

## REVIEW

By prof. Georgi Petkov Bliznashki, Dr. habil., Lecturer in Constitutional Law at the Law Faculty of Sofia University “St. Kliment Ohridski”, appointed as a member of the scientific jury with the Order No. 3-PK-197/24.06.2021 by the Rector of New Bulgarian University

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

### **I. Compliance with the minimum national requirements and the requirements of New Bulgarian University assessment**

Dr. Deyana Marcheva has presented documentation in the tender dossier showing that she has fulfilled the scientific and teaching requirements for the Associate Professor academic position set out in Art. 24, para 1 of the Law for the Development of the Academic Staff in the Republic of Bulgaria and in Art. 58, para 1 of the NBU Regulation for the Development of the Academic Staff, including:

- She has obtained the educational and scientific doctoral degree in law at Sofia University “St. Kliment Ohridski”;
- She has worked as a chief assistant professor at NBU for more than two years (since April 2016 until today);
- She has presented a monograph entitled “The Constitutional Principle of the Rule of Law”, published by the NBU Publishing House in 2021, that does not repeat the publications submitted for gaining the PhD degree;
- She meets the minimum national requirements for the Associate professor academic position;
- She has not been subjected to legal procedures for establishment of plagiarism in her scientific works;
- She fulfills the additional conditions laid out in the NBU Regulation for the Development of the Academic Staff.

It is demonstrated in the individual evaluations table that in certain indicators she scores much more points than the minimum required – for instance, 205 points (with minimum of 100 points) for articles and papers, published in peer-reviewed journals and collective volumes (indicator Г.7.).

The academic and teaching work of Chief Assistant Prof. Deyana Marcheva entirely complies with the minimum national requirements and New Bulgarian University conditions for the Associate Professor academic position.

## **II. Research Work and Results.**

1. Monograph assessment, including research and applied research contributions of the author

The monograph “The Constitutional Principle of the Rule of Law” covers 429 pages. It is structured in foreword, introduction, four chapters, conclusion, bibliography, resume and contents in English. It contains 1376 footnotes with references to a great number of sources in different languages.

The monographic aims, methodology and structure are clarified in the foreword and introductions and the end of the first chapter. The starting point of the author is the existence of issues with the constitutional principle of the rule of law in Bulgaria. She herself supplementary renders it problematic by bringing forward among her objectives the need for development of the jurists’ critical attitudes towards the principle. Such a task seems ambitious and difficult to carry out considering the lack of sufficient experience, tradition and adequate methodology in Bulgaria constitutional law literature. It is risky as the critical attitude towards a constitutional principle mobilizes destructive energy that might undermine the balance of values in the present constitution.

What strikes me is the careful way in which the methodology of Michel Foucault has been applied. The author emphasizes on his idea that the critique against government and the obedience it stipulates is “legal in essence” because it means putting forth universal and indefeasible rights. Such a conclusion is in no way indisputable because putting forth the fundamental rights against an act of power in the outset is always a political act and a critique that is political in its essence. The researcher who is otherwise inclined to look out from various angles the ideas and theses that she discusses in this case skips to pose questions Foucault himself. However, it should be noted that Dr. Marcheva consistently applies the chosen methodology and scientific practice. It further explains the untypical structure of the monograph in which the chapter before the last refers to Ancient Greece, and the last one – to Nazi Germany. The historical presentations are not intended to track the development of the ideas of rule of law, but to reconstruct the conditions that enable their genesis, and the circumstances that lead to their eradication. Overall, the monograph employs an innovative approach towards the rule of law principle understanding in a constitutional law context that has a strong impact on the reader.

The monograph systematizes the achievements and contributions of our law literature on the rule of law after the Liberation under the Tarnovo Constitution, and after the adoption of the Constitution of 1991. The author resumes the two main interpretations of the principle under Art. 4, para 1 of the Constitution – as legality principle or as rule of law principle, and provides a true presentation of that issues in the constitutional law of the 90ties of XX century.

I consider a scientific contribution of the monograph the analysis of the social legality principle under the socialist constitution of 1947 and 1971, as well as its distinction from the rule of law principle under art. 4, para 1 of the Constitution. The author has studied in-depth, systematized and analyzed a great number of textbooks, monographs, articles, collective volumes and others published between 1994 and 1989 so that to represent the ideology, the scientific apparatus and the phases of the socialist legality. It is valuable how she maps out the route, followed after 1944 initially by negation of the rule of law as “bourgeois legality” and decades afterwards by constructing a scientific-political hybrid of socialist rule of law in the reformation period of the mid 80ties of XX century. It should be noted that in the analysis of the Marxist ideology and scientific method Dr. Marcheva has put the spotlight on specific focuses so that to highlight those aspects of the socialist legality that have no place nowadays, and in her opinion “suffocate” the new principle of rule of law. However, the ignorant reader may be left with a distorted view of Marxism that also has emerged as a critique against the power and has also put forth the fundamental rights and freedoms against the oppression. Therefore, I believe that the critical project would have benefitted from an additional comparison between the critique against power in Foucault’s terms and in Marx’s terms, as well as the role of the inalienable rights in both. In any case the monograph has opened new debates on the contributions and limitations of the different ideologies and methodologies and their manifestations in the constitutional practices.

All of us who have been researching into the ideas and institutions of the Athenian democracy for years should not encounter any surprises in the third chapter. Nevertheless, here for the first time one can find in Bulgarian language excerpts from the court speeches and political speeches of the most renowned ancient Greek orators, such as Demosthenes, Aeschines etc., that contain key ideas for law and justice in the polis. Extensive academic literature and various resources, such as stone inscriptions, prose and poetry, philosophical works, court speeches, have been mobilized. Dr. Marcheva has the capacity to process a considerable number of resources and to highlight important notions thereto, as well as to summarize and put them in order in view of her study.

In the last chapter of the monograph, she represents the conceptions for the state law of the jurists National-Socialists – their common positions and individual touches, in the background of the debates for Rechtsstaat in 1933-1936 Nazi Germany. This is the first research of this kind in our constitutional law literature. The author thoroughly analyzes the outlooks of the main

participants in the debates, that have been grouped around two famous opponents in the German legal science of this time – Carl Schmitt and Otto Koellreutter. She also reviews the abuses of the concept of law in the Nazi debates on Rechtsstaat, as well as the attempts for construction of “national” and “National-Socialist” Rechtsstaat. In the courses of the analysis Dr. Marchecheva tackles the issues of revolutionary constitutions that has potential for further studies as clear from the conclusion of the monograph.

At the end it is worth noting the thesis of Deyana Marchecheva that nowadays it is not sufficient to summarize the rule of law as a set of formal and material elements because the government continues to complicate its institutions and, thus, its ways to circumvent the limitations of the law. This seems to be a hint for the paths for future studies in the issues of the constitutional principle of the rule of law.

The above critical remarks on the work do not in the least diminish its value and significance as they relate to issues of scientific methodology which is primarily a matter of personal choice. I view favorably the monograph “The Constitutional Principle of the Rule of Law” (2021) and I believe it will have its worthy place in our law literature.

## *2. Assessments of the contributions in the other publications*

Chief assistant professor Deyana Marchecheva has exhibited 21 articles and papers, published from 2013 till 2021 in peer-reviewed collective volumes and journals. They show that her academic interest to study the rule of law has been manifested ever since 2016 in the articles: Marchecheva, D. The Limitations to the Prosecutor’s Supervision over the Administration in the Rule of Law. – In: “The State and the Law”, National conference dated 20<sup>th</sup> Nov 2015. Sofia: NBU, 2016, 194-210.

The human rights topic is durable in the academic work of Dr. Marchecheva. A contribution to the possible explanations of their history can be discovered in the article “Towards the Invention of Human Rights”, 2017 Yearbook of the Department of Law, NBU. Sofia: NBU, 2018, 310-331. It presents and analyzes the culturological concept of the historian Lynn Hunt who argues that human rights are not a product of revolutions only, but also of the similar experiences, series of events and ideas in the cultural practices of the XVIII century of a great number of people of different national and social identities. The core thesis here is that human rights genealogy cannot be discovered within the legal system for which judicially sanctioned torture was an undeniable norm and practice in the Enlightenment. In this regard law turned out to be incapable to bring into the world the concept of human rights.

The focus on the culturological aspects of constitutional issues is permanent in the scientific projects of Dr. Deyana Marchecheva. She explicitly states it in two more of her articles from 2017:

- “Towards “Legal Imagination” by James Boyd White (Why Does Law and Literature Make Sense?)”, *Sledva journal*, 2017, Issue 35, 26-37;
- “The Socialist Equality of Women”, 2016 Yearbook of the Department of Law, NBU. Sofia: NBU, 2017, 260-278.

In the first one the author justifies the uses of the interdisciplinary studies of law and literature that represent the ideas of their founder James Boyd White in his book “Legal Imagination” of 1973. This approach is further employed in the article “The Socialist Equality of Women” which has been problematized through an analysis of the tension between the norms and the facts in respect of two main female figures – the mother and the prostitute, that are subject to different policies in the period 1944-1989. The author examines the facticity through various sources – statistics, memoirs, literary works (“In Absentia Reports about Bulgaria” by Georgi Markov), and thus reveals how the totalitarian state splits between the official and the unofficial.

The works of Dr. Deyana Marcheva express her conviction in the potential of the interdisciplinary studies to enrich and provide density to the analysis of constitutional issues.

#### 1. *Citations by other scholars*

The individual evaluation table lists with specifics and references 26 citations of Deyana Marcheva’s articles in monographs and in peer-reviewed collective volumes in Bulgarian and English. Thus, she scores 260 points (the minimum being 50 points) on indicator Д12. In this respect the applicant far exceeds the minimum national requirements for citations by other scholars.

### **III. Teaching work**

Dr. Deyana Marcheva fulfills the normative requirements and criteria of New Bulgarian University in all the indicators for teaching work of the candidates for the Associate Professor academic position. She has been appointed as an assistant professor in November 2014. After a competitive procedure she has been appointed in April 2016 as a chief assistant professor teaching in the seminars of constitutional law and lecturing in comparative constitutional law.

She has obtained the average score Very good 4.44 (the maximum being 5.00) according to the student survey questionnaires regarding the academic course “Seminars in constitutional law” for the last ten semesters.

She has compiled numerous teaching materials for the academic course “Seminars in constitutional law” that include questions and answers, case-law excerpts, tables, diagrams, schemes and others that facilitate the training of the students in constitutional law.

It is evident from the competition dossier that Dr. Marcheva is actively engaged in enhancing the Law program at NBU. She has offered and developed new elective academic courses,

namely “Administrative Law of EU” and “Public Procurement, Concessions and Public-Private Partnerships”. She is an organizer of the Human Rights seminar series at New Bulgarian University ever since 2016. She is member of the organization committees and a secretary of two national academic conference, held in 2016 and 2020 at NBU. She has also founded a Law and Literature student group at NBU in 2020.

Chief assistant professor Deyana Marcheva further develops her knowledge and skills in her teaching work by enrolling for training sessions, related to the library and informational services, to the NBU scientific electronic archive listing of publications etc.

#### **IV. Administrative and social work**

The candidate Dr. Deyana Marcheva has an active administrative and social work. She has been engaged in the administration of NBU from 2015 till 2017, and in the Law Program council afterwards. She also regularly takes part in the work of the Law department council at NBU.

Dr. Deyana Marcheva is a member of Jurists Alliance in Bulgaria and of the International Society of Public Law ICON-S.

She is also active as a translator of constitutional law literature from English. She has translated in post of the part the articles, published in the collective volume “Constitutionalism”, Sofia: Agata-A, 2006.

In 2017-2018 she has taken part in an International Commission of Jurists projects in which she has translated the training materials about the children migrants’ access to justice.

In 2021 Dr. Deyana Marcheva was also a lecturer in a workshop for human rights lawyers, organized by the Women’s Human Rights Training Institute.

#### **V. Personal impressions (if applicable)**

I have known Deyana Marcheva since 1997 when she was one of my best students of constitutional law at Sofia University “St. Kliment Ohridski”. Ever since she stood out with her precise work in-depth and her continuous interest in discussing public law issues in student groups and research initiatives.

As a scholarship visiting student at the University of Oxford in 2002-2003 she widened her knowledge on the issues of women’s rights and constitutional values and afterwards she directed her translations work in this field.

After Dr. Marcheva started to work at NBU she initiated her studies in the socialist state and law and we had discussions on the famous jurists of that time.

## **VI. Opinions, recommendations and notes on the candidate's work and achievements.**

In view of the foregoing, I conclude that Dr. Deyana Marcheva meets the legal requirements for being elected on the Associate Professor academic position. Her academic work gives me the reasons to express my positive assessment of her application in this competition. Consequently, I make a proposal to the Scientific Jury to pass a positive resolution and the New Bulgarian University Academic Council to elect Chief Assistant Professor Deyana Dimitrova Marcheva, for the Associate Professor academic position at New Bulgarian University in professional field 3.6. Law (Constitutional law),

15.08.2021

Prof. Georgi Bliznashki, Dr. habil.