REVIEW

from

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ABOUT the competition for "Associate Professor" in the professional field 3.6 Law (Civil and Family Law) at the Faculty of Law of Sofia University "St. Kliment Ohridski", announced in SG, issue 57 of 26.06.2020, with the only candidate Chief Assistant Professor Ventsislav Lyudmilov Petrov, Ph.D.

By Order № RD 38-255 / 06.07.2020 of the Rector of Sofia University “St. Kliment Ohridski" I have been appointed as a member of the scientific jury for conducting a competition for associate professor in the professional field 3.6 Law (Civil and Family Law) at the Faculty of Law of Sofia University "St. Kliment Ohridski", announced in SG, issue 57 of 26.06.2020. The only candidate in the competition is Chief assistant professor Ventsislav Lyudmilov Petrov, Ph.D.

1. Biographical data

Ventsislav Lyudmilov Petrov was born in 1985. He graduated in Law from the Faculty of Law at Sofia University "St. Kliment Ohridski" in 2009. In 2011 he graduated from the same faculty, majoring in International Relations, Master's program in Private Relations with cross - border consequences in the EU ".

Since 01.09.2011 he has held the academic position of "Assistant professor" in the Department of Civil Law studies at the Faculty of Law of Sofia University "St. Kliment Ohridski". In 2015 he received the scientific degree "Ph.D. Law" with a dissertation on "Revocatin of renunciation of inheritance by

the creditors of the heir." From 27.11.2015 he holds the academic position "Chief Assistant Professor" in the Department of Civil and Family Law at the Law Faculty of Sofia University. Since 2016 he has held the academic position of "Assistant Professor" at the Faculty of Law of the University of Veliko Tarnovo" St. Cyril and St. Methodius", and since 2017 he has been a chief assistant professor at the same faculty.

Since 2011 he has been registered as a lawyer at Sofia Bar Association.

At the Faculty of Law of Sofia University, the candidate conducts seminars in Family and Inheritance Law, Civil Law - general part and in Law of obligations with a work engagement significantly exceeding the requirements. At University of Veliko Tarnovo he teaches a lecture course in Family and Inheritance Law to students in Law in full-time and part-time education, as well as a lecture course in Family Law to students in Social Activities. He conducts seminars on Property law.

2. **Ventsislav Petrov participated in the competition** for associate professor with the monography "Inheritance of obligations and liability for legacies", published by Siela Publishing House in 2020, as well as with 14 articles published after the defense of the Ph.D. dissertation.

2.1. The monography "Inheritance of Obligations and liability for legacies" is 435 pages long and consists of an introduction, four chapters and a conclusion.

The presented work examines a subject that has not been fully studied in Bulgarian literature. Therefore, the fact that this is the first monographic study on the subject is positive in itself.

The first chapter, entitled "Development and general characteristics of inheritance of obligations" covers the historical development of the institute from ancient Roman law, in the Middle Ages to European law in the 17-20 century, as well as the development of inheritance of obligations in Bulgarian law. Special attention is paid to the issue under study in Roman law. The development of views on the inheritance of debts of the deceased are examined -

from the opinion of the continuation of his personality to the concept of universal succession. He came to the conclusion that inheritance precedes the debt transfer through a transaction inter vivos.

The first chapter also includes sections devoted to the legal nature of the inheritance of obligations, its legal facts and delimitation from similar figures. The author outlines the inheritance of obligations as a way to change the holder of a liability mortis causa by exercising a general succession. Unlike the transfer of a debt between the live persons, when the consent of the parties is required, in the inheritance of a debt, the holder changes, even if the testator and the heir are not aware of its existence. The author tries to apply the division of the ways of acquiring rights of primary and derivatives to the obligations.

Thus, the inheritance is characterized as a derivative method, insofar as the obligation must have existed in the patrimony of the testator, for to pass to the heir. Although the introduction of this division is interesting, I do not think it is appropriate. It is a known division of the acquisition of rights according to certain criteria. In the case of obligations, as the author himself points out, the criteria are different. In this situation, the use of the same terms can only be confusing, and the division itself doesn’t contribute for understanding of the inheritance obligations.

The author assumes that the legal fact of the acquisition of an inheritance obligation is successive and includes three elements when the system of acceptance is applicable, and two - in the system of refusal. Analyzing the inheritance of some obligations, the author comes to the correct conclusion in my opinion about the obligation of the contractor under a construction contract, when it is not concluded intuitu personae. He assumes that Art. 269 of the Law for obligations and contracts, which requires their consent to transfer the obligation to the heirs, in fact shows that it is a matter of concluding a new agreement between the assignor and the heir for the performance of the work assigned to the testator.

The second chapter describes the obligations that are included in the estate. The author's summary is that inheritance includes "inheritable"

obligations, considering the widespread thesis that inheritance includes "transferable" rights and obligations to be inaccurate. The inaccuracy, according to the author, is related to the right to inherit, which, although not transferable through a transaction between the live persons, is inheritable. Obligations with such a characteristic are not found in the current law. It seems to me that defining the obligations that are included in the inheritance as inheritable is a circular definition that should not be accepted. In fact, it is heredity that needs to be explained. The absence of complete accuracy of one term, in this case "transferable", does not mean that it should be replaced by another, which is completely true, but, on the other hand, devoid of content.

The author researches some special cases of inheritance of obligations - the inheritance of an enterprise, a company share, obligations under a contract for maintenance and care, etc. Regarding the transfer of an enterprise by legacy, the author supports the opinion that it is an occasion of private succession - a legacy in which the legatee becomes the holder of the obligations included in the enterprise. Although he describes possible explanations for this phenomenon, the author avoids joining any of them. Regarding the taking over of an enterprise, regulated in art. 60, par. 2 of the Commercial Act, the author also outlines the opposite views, seeming to consider them correctly included in the enterprise has the rights and obligations to pass into the patrimony of the heir who took it over, but finds that a change in the law is required, providing for the consent of the other heirs in a certain form in order to achieve this effect.

Chapter three is entitled "Persons to whom the obligation passes after the death of the debtor." The author’s opinion is the debt passes only to a person, who have the status of heir at law, by will or by contract of inheritance (when such is provided in the relevant legislation).The State also acquires obligations in the cases under Article 11 of the Law on Inheritance. A comparison between universal and private testament is made; the author considers that the character of the disposition is determined not only by the will of the testator, expressed in the testament. As regards the division made during his lifetime by will, he held that, although it appeared to be a set of legacies, it was in fact an universal

testamentary disposition which also distributed the obligations between the testamentary heirs. The legal position of the State in the cases of vacant estate is also considered, as the author through historical and comparative legal analysis supports the understanding that it acquires the inheritance not as an heir, but as a sovereign.

The same chapter deals with the question of legatees and whether they can be burdened with obligations included in the inheritance. Analyzing several figures that may give rise to this question, the author concludes that the only occasion in which a testator acquires obligations is in a testament of a totality - enterprise or inheritance. An interesting analysis was made of the provisions of Art. 66, par. 2 and Art. 68 of the Law - hypotheses in which the creditors, who cannot be satisfied by the heirs, have a right for enforcement against the legatees. The author rightly assumes that in the considered texts the law does not provide a liability of the testators for obligations, but provides a privilege for satisfaction by the hereditary mass of the creditors of the inheritance before the legatees. The legal position of the municipality in case of vacant estate is similar to that of a legatee, as it is reasonably recommended de lege ferenda to explicitly regulate the application of Art. 66, par. 2 and 68 of the Law and in relation to the municipality.

In Chapter four are researched the consequences of debt inheritance and liability for legatees. The author accepts that the inheritance legal relationship is terminated with the acceptance of the inheritance and therefore the obligations acquired by the heir are not an element of its content, but part of the civil legal relations to which the testator was a party during his lifetime. He substantiates that the obligations pass to the heir in the same form and content as they had as part of the patrimony of the testator. Only the person of the debtor changes. The author finds that the Bulgarian law does not regulate a occasion in which the obligations passes to the heirs in a size different from their inheritance share. He accepts that it is possible for a testator to entrust a certain heir with the performance of an obligation, but such a declaration of intent has no effect on

the creditor, who may demand performance from all heirs in proportion to their shares.

Regarding the scope of the liability of the heir, the author accepts that unlimited liability is a rule in the Bulgarian legislation and finds the recommendations de lege ferenda in the opposite sense inappropriate. Limited liability in our country is an exception, which is applicable only in cases expressly provided. The cases in which the law limits the liability of certain categories of persons are considered - according to art. 61, par. 2 of the Inheritance Act, these are the incapable, the State and public organizations. The author finds that the limited liability of "public organizations", whatever content is included in this term in the contemporary legislation, has no basis in the current situation. Recommends that it be explicitly provided that the limited liability of the State applies only in the cases under Art. 11 of the Law, but not when the State is an heir by will. The author also describes the way in which the limited liability for the different categories of persons arises. His opinion is that the State receives the vacant estate *ex lege*, without the need a declaration for acceptance. About the incapacitated, the limitation of liability also occurs regardless of whether an inventory has been made, although acceptance is necessary here. The term for acceptance by benefit of inventory is not applicable to the incapacitated, as it starts to apply only after the incapacity lifted. The author also researches the controversial question of whether children can inherit by implied actions, rightly supporting the understanding that this is permissible.

The important question is what the limited liability is - whether it is a liability with the inherited property or a liability limited to the value of this property.

The author shows a number of arguments from the contemporary and repealed Law, as well as comparative legal ones, in order to substantiate the conclusion that the heir accepted by benefit of inventory is liable only with the inherited assets. He finds that the acceptance by benefit of inventory leads to the separation of the inherited property from the property of the heir. It further concludes that the limitation of liability appears only in enforcement - in the

case of a claim against the heir, accepted by benefit of inventory, he should be condemned for the full size of the debt, and acceptance by benefit of inventory should be considered only in the enforcement procedure, as the bailiff will assess which is the inherited property, in respect of which the enforcement can be directed. The author have an opposite opinion when it comes to the liability of the State (p. 267).

This thesis of the author, in my opinion, should not be shared. It is true that there are arguments in his favor, but there are also those in support of the prevailing opposite thesis, which the author underestimates. Furthermore, some of the arguments put forward by the author in support of his own thesis are artificial and, in my view, incorrect, such as the argument that the understanding of limited liability better protects the interests of the heir and especially the incapacitated (p. 290-292).

Limiting liability for value was not sufficient because some items could be more valuable (regardless of value) - examples are inappropriate because the debtor in the enforcement process may offer another property as well as object to the disproportionate performance (if, as given by example, is performed on the child's home, not included in the inheritance, instead of on any of the inherited objects).

Without going into my own analysis, I would point out two points: First, the text of Art. 66, par 1 of the Inheritance Act, which regulate the order in which the heir, accepted by benefit of inventory, "pays" to the heirs and legatees and provides that this is done in the order of presentation of their rights. This is an occasion of a voluntary payment, and not, for example, for the "transfer" of part of the inheritance property to the creditor instead of performance. This text was read indirectly by the author, who accepted that the limited liability in the form in which he understood it was applicable only in case of enforcement. And this is the second conclusion I cannot accept. If the heir performs voluntarily, he is in a more difficult situation than in compulsory execution. If so, it turns out that the law motivates non-compliance in order to bring an enforcement process after the relevant court procedure and only then to apply the limitation of

liability. Moreover, although accepted by benefit of inventory, it turns out that the heir will be condemned for the full size of the debt (corresponding to his share of the estate), so he has no interest to pay voluntarily. Finally, this approach leads to the inadmissible discrepancy between the amount awarded in the judgment and and the amount up to which the bailiff is entitled to enforce. This position, combined with the thesis (quoted in the paragraph below) that the inventory may not be drawn up at the time of acceptance by benefit of inventory, but at a later (and unclear) point, make the situation of the heirs and creditors unclear and extremely uncertain.

The author also researches the procedure of the acceptance by benefit of inventory. He states that it is always explicit. He rightly rejects the thesis that a person who has accepted directly may subsequently, if the statutory time limit has not expired, declare that he accepts by benefit of inventory. The author accepts that the legal fact of the acceptance by benefit of inventory has been completed and the limitation of liability has occurred with the registration of the acceptance by benefit of inventory in the book under Art. 49 of the Inheritance Act. The execution of the inventory is not an element of the legal fact of the acceptance; the inventory may not be performed or may be performed later. Therefore, the author denies the case law according to which the court must first order an inventory to be drawn up and then order the entry of the order for acceptance according to an inventory. In my view, the opinion that the compilation of an inventory is not part of the legal fact of the acceptance by benefit of inventory is not based on the law. If the inventory is not necessary, what is the meaning of Art. 64 of the Inheritance Act, which regulates that the heir is obliged to indicate to the court all the inheritance assets known to him in order to be entered in the inventory, otherwise he loses the benefits of inventory. Among the arguments in favor of postponing the inventory, the author points out that the moment from which the limitation of liability occurs should not be delayed. This is also unacceptable - the moment is always from the opening of the inheritance, and until the entry of the acceptance, even delayed by the inventory, there is neither unlimited nor limited liability.

The distinction that the author makes between inheriting of obligations and liability for legacies should be supported. It is correct to understand that in a legacy for an specific thing the legatee becomes its owner by accepting the legacy, if the testator was the owner at the time of his death. Otherwise, the legacy is invalid. The author rightly excludes the possibility of applying by analogy the consequences of selling non-owner's property.

The analysis of the systems for liquidation of the inheritance obligations and the pointed out the disadvantages of the decentralized system, adopted in our country, is in-depth and useful. The proposal de lege ferenda for establishment of a centralized order for the liquidation of the estate deserves support.

2.2. Articles submitted for participation in the competition

Some of the articles researched the issues included in the discussed monography, but most of them deal show other topics from Inheritance law and other civil law areas. It is characteristic that the author researches mainly with issues that do not have a unified solution in theory and practice, seeking and justifying the correct thesis in his opinion, which in most cases can be shared. In two articles he thoroughly criticized the draft Law on Individuals and the Support Measures.

3. General evaluation of the works

In the evaluated works the author shows maturity and in-depth knowledge of all parts of Civil law. With consistent logical thinking, he analyzes each issue and substantiates his theses. Using a very rich legal literature, the author handles the cited works correctly, but without being afraid to oppose established authorities. The works are structured logically, in a way that allows to analyze the issue comprehensively and completely. The author pays attention not only to the theoretical analysis, but also seeks the practical usefulness of his thesis.

The more important author's conclusions noted in the previous statement, in the predominant part, can be classified as contributions, as some of them have not been explicitly formulated in the literature, and even where the author accepts an already existing opinion, he arrives independently to the respective conclusion as a result of in-depth analysis, including historically, the legal framework in our country and in other countries, the case law, as well as an analytical discussion of all available literature.

Most of the author’s theses should be supported. I have expressed my disagreements in some places above in item 2.1. But, even if the reviewer has a different opinion, this only shows that the author is able to enter into controversies, considering complex and multifaceted issues, which in itself is an achievement.

Many suggestions have been made de lege ferenda, most of which I would support.

The author also analyzes all the available case law and makes appropriate proposals for improving the legislation.

4. Teaching activity

As stated in item 1 above, chief assistant professor V. Petrov conducts seminars in four civil law disciplines at the Faculty of Law of Sofia University and at the University of Veliko Tarnovo. There he also teaches a lecture course on Family and Inheritance Law. At Sofia University, its academic engagement is much higher than required, but this does not affect the quality of teaching. His classes are interesting for the students. V. Petrov always actively participates in oral and written exams.

5. Conclusion

I consider that the candidate chief assistant professor Ventsislav Lyudmilov Petrov, Ph.D. fully meets the requirements of Art. 24, par. 1 of the Law for the development of the academic staff in the Republic of Bulgaria for

holding the academic position "Associate Professor": he has a scientific degree "Ph.D.", has held successive academic positions "Assistant professor" and "Chief Assistant professor" for 9 years; monographic work on a topic different than the dissertation for the acquisition of the educational and scientific degree "Ph.D.", which contains numerous contributions, meets the minimum national requirements under Article 2b of the Act.

Based on the above, I strongly suggest to the scientific jury to elect Chief Assistant Professor Ventsislav Lyudmilov Petrov, Ph.D. for the academic position of "Associate Professor" in the professional field 3.6 Law (Civil and Family Law).

Reviewer

15.10.2020 Assoc. prof. Anna Staneva, Ph.D.