” Rechtsstaat.

It should not be overlooked also that the author focuses on the very first presentation of the rule of law ideas and the main highlights in the book “Law, Rule of Law, Justice, Legal Conscience” (1920), published by an anonymous editor called Lawyer.

For the indicators in group “Г”, where the minimum required score is 100 points, the candidate has submitted publications that score to 205 points. All the articles, offered for review, cover issues of constitutional law, administrative law and EU law, and most of them contain their own scientific contribution beyond the monographic work. All of them reveal the targeted scientific work of Chief Assistant Professor Deyana Marcheva, PhD, who deserves high comprehensive assessment. The overall creative production proves a consistency in her scientific and pedagogical efforts on the basis of a wider topical circle of interests and original research methodology. I cannot fail to stress that the range of her research is placed in several different strands and covers various aspects of human rights, administrative law issues, EU administration and administrative controls, the legal framework for budget implementation in EU, the independent EU prosecutor etc. (publications No. 4, 8, 10, 13, 14, 17, 18 and 19).

Particular attention merits the article “Human Rights as Constitutional Principle of EU Law” (No. 8 in the Publications list) which suggests that the European Union is based on the principle of human rights protection, further illustrating the general process of development of the EU constitutional framework. A challenge to the EU, however, has turned out to be the accession to the ECHR that has not happened yet. The publication in co-authorship under No. 10 of the list – “The Independent European Prosecutor”, is unquestionably up-to-date and contributory.

For the indicators in group “Д”, where the required score is 50 points, the candidate has proved to have 260 points. All the citations submitted for review are in the category citations in monographs and peer-reviewed collective volumes, including in English. Chief Assistant Professor Deyana Marcheva, PhD, fully complies with the legal requirement and with the scientometric indicators from the last group.

III. Teaching and educational work

Deyana Dimitrova Marcheva has been working as Assistant Professor at NBU since 2014, and as Chief Assistant Professor since April 2016. Ever since 2015/2016 she has been teaching the constitutional law seminars and lecturing in several elective academic courses, including “Comparative constitutional law” and the courses offered and developed by her “Administrative Law of EU” and “Public Procurement, Concessions, Public-Private Partnerships”.

According to the student survey questionnaires scores on the course “Seminars in Constitutional Law” for the last 10 semesters, the average grade of Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, is very good 4.44, the maximum being 5.00.

In this selection procedure dossier have been exhibited printed didactic materials, developed by Chief Assistant Professor Deyana Marcheva on topics in the course “LAWN 217 Seminars in Constitutional Law”, including Q&A, diagrams, block-schemes, tables. They demonstrate various methods of preparation of the constitutional law students employed by the teacher. Moreover the candidate has extracurricular activities with the students at NBU in the student group “Law and Literature” founded by her.

The candidate has also participated in the organization of two scientific conferences in 2016 and 2020 and I myself have personal impressions on her work as an organizer and collector of the volume with papers of the “Scientific Readings in Memory of Christian Takoff “Challenges to the Law” (2020). She is also one of the initiators of the seminar series “Human Rights” at New Bulgarian University that have been discussing important aspects of the ECHR case-law, the protection of refugees etc. ever since 2016.

The candidate additionally takes efforts to enhance her knowledge and skills by taking part in the trainings for the academic staff, organized by NBU. The selection procedure dossier demonstrates that the candidate has been active in the teaching work and, therefore, fulfills not only the requirements of the law, but also the additional criteria of New Bulgarian University for its academic staff development.

IV. Administrative and social work

The selective procedure documentation contains proofs that Chief Assistant Professor Deyana Marcheva, PhD, has performed duly in accordance with her academic obligations and regularly participates in the meetings of the Department Council and the meetings of the Program Council at the Department of Law, NBU, respects her students consulting hours etc. She has been working in the administration of NBU as a program consultant from 2017 to 2017, and afterwards has remained to be engaged in the program as a member of the Law Program Council.

Dr. Marcheva is a member of the Alliance of the Jurists in Bulgaria and of the International Society for Public Law ICON-S. She also has social activities as a translator of academic law literature from English language as shown in the exhibits under indicator Ж.28 of the individual evaluation table.

V. Personal impressions of the candidate

I have known Dr. Deyana Marcheva since 2015 when we were invited and participated together in a series of activities of the predefined project No. 3 “Strengthening the national compensation measures for the alleged violations of the European convention for the protection of human rights and fundamental freedoms and the capacity for execution of judgments of ECHR” with beneficiary the Directorate “Legal Representation of the Republic Bulgaria to ECHR”, Ministry of Justice, financed by the Norwegian financial mechanism of the European Economic Area. We were in the groups of experts and teachers that have visited in the Norwegian Center of Human Rights to the University of Oslo in September 2015 as part of the project activities. I was extremely impressed by the erudition and excellent knowledge of Dr.

Marcheva in the field of human rights, the case-law of ECHR and matters, related to the law of EU and international law that is definitely her advantage in interdisciplinary studies, covering different aspects of public law.

I cannot skip the high level of language competence of Deyana Marcheva that allows her to act also as a teacher of English for lawyers. I would like also to point out specifically her commitment to the preparation and organization (in pandemic situation) of the last-year scientific readings in memory of Christian Takoff “Challenges to the Law”.

To sum up, my impressions of Dr. Deyana Marcheva are as follows: hard-working, disciplined, self-demanding, having a wide common culture and consistent academic interests. I think that Dr. Deyana Marcheva is distinguished for her rarely met fellowship and morality as a researcher and teacher.

VI. Opinions, recommendations and remarks on the candidate’s work and achievements

For the reasons stated above I conclude that Dr. Deyana Dimitrova Marcheva fulfills the requirements for the academic position Associate Professor. I express my positive view of her teaching, educational, administrative and social work, and of her academic contributions in the monographic work and other publications presented within her application in the selection procedure. I make a proposal to the Scientific Jury to pass a positive decision and the NBU Academic Council to elect Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, for the academic position Associate Professor at New Bulgarian University in the professional field 3.6. Law (Constitutional law),

Date: 20 Aug 2021.

Signature: G. Belova