

## REVIEW

By prof. Ekaterina Ivanova Mihailova, PhD, Lecturer in History of Bulgarian State and Law at the department of Law, New Bulgarian University, appointed as member of the scientific jury by the Rector of NBU with Order No. 3-PK-197/24.06.2021

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

### **I. Assessment of compliance with the minimum national requirements and the requirements of New Bulgarian University**

Documents for participation in the competition have been presented by Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, who is the only candidate.

In view of these documents, it can be concluded that the candidate has fulfilled the requirements of the Act on the Development of the Academic Staff in the Republic of Bulgaria (ADASRB), namely:

It is attested by a diploma that the candidate has obtained the educational and scientific doctoral degree in law at Sofia University “St. Kliment Ohridski” in 2011.

A monographic work has represented as follows: Marcheva, Deyana. The Constitutional Principle of the Rule of Law. Sofia: New Bulgarian University Publishing House, 2021. ISBN 978-619-233-145-0.

Deyana Marcheva has occupied the position Chief Assistant Professor at the department of Law, New Bulgarian University ever since April 2016, i.e. she has been in this position for more than two years as required by NBU.

The evidence, attached to the table for individual evaluation, show that the candidate fulfills the minimum national requirements under Article 2b of the ADASRB, including she exceeds the relevant scientometric indicators such as number of publications, number of citations etc.

It is also noted that there is no duly proved plagiarism in the scientific works of Deyana Marcheva, PhD.

The competition dossier of the candidate represents a number of documents that establish the fact she meets the additional requirements set in the Regulation for the Development of the Academic Staff at NBU (indicators classified in groups named under the Cyrillic letters Ж, З and И in the table for individual evaluation).

In the light of the foregoing, I can draw the conclusion that the application of Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, complies with the minimum national requirements and the additional requirements of New Bulgarian University for the academic position Associate Professor in in professional field 3.6. Law (Constitutional law).

## **II. Research (creative) work and results**

1. Assessment of the monographic work, including an assessment of the scientific contributions and the applied research contributions of the author.

The monograph “The Constitutional Principle of the Rule of Law. Sofia: New Bulgarian University Publishing House, 2021. ISBN 978-619-233-145-0, Reviewers: Prof. Ekaterina Mihaylova, PhD, Associate Prof. Katerina Yocheva, PhD, Editor and Proofreader: Daniela Dokovska, Attorney-at-law, covers 429 pages and its structure includes a foreword, an introduction, four chapters, a conclusion and bibliography. The footnotes amount to 1376 in number and the cited Bulgarian and foreign literature is extremely numerous. My finding is that the overall layout of the work, including the content, footnotes, citations and bibliography conforms to the established academic standards. The monograph elaborates on a substantial topic of the Constitutional law scientific field.

The structure of the monograph is described in the very foreword. Both the foreword and the introduction clarify the objectives, the methodology and the logic of the research, as well as the basic directions it takes.

Dr. Marcheva argues that the constitutional principle of rule of law is the most problematic in Bulgaria and for that reason it needs to be examined not only legally but also historically as applied in different periods and in different countries. The candidate does so because she believes that the constitutional principle of rule of law is not just an assembly of formal and material requirements but is also based on the conviction that the law is the opposite of arbitrariness and the limitation of power.

The first chapter of the monograph represents the law literature on the rule of law under the Tarnovo Constitution, and also after the adoption of the Constitution of 1991. It highlights the contributions of various researchers of the rule of law and this is done in a systematic and exhaustive way, including the presentation of publications and authors from different periods of the development of our state. The case law of the Constitutional court on the application of the principle of the rule of law is reviewed in details, providing for an analysis and some critical notes to certain concepts. Dr. Marcheva also explains the critique methodology of Foucault that may fill in the deficits of the legal analysis and understanding of the rule of law principle.

The second chapter draws an analysis of the “socialist legality” principle in the totalitarian state and law in the period 1944-1989, as well as its connection to the ideology of Marxism-Leninism. It discusses in details the principle of unity of power, the socialist administration of

justice, the categories “socialist legal order” and “socialist legal conscience” etc. and offers an explanation for the origin, the logic and the functioning of **the legality principle** in the constitutions of 1947 and 1971. In this part is outline the way in which the revolutionary legality is transformed into socialist legality and at the end of the 80ties in the context of the restructuring is set a course towards the so called “socialist rule of law”.

The third chapter presents a genealogical research in the rule of law in Ancient Greece. The candidate first outlines the limitations of the traditional historic methods and then justifies the need for a genealogical approach. On the basis of various historical sources and academic researches Dr. Marcheava initiates to assemble the pieces of the possible context in which the ideas for rule of law have emerged. Her contribution is the representations of multiple court speeches unknown to Bulgarian law literature and the emphasis on ideas that correspond to the contemporary understanding of formal legality.

In the fourth chapter the candidate sets a challenge by drawing our attention to the debates for Rechtsstaat in Nazi Germany 1933-1936 that demonstrate how the rule of law principle is being replaced and destroyed and moreover with the complicity of distinguished jurists. Key aspects of the Nazi law and state are outlined such as the reduction of the law to “the plan and the will of the Führer”, the racist theory of law and state etc. Dr. Marcheava demonstrates how the destruction of the rule of law principle unleashes violence and terror that goes beyond not only the limits of the law but also beyond the limits of humanity.

In the conclusion the candidate concludes that today it is not enough to enlist the formal and material aspects of the rule of law because the public power incessantly multiplies and complicates its institutions, and thus its options for circumvention of the known restrictions imposed to it by the law. For that reason, the candidate believes that it is important to mobilize and develop the critical attitude of the Bulgarian jurists towards the constitutional principle of the rule of law and its implementation in the practice.

I would point out the following contributions:

- ✓ Rendering systematic the achievements of the Bulgarian law literature on rule of law research under Tarnovo constitution;
- ✓ Analysis of the first representation of the rule of law ideas in the book “Law, Rule of Law, Justice, Legal Conscience” (1920), published by an anonymous compiler;
- ✓ Rendering systematic the contributions of various authors in Bulgarian law literature for the clarification of the origin, the substance and the theories of rule of law;
- ✓ Analysis of the constitutional law literature after the adoption of the Constitution of Republic Bulgaria of 1991 and rendering problematic the fact that till the end of the 90ties of the XX century the principle under Art. 4, para 1 of the Constitution has found different interpretations either as a principle of legality or as a principle of the rule of law.
- ✓ Analysis of the case-law of the Constitutional court on the rule of law;

- ✓ New directions of critical study of the principle of rule of law, including its comparison to the principle of socialist legality under the previous constitutions of 1947 and 1971;
- ✓ Drawing the distinctions between the principle of socialist legality under the constitutions of 1947 and 1971 and the principle of rule of law under the Constitution of Republic Bulgaria of 1991;
- ✓ Tracking the genealogy of the rule of law ideas to Ancient Greece by examination of different types of sources, such as inscriptions, literature, court speeches etc.;
- ✓ Following-up of the end or the destruction of the rule of law principle through an analysis of the debates for the Rechtsstaat in Nazi Germany 1933-1936;
- ✓ The summary as lessons from the totalitarian state and law that no state may be sustained over violence and unlimited power forever.

2. Assessment of the contributions in the other presented publications after taking the academic position Chief Assistant Professor, including the requirement for peer-reviewed publications.

The candidate Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, participates in this competition not only with her monographic work but also with 21 articles and papers, published in peer-reviewed collective volumes and journals in the period 2013-2021. Most of the publications are in the field of constitutional law and the continued interest towards the topics of the rule of law and the human rights stands out.

I would like to point out some of the publications related to the rule of law topic, such as “Rule of Law Limitations of Prosecutor’s Supervision over Administration” in the collective volume “The Statute or the Law”, National Conference dated November 20<sup>th</sup>, 2015; “The Origin of Written Laws in Ancient Greece” in 2019 Yearbook of the Department of Law at NBU; “The Judge and Justice”, collective volume “On the Values in Law”, Scientific Conference dedicated on 120 anniversary of the birth of Prof. Tseko Torbov, held on May 15<sup>th</sup> 2019; “Towards Public Law Concept of Authority” in the collective volume “25 Years the Department of Law at New Bulgarian University”. In these articles one can find developed some of the theses, maintained in the monographic work, that gives me the ground to conclude that the candidate consistently researches into the topic of rule of law using legal, historical and philosophical methods to clarify the content of this concept in different periods of the state development.

It is worth mentioning Dr. Marcheva’s understanding that any constitution devoid of the principle of the separation of powers and the principle of rule of law is a façade or sham constitution as developed in the articles “Constitution without Constitutionalism” (in “Constitution and Statehood”, Papers from scientific conference dedicated on the 70<sup>th</sup> anniversary of the adoption of the Second Bulgarian Constitution, Veliko Tarnov) and “What is Socialist Rule of Law?” (in 2018 Yearbook of the Department of Law at NBU).

I note as her contribution also the thesis, elaborated in the article “Towards the Invention of Human Rights” (in 2017 Yearbook of the Department of Law at NBU), that the history of human rights should be explained not with their proclamation in the American Constitution and the French Declaration of the Man and the Citizen, but with the culturological conception of Lynn Hunt. Contributory is also the questioning of the law of legal concept of authority in Bulgaria public law literature and the need for it is justified by the elaboration of the conception of “authority of law” so that the law not to be considered powerless if not vested with the state power-coercion, in the article “Towards Public Law Concept of Authority” in “25 Years the Department of Law at New Bulgarian University”. It is worth noting also the article “Legal Imagination” by James Boyd White (Why Law and Literature Makes Sense)” in “Sledva” magazine, 2017, Issue 35. It represents for the first time in Bulgarian law literature the uses of the methodology and the interdisciplinary studies Law and Literature in the legal education and science by presentation of the ideas of James Boyd White and his book “Legal Imagination”.

### 3. Citations by other authors.

According to the Act on the Development of the Academic Staff in the Republic of Bulgaria and the NBU requirements the candidate for an Associate Professor competition needs the minimum of 50 points. The table for individual evaluation and the presented materials attest 26 citations of Deyana Marcheva’s articles in monographs and peer-reviewed collective volumes in Bulgarian and English. Thus, she scores 260 points on this indicator Д12 of the table for individual evaluation. Hence, the candidate substantially exceeds the minimum national requirements for citations from other authors.

### **III. Teaching and lecturing activities**

Dr. Deyana Marcheva’s teaching activities at New Bulgarian University as an Assistant Professor have started in 2014. Afterwards she has been elected on the academic position Chief Assistant Professor by a competitive procedure in 2016. At that time she started to teach in the constitutional law seminars and to gain lecturing experience in the elective courses LAWN 214 Comparative Constitutional Law and LAWN 513 Medical law. Furthermore, she has elaborated consecutively two new elective academic courses that enrich the Law program: LAWN 618 Administrative Law of EU and LAWN 78 Public Procurement, Concessions and Public-Private Partnerships. She also has experience in teaching legal subjects in English.

According to the scores from the student survey questionnaires the average grade for the teaching activities of Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, in the Constitutional law seminars for the last ten semesters is very good (4.44) with a maximum of 5.00. She has prepared and made available for the students lots of educational materials in all the academic courses in which she teaches. The didactic materials in constitutional law include block-

schemes, tables, questionnaires, case-law excerpts, cases that the students find useful, including for their preparation for the public law sciences state exam.

Dr. Deyana Marcheva is one of the active members of the department of Law at NBU who has engaged in the organization of two national scientific conferences in 2016 and 2020, and in the collection and edition of their collective volumes of papers. She is also one of the founders of the general University seminar “Human Rights” that has been recognized, on one side, as an interdisciplinary forum for debates with political scientists, historians, philosophers etc, and on the other side, as a forum for sharing the experience among many legal practitioners. In the last academic year Dr. Marcheva also organized a “Law and Literature” student group to encourage their extracurricular readings and discussions of books out of the compulsory educational and scientific literature.

Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, also participates in the workshops organized by the NBU Library for the academic staff so that to enhance her knowledge and competences in working with the scientific electronic archive of NBU and the library and informational services.

It is undoubted that the teaching and lecturing activities of the candidate comply with the legal requirements of the law and with the additional criteria set by NBU in groups named under the Cyrillic letters Ж, З and И in the table for individual evaluation.

#### **IV. Administrative and social activities**

The candidate has worked in the administration of New Bulgarian University as a program consultant in the period 2015-2017. After the closure of the program consultant administrative positions in the spring of 2017 Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, has continued to be actively engaged in the Law program already as a member of the Program Council and she regularly participates in the meetings and the work of that council. She regularly participates in the meetings of the Department council as well and is actively committed to the projects of the department, including in the current project that studies the Human Rights legal education in Bulgaria, in which the Law Department of NBU cooperates with the Ministry of Justice and the Norwegian Center of Human Rights.

Deyana Marcheva is also a member of the Alliance of the Jurists in Bulgaria. She is also a member of the International Society of Public Law ICON-S, which is one of the most renowned international scientific organization for discussion of constitutional law issues on an annual conference in which take part famous constitutional scholars from around the world.

Dr. Marcheva also develops active social activities as a translator of academic legal literature from English, including in the field of Constitutional law. In the tender dossier one can find her translations of Jon Elster, Walter Murphy, John Hart Elly, Frank Michelman, Catharine MacKinnon in the edition “Constitutionalism”. Sofia: Agata-A, 2006, 954-540-046-3.

The candidate's social work includes her participation in an International commission of jurists project for the rights of the children-migrants in 2017-2018. She is also a lecturer in international workshops for human rights lawyers.

#### **V. Personal impressions of the candidate (if applicable)**

I have known Chief Assistant Professor Deyana Dimitrova Marcheva, PhD, since 2013. My personal impressions on her further deepened after she has started to hold the Constitutional law seminars and in the course of several joint initiatives, such as organization of conferences, edition of collective volumes, the organization of the general university seminars, co-authoring of articles and educational materials. My finding is that she is a smart, hard-working and very ambitious young person and researcher. Moreover, on the basis of the joint activities I have perceptions on her work with the students, whom Dr. Marcheva engages in participating in numerous initiatives. Her work is appreciated by our student and they willingly take part in the constitutional law initiatives. I would like also to note the interest of the candidate towards research into unknown or rarely known publications of Bulgarian jurists from the past and their bringing to light so that they can be examined by a wide range of legal scholar and colleagues. I can also outline her focus on providing an interdisciplinary character to all the University events she organizes.

#### **VI. Opinions, recommendations and notes on the activities and achievements of the candidate**

I believe that the application of Chief Assistant Professor Deyana Dimitrova Marcheva, PHD, fulfills the conditions and meets the requirements set for the academic position Associate Professor in law. The monograph and all other publications presented with the application contain original contributions to Bulgarian legal science. Her overall teaching, administrative and social activities merit a positive assessment. Therefore, I propose to the Scientific Jury to pass a positive decision and I propose to the Academic Council of New Bulgarian University to elect Chief Assistant Professor Deyana Dimitrova Marcheva, PHD, for the academic position Associate Professor at New Bulgarian University in professional field 3.6. Law (Constitutional law),

Date: August 4<sup>th</sup>, 2021

Prof. Ekaterina Mihaylova, PHD