STATEMENT

by Prof. Dr. Anelia MINGOVA

Member of the scientific jury for the competition announced in the State Gazette (issue № 22 of 16.03.2021) for the academic position of "Professor" at the Faculty of Law of Sofia University "St. Kl. Ohridski", in the field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law, scientific specialty: Labour and Social Insurance Law, determined by Order of the Rector of Sofia University РД-38-200/23.04.2021.

I. In the announced competition for the academic position "Professor" at the Faculty of Law of Sofia University "St. Kl. Ohridski", there is one candidate participating: **Nina Milkova Gevrenova**, currently holding the academic position of "Associate Professor" at the same faculty, Doctor of Law.

1. It is evident from the submitted report that she has fulfilled the scientific requirements for participation in this competition for the academic position of "Professor", having 650 of the required 450 science-metric points. The papers submitted for review are different ones from the doctoral dissertation and the work, with which she participated in the competition for the academic position of "Associate Professor". There are no violations in the procedure.

2. In order to participate in the competition for full-time professor of Labour and Social Insurance Law - code 3.6 of the Classification of the fields of higher education and professional fields for the needs of Sofia University "St. Kliment Ohridski", Assoc. Prof. Dr. Nina Gevrenova has submitted a monograph: "Essential content of the individual employment contract", as well as 10 (ten) scientific publications, four of which articles and six studies, described in detail in the reference submitted by the candidate, part of the materials for the competition.

3. Brief biographical data on the professional development of the candidate.

Nina Milkova Gevrenova graduated from the Faculty of Law at Sofia University in 1992. From that year onwards, she became Assistant and later Junior Assistant and Senior Assistant in Labour and Social Insurance Law, since 2014, she is Associate Professor in the same discipline with a habilitation thesis on "Special protection of workers and employees with reduced working capacity". She became Doctor of Law in 2007 and defended her dissertation on the topic: "Regulations for the internal labour order - a non-state source of labour law". Since 2017, she has been the Head of the Department of Labour and Social Insurance Law at the same faculty.

Assoc. Prof. Gevrenova leads the courses in Labour Law and Social Insurance Law to full-time and part-time students in the specialty "Law", as well as lectures in the discipline "Fundamentals of International Labour Law" in the specialty "International Relations" at the Faculty of Law. Nina Gevrenova has also conducted various training courses in the field of Labour and Social Insurance Law at other faculties: at the Faculty of Pedagogy, the Faculty of Public Administration and at the Faculty of Economics at Sofia University, as well as at the Faculty of Law and the Faculty of Economics at Veliko Tarnovo University “St. St. Cyril and Methodius”, as well as in the School of Management at the New Bulgarian University.

The professional experience of the candidate also includes holding a number of positions: expert in the Ministry of Justice, PHARE Program (1996-1997); BCCI expert; expert in the Tripartite Council for Social Cooperation at the MLSP (2000-2009); expert at USAID Project "Labour Market Project-Harmonization of the Bulgarian Labour Law with EU legislation" (2003-2004). Assoc. Prof. Gevrenova was Chief Legal Adviser at BTC AD (2004-2008) and Human Resource Manager at BTC AD (2009-2012). She was an arbitrator at NIPA (2003-2009) and since 2012 - a mediator; member of the Legal Council of the President of the Republic of Bulgaria (2012-2016). From 2000 onwards, she is a lawyer at the Sofia Bar Association.

She has completed specializations in the field of Labour and Social Insurance Law in Hungary (1994 and 1995), and in Germany in 2006.

II. Analysis and contributions in the monograph: "Essential content of the individual employment contract".

1. General characteristics of the work.

The monograph is 359 standard pages long. It consists of a preface, 9 chapters and a conclusion. The paper also contains a bibliography which mentions 138 works in Cyrillic and 11 in Latin. The paper traces in a logical sequence all significant aspects of the research topic. The author immediately addresses the subject, without being tempted to introduce the reader to fundamental labour law theses for its consideration, which proves her qualities as an established researcher in this field of scientific knowledge. Thus, the first chapter begins with an analysis of the features and prerequisites for the essential content of the employment contract, as a result of which the conclusions are proven about its division into substantive and non-substantive, and the relation between them. The following chapters are devoted successively to the individual elements, as their essential legal characteristics and their significance for the conclusion and validity of the employment contract are precisely traced and in detail.

The expose is dedicated to a founding institute of labour law. The reality and content of the employment contract as a legal fact of the individual employment relationship raises questions that are not only the basis of labour theory, but are also of paramount importance for public relations governed by labour law.

The author makes a comprehensive, contemporary reading of the topic, the work is in-depth in its analysis, justified and creative with the conclusions reached.

The work is intriguing and may be useful to a wide group of readers, because the theoretical approach to the issues is in direct contact with real life: labour relations with their subject, content and consequences are existentially important for any able-bodied individual as part of the main rights and freedoms, constitutionally recognized and guaranteed.

The style is polemic, but correct and balanced, despite the fact that the author builds and argues her own theses on a number of specific issues. Her conclusions and suggestions de lege ferenda are unobtrusive, presented with a light suggestion of what is right, and the reader is willing to support them because they are based on a study of the roots, directions and goals in the

development of modern labour relations, and therefore, they sound justified - legally-wise and life-wise.

2. More significant scientific contributions.

Against the background of numerous specific questions that the author raises, examines and analyzes in detail, and on the basis of which she reaches her in-depth and substantiated theses, legal conclusions and proposals, I would like to point out the following:

a) The analysis of Assoc. Prof. Gevrenova on the specifics of the freedom to negotiate when concluding an employment contract deserves attention. Of interest is the characteristic of the main features of the essential content of the employment contract, namely in the context of the conclusions about the role of contractual freedom in determining not only the fundamental rights and obligations of the parties, but also their arising, i.e. the conclusion of a valid employment contract as grounds to initiate employment relationship. In direct connection with these features, the author analyzes all three main prerequisites for the essential content of the contract, namely: the legislator to imperatively specify the elements he includes in it, but without regulating them, while prohibiting such regulation by non-state sources. Against this background, Assoc. Prof. Gevrenova successfully examines in detail these prerequisites in the current system, noting the imperfections and incompleteness in it.

In the context of the fundamental importance of the topic of the specifics of contractual freedom, the author successfully argues the essential features and consequences of the two types of essential content, outlining the similarities and differences between them, based on differences and specific manifestations of contractual freedom provided by the state: 'substantive' is that, in which bargaining determines not only the content but also the very conclusion of the contract as a legal fact giving rise to the employment relationship; "Non-substantive" is that, which is not sufficient for the conclusion of the contract, but the lack of negotiation for its elements does not lead to complete invalidity, as in the contract’s content this lack is replaced by what is regulated in the respective legal source (Chapter 1 and 2). Against this background, support deserves the proposal of the author **de lege ferenda** for an explicit new provision in Article 74 of the Labour Code (dispositive or dispositive with imperative boundaries that invalidity is not declared in cases

where the missing clause is replaced by an effective provision from the relevant legal source. (p.34);

b) Observing the logical sequence of separate aspects of the research's topic, in Chapter 2, Assoc. Prof. Gevrenova convincingly argues her opinion that the title of the position has the character of a substantive essential content of the employment contract, and the job description is a "legal instrument", the content of which cannot be negotiated, but is defined solely by the employer as "a set of work obligations the employee must perform, and the employer has the right to assign and receive as performance " (p.57, 60-63). The author convincingly reaches the conclusion that the position and its name **"are legal phenomena different in nature"**, with different consequences (p.67, 68 underlined N.G.). Parties have the right to agree on the title of the position, as well as its place in the structure of the employer. Assoc. Prof. Gevrenova is convincing in her conclusions about the limits of contractual freedom over this element of the contract's content, in the analysis of the various hypotheses of a missing clause regarding the job title, and in the final conclusion that this "*leads to lack of an element from the essential content of the employment contract and to its complete invalidity…* " (p.83, Italic N.G.) In this regard, support deserves the proposal **de lege ferenda** to supplement Art. 127, Para. 1, item 4 of the Labour Code on prohibiting the employer to make changes in the duties of a job description already handed over, unless the employee has agreed in writing with them, which would act as a protection for the employee against "unlimited use" of the employer's power to dispose with labour force (p.91-92);

c) The consistent analysis of all other elements of the essential content of the employment contract should be positively evaluated. The legal framework and essential characteristics of each of them are thoroughly, completely and precisely examined (Chapters 3-9). The author has studied in detail the specifics of the individual elements, reaching general conclusions relevant to all that have allowed them to be combined under "non-substantive essential content" of the contract.

Here, standing out is the analysis of the place of work as part of the non-susbtantive content of the contract, its difference with the concept of "workplace", and the conclusions that the employer can change the latter only within the agreed with the employee place of work, which led to the proposal **de lege ferenda** for a change in the legal definition of workplace in §1, item 4 of the Labour Code (p.101-102). Interesting are the reflections about the prerequisites, differentiation and relationship between the two types of workplace - permanent and mobile, which characterize

them as alternatives in the agreed content of the employment contract (p.108-115). Reflections on the limits of contractual freedom in each of the two types of place of work (Chapter 3, item 4) should also be praised.

The analysis of the concept and types of working time - full and part-time - with the derivation of the features that separate them, can be pointed out as an accent of a contributing nature. Logic are the conclusions about the legal nature of the duration of each of the types, with the remark about the incorrectness of the legal framework in Art. 66, Para. 1, item 8 of the Labour Code, insofar as it follows from the legal nature of the phenomena that parties actually agree on the type, and only depending on whether they have chosen the part-time work option, can and should they reach an agreement on its duration and distribution, from which is derived the difference in the subject of negotiation (Chapter 4, items 2-4).

Against the background of a detailed analysis of the legal nature of the basic remuneration, all three alternative payment systems have been studied, which, together with the amount, are in the subject of agreement between parties. The conclusion should be shared that for better protection of the rights of parties, this should be explicitly stated in the legal framework, as it is the agreed payment system that determines the other elements, on which parties agree (Chapter 5, item 4). Great worth also brings the study of the reasons that led to the conclusion that the lack of clauses on the amount of basic remuneration does not lead to complete invalidity and impossibility of the employment contract to serve as a basis for legal relationship, as a result of which this element is also part of the non-substantive essential content of the contract (Chapter 5, item 6).

Through conscientious analysis and methodological approach are formulated the limits of contractual freedom, the consequences of lack of clauses in the contract and each of the other elements of the "non-substantive" essential content of the employment contract, as well as the specific consequences of the clauses included in the contract, whereby conclusions have been made depending on the specifics of the individual elements. Already in the first chapter, the cardinal conclusion is made that lack of consent over these elements does not lead to lack of employment contract, and that such is concluded, "*but not with the agreed content, but with the normatively regulated one, most favourable for the employee*." (Italic N.G.). These questions are discussed in detail in the expose for each element of the non-substantive content, whereby the specific analysis and conclusions correspond fully and accurately to the specifics of each of them

(in Chapters 3, 4 and 5, respectively items 5-7; Ch. 6, item 5-8; Chapters 7, 8 and 9, respectively items 4-6). Particularly interesting is the analysis of the relationship between the acting of state and non-state sources in the regulation and the hypotheses when the invalid clause in the contract – pronounced in a court ruling - is replaced by the one provided in a private-law provision. Based on the conclusions of the relationship between state and non-state regulation sources in determining the system and amount of basic remuneration, innovative appear the proposals **de lege ferenda** the contradiction with the internal rules be explicitly regulated as grounds for invalidity of contract (supplement to Art. 74, Para. 1, LC), as well as in Art. 66, Para. 2, LC, along with the collective labour agreement, these should be added as a framework for contractual freedom (p.214). Upon a substantiated analysis, support also deserves the proposal that internal rules - as part of their mandatory content - regulate the periodicity of payment of basic and additional remunerations, but with the guarantee of change as per Art. 270, Para. 2 of the Labour Code, in which to establish a "*socially acceptable maximum payback period*" (Italic N.G., p. 272, 279) not be contractually exceeded.

No less interesting and creative is the analysis of the peculiarities in regulations, subject of negotiation, limits of contractual freedom and consequences of deviation from it – with regard to the different types of leave and notice periods when terminating employment (Chapter 8 and 9).

d) As a result of the impartial, objective and comprehensive analysis of each specific aspect of the issues under discussion in the subject of research, interest and support deserves the correctness with which Assoc. Prof. Gevrenova argues with established statements in theory, which leads to her own, different conclusions, arguments and proposals being rational.

In this vein, for example, convincing sounds the conclusion discussed above that only the "title of the position" is included in the substantive content, although it differs from the existing ones in legal theory for the scope of the substantive essential content, which include in it also the amount of basic salary and the place of work (compare the expose Chapters 1, 3 and 4, resp. notes 26, 27). Also, it logically fits into the analysis of the author that the job description is the employer's will, which **"initially" and, in this sense, solely defines work obligations",** against the background of existing and generally accepted conclusions that the job description only specifies the labour function once already agreed by the parties (p. 63-65 and note 55.57, bold N.G.) As an example of a successful and well-founded argumentation is the conclusion that

extended working hours do not represent a third independent type, different from full-time and part-time work, because unlike them, in extended working hours, one is assigned more than the amount of labour agreed between parties (Chapter 4, item 4.2, p.142-144).

e) At the respective systematic places in each chapter of the text, the procedural aspects of the set topic are examined, as the options for protection in the separate forms of violation of the rights and non-fulfillment of the obligations of each of the opposing parties are discussed. In this regard, Assoc. Prof. Gevrenova views the possible types of claims, as well as the specifics arising from the types of protected rights and the subjects of claim protection in the content and consequences of court decisions. Particular attention is paid to the decisions for declaring the partial invalidity of the respective clause of the employment contract and its replacement with the normatively determined content, incl. when the change is effective not only in the future, but has retroactive effect and, as a result, a number of secondary rights have arisen for the party, in whose interest the partial invalidity has been declared.

III. General characteristics and contributions in the other works subject to review.

The overall impression of the six studies and four articles presented for review from the periodical legal press is one of theoretical research which characterizes the wide range of labour and social insurance issues, falling within the scope of the author's theoretical interests, and which, like the monograph, reveal her ability to directs her creative searches towards significant - not only of theoretical but also of practical significance - separate segments of the legal framework and the practice of its implementation.

IV. Lecturing and other professional activities.

Assoc. Prof. Nina Gevrenova is a respected and valuable lecturer in the field of labour and social insurance law. In addition to law students at Sofia University, she gives lectures in this field to the students from the “international relations” specialty at the same faculty, as well as at other faculties at Sofia University and other universities in the country. Her teaching activity is marked by indisputable capacity and skills in presenting theoretical and practical material within her field

of knowledge. She enjoys undisputed authority amongst her students. The well-deserved recognition of her qualities as a teacher is also a result of many years of professional experience as an expert in the field of labour and social insurance relations in various institutions. The level of her theoretical training and her professional qualities is also evident from the scientific publications which are not subject to review in this opinion. As can be seen from the presented information, Assoc. Prof. Gevrenova is the author of two more monographs and co-author in three other books (one of which is a second revised and supplemented edition), several collections and textbooks, as well as over 20 studies and articles in the field of labour law, social and health insurance and social assistance.

V. Conclusion.

The monograph presented by Assoc. Prof. Dr. Nina Gevrenova, as well as the other publications submitted for review, reveal high theoretical merits and are of indisputable importance for the development of legal theory and relevance for law enforcement. With their overall tone and specific content, they are a proof of the candidate's innovative research approach, of the ability to discover and study theoretical problems important for the development of legal science, as well as of scientific courage in formulating substantiated and in-depth conclusions, which ultimately proves an achieved creative maturity. The overall teaching and practical experience of Assoc. Prof. Gevrenova also reveals her high professionalism.

As a result, I am quite confident in declaring that Assoc. Prof. Dr. Nina Milkova Gevrenova fully meets the requirements of the Act on the Development of Academic Staff in the Republic of Bulgaria and the Regulations for its implementation for the academic position of "Professor". Therefore, I strongly recommend the scientific jury to propose to the Faculty of Law of Sofia University "St. Kl. Ohridski" **to elect Assoc. Prof. Dr. Nina Milkova Gevrenova "Professor" in the professional field 3.6. Law (Labour and Social Insurance Law).**

June 04th, 2021 Prof. Dr. Anelia MINGOVA