

REVIEW

by Prof. Tzvetan Sivkov, Doctor of Legal Sciences
regarding the competition for the academic position of “Associate
Professor” of Constitutional Law
(announced in State Gazette No. 65 of 28.07.2023)
for the needs of the Faculty of Law,
University of Sofia “St. Kliment Ohridski,
in the field of higher education 3. Social, economic and legal sciences,
professional field 3.6. Law: Constitutional Law
Candidate is Senior Asst. Prof. Plamena Dimitrova Penova, PhD

By Order No. RD-38-485/08.08.2023 of the Rector of the Sofia University for conducting a competition for the academic position Associate Professor in the professional field 3.6.5 (announced in State Gazette No. 65 of 28.07.2023) I have been appointed as a member of the scientific jury for the competition.

According to the decision of the jury at its first meeting I was assigned to submit a review for the competition. The only candidate in the competition is Senior Asst. Prof. Plamena Dimitrova Penova, PhD.

The procedure of the announcement of the competition for the position Associate Professor, its movement and completion, takes place at the Faculty of Law of University of Sofia “St. Kliment Ohridski”.

The candidate Plamena Penova holds a Master degree in Law from the University of Sofia “St. Kliment Ohridski” and is graduated since 2007. In 2012 she completed her PhD in Constitutional Law at the Department of Constitutional Law at the Faculty of Law of University of Sofia "St. Kliment Ohridski". After she successfully defended her PhD thesis in 2013 Ms. Penova

was awarded the degree PhD in the professional field 3.6, with the doctor thesis "The Local Self-Government in the Bulgarian Constitutional Model after 1991".

Plamena Penova, PhD has many years of professional experience in academic teaching. Since 2015 she is Senior Assistant Professor in the Department of Constitutional Law at the Faculty of Law of the University of Sofia "St. Kliment Ohridski", as evidenced by the employment contract No. RD 22-1294/05.06.2015 with the Rector of University of Sofia "St. Kliment Ohridski. She is teaching lectures and seminars in "Constitutional Law", lectures in "Parliamentary Law" in the Master's Degree Programme "Law", as well as seminars in the Bachelor's Degree Programme "International Relations" of the Faculty of Law of University of Sofia "St. Kliment Ohridski". According to the Penova PhD's biography, she is also a lecturer at the Academy of Ministry of Foreign Affairs. She has been teaching there at the Department of Public Law of the Faculty of Police from 2014 to the present - initially as a Visiting Assistant Professor, and after 2019 Penova, PhD has successively held the positions of Assistant Professor and Senior Assistant Professor. Along with her teaching activities, Ms. Penova is also a legal practitioner - she has worked as a "legal advisor" at the National Revenue Agency, in private companies, and since 2014 she is a lawyer. This practical experience has given her the opportunity to gain personal insights into the legal practice and a critical perspective on the mechanisms of functioning of the public authority, valuable for the development and improvement of Ms. Penova as a lawyer, scholar and lecturer.

The only candidate Senior Assistant Professor Plamena Penova, PhD has fulfilled the requirements for participation in the competition for the academic position of Associate Professor in Constitutional Law. The minimum national requirements have all been fulfilled. A reference list of citations has been submitted, and that shows the value of her research in the field of public law.

The list of publications shows a thorough interest in the subject of constitutional law. Such a competition is necessary for the needs of the Faculty of Law in the view of the submitted reference on the workload in teaching and working with students.

Senior Asst. Prof. Plamena Penova, PhD submits to the competition for review one monograph, regarding the constitutional position and status of the government in the parliamentary model of Bulgaria, 5 articles and 4 studies. This scientific production gives grounds to assume that Ms. Penova is a serious researcher in the field of Constitutional law.

Expectations in moving to a new higher academic and scholarly quality, such as the acquisition of the position of Associate Professor, are related to the evaluation of serious published monographic research, other than the PhD thesis, such as the book presented here. With the submitted book, P. Penova, PhD fulfils this legal requirement. Therefore, I will pay special attention to it.

The monograph "The Council of Ministers in the Bulgarian Parliamentary Model"¹ is a comprehensive scientific study of the position, the status and the role of the government in the existing model of government and the parliamentary government adopted in the Constitution of the Republic of Bulgaria. From the point of view of the Constitutional law - theory, practice and legal framework - it is a comprehensive analysis of the activities of the Council of Ministers and its interaction with other state bodies and institutions of public power in Bulgaria within the national parliamentary, and more generally - within the national constitutional model. I find this monograph an extremely valuable work from the theoretical and practical point of view.

¹ Penova, Pl. Council of Ministers in the Bulgarian Parliamentary Model, Baltica-2002, B., 2023, 556 pages, scientific editor Assoc. Prof. Kapka Georgieva-Atanasova.

The structure of the presented monograph consists of 4 chapters, has a volume of over 500 pages, an introduction, a conclusion and a bibliography. The bibliography covers a number of sources - textbooks, monographs, studies, articles, case law in Bulgarian and other languages. It shows a thorough, complete and comprehensive treatment of a large volume of material, and contributes to a broad view of the chosen topic. The content is properly distributed in terms of logic and volume. The systematics, which is chosen by the author, presented in the exposition and in the arrangement of the chapters and the material within them, shows the possibility of building serious theoretical constructs in the field of constitutional law and thoroughness in their presentation and analysis. It is also a way of logically arranging the theses on which the author builds and an opportunity to justify them.

The first chapter of the presented monograph has a fundamental and foundational character. It deals with one of the significant and fundamental issues of the Bulgarian constitutional system - the form of government. Within the Bulgarian constitutional model the state is defined as a republic with parliamentary government. Important political and legal issues related to the political form of the state, the form of government and structure, the political regime are presented here, and the elements of parliamentary government and its features are also examined. The development of national parliamentary government is presented as part of, an element of, and in relation to the political changes taking place in Europe. The author's conclusions about the existence of hypotheses, allowed by the Constitution, under which it is possible for a certain period of time the parliamentary Council of ministers not to be a subject to parliamentary control and not be politically accountable to the parliament, are also relevant for the way the parliamentary model of Bulgaria functions. These conclusions are contributory.

Further, within the first chapter, are examined and analysed the relations between the Council of Ministers, on the one hand, and the National Assembly, the President, the Constitutional Court and the judiciary, on the other, i.e. with the other constitutionally regulated institutions in the state government. Here it is analysed how the formation of the government is dependent on the confidence of the parliament, the philosophy and the real political weight that the representative body has. The question of the interaction between the legislature and the government is then logically examined. The author's thesis on the differentiation of the head of state from the real executive, which is a characteristic in most of the parliamentary democracies, in which the executive is actually led by a collective government, is interesting. The relations between the Council of Ministers and the Constitutional Court and the judiciary are carefully and analytically examined. The first chapter, both as an internal structure and as the beginning of the study, provides a good basis and a good foundation for going further into depth of the issues that are the essence and concreteness of the author's main idea - the analysis of the place of the Council of Ministers in the Bulgarian constitutional model.

The second chapter goes directly into the examination of the constitutional position and the constitutional status of government. It clarifies the nature of the concepts of "government" and "council of ministers", and their relationship to "executive", "public administration" and "administration". This is important because this type of generalized representation is absent as systematized knowledge in our public law theory. And this part of the monograph is well constructed logically. It describes the complex elements in the construction of government and gives due attention to the mechanisms and rules in the formation of the Council of Ministers. There is an able analysis of the procedure of government formation in its constitutional, theoretical and

practical dimensions. The study is very interesting in its section on negative and positive parliamentarism. It also explores the nature of the presidential decree by which the president proposes to the National Assembly a candidate for prime minister.

The study of the different types of governments that can function in the Bulgarian parliamentary model makes a good impression. The analysis is valuable because it embodies political and legal characteristics. I find this particularly important in recent years, when we have witnessed political instability. It also discusses seemingly clear hypotheses about the beginning and end of the government's term, and also about its structure and composition.

The third chapter of the monographic study is entitled "Competence, Activities and Acts of the Council of Ministers". The author rightly begins this part of her study with the functions of government and their fundamental role in relation to the competence and acts of government. They reveal the tasks set for government bodies and the goals that "are set to be achieved as a result of the body's activities with its creation"². I have respect for Penova, PhD's thesis on the different meaning of "competence" and "competency" and her analysis of their nature, differences and also her conclusion that the first is the correct legal term. Penova, PhD's analysis of the independent and non-independent powers of the Council of Ministers is very good. I agree with her thesis that the tendency to submit powers on the government not by law but by government acts cannot be supported. This has its impact on the quality of law-making.

From a professional point of view, the most interesting part for me was the analysis of the acts of the Council of Ministers. They are all of a legal nature and have their legal or legal-political consequences. The reflections, examples and conclusions about the different types of acts are extremely important for

² Penova, Pl. Council of Ministers in the Bulgarian Parliamentary Model, Op. Cit., p. 337.

legal theory. This is the first time in several decades that the author has looked at the injunction as an act of the Council of Ministers, and for this she deserves a positive assessment. An important point here is the analysis of the mechanisms by which acts of government are enacted. This, too, is a subject that has been overlooked by theory.

The final, fourth chapter, of the monograph is dedicated to the responsibility of government. Here are questions, inquiries, and participation in ad hoc committees examined. The author thoroughly examines all aspects of ministerial responsibility – political and legal. The analysis of the impossibility for a vote of no confidence in an individual minister is a feature of the Bulgarian government constitutional model and this the author has made clear in a good way. All possible cases of the legal responsibility of ministers and the legal consequences are fully and comprehensively clarified.

The presented monograph has an important significance for the development of constitutional law and legal theory. I take as most important that it is the first independent monographic book on government and its functioning. Important and valuable for theory and practice are the analyses of the political system, the form of government, and the relations between the political institutions in the country. The particular insight into the decision-making mechanisms of the Council of Ministers makes a good impression. The study of acts and the ways in which they are passed is extremely important. For me, these are the most important contributions, and several more could be mentioned. For these, I particularly pay tribute to the result achieved by Dr Penova.

My overall impression of the presented monographic work is positive. It shows a thorough, systematic and analytical knowledge of the subject matter,

in the field of the theory and practice of the Council of Ministers and of Constitutional law. This work has the quality of a habilitation thesis.

Penova, PhD participated in the competition not only with a monograph, but also with other publications. They are 5 articles and 4 studies.

I find the article on the normative acts of the Council of Ministers interesting and topical. The author examines the normative acts adopted by the government, and discusses and analyses in detail their types, peculiarities, as well as the application they manifest in the legal system of the Republic of Bulgaria. Of great importance not only for theory, but also for practice, is the author's reasonable conclusion on the inadmissibility of the Council of Ministers issuing instructions, which is beyond its constitutional competence.

The study "Termination of the mandate of the National Assembly" is also topical. Penova, PhD concludes in it that the normative grounds for termination of the mandate of the National Assembly are explicitly formulated in the constitutional norms and no additional grounds, beyond those explicitly provided for, can be interpreted for the termination of the powers of the legislative body.

The article on constitutional principles in the local self-government³ focuses on the idea that the local self-government is the environment for variety of principles of the representative democratic government. At the local level are manifested the principle of national sovereignty, vertical segregation of powers, political representation and principle of publicity. On the subject of local self-government Penova, PhD presents two other articles – on local self-government

³ Penova, Pl. Constitutional principles and their reflection in the local self-government in Bulgaria, In: Application of constitutional principles in public and private law: jubilee international scientific conference, on the occasion of 25 years of the Faculty of Law of VTU "St. St. Cyril and Methodius" and 25 years since the adoption of the Constitution of the Republic of Bulgaria, 6-7 Oct. 2016., University Press. "St. St. Cyril and Methodius, V. Tarnovo, 2017, 165-174.

under the Tarnovo Constitution⁴ and on the election of mayors⁵, as well as a study that examines the constitutional guarantees of local self-government in Bulgaria⁶. The conclusions of the above analyses, that are presented in the studies, are interesting and valuable for theory and practice. The conclusions drawn by the author about the excessive influence of political interest in local self-government, which has a negative impact on the rights and interests of the local population, are of great value.

I would also like to draw attention to the consistent approach in Penova PhD's scholarly researching related to the subject of the immunities in constitutional law. In this matter she is the author of several articles and studies. The article on the constitutional law aspects of parliamentary immunity⁷ presents the theoretical foundations of the concept, its essence, traces the historical origins of the institute, as well as the constitutional regulation of parliamentary immunity in its two components – criminal irresponsibility and criminal inviolability – In Bulgaria. The study on the immunity of the political

⁴ Penova, Pl. Local Self-Government during the Tarnovo Constitution, In: 135th Anniversary of Adopting Tarnovo Constitution, Collection of Scientific Conference dedicated to the 135th Anniversary of the Tarnovo Constitution, edited/compiled by Prof. Vasil Machkov, Sibi, 2014, 299-311.

⁵ Penova, Pl. On the Election of Mayors in the Bulgarian Model of Self-Government, Constitutional Studies 2014-2015. 25 years of democratic transformation in the Republic of Bulgaria. St Kliment Ohridski University Publishing House, C., 2017, 157-175.

⁶ Penova, Pl. Constitutional Guarantees of the Right of Local Self-Government, Constitutional Studies 2012-2013; Statutory Constitutional Protection of the Main Rights and Freedoms, St Kliment Ohridski University Publishing House, C., 2014, 341-366

⁷ Penova, Pl. Constitutional Legal Aspects of Parliamentary Immunity. In: Constitutional Studies 2014-2015. 25 years of democratic transformation in the Republic of Bulgaria; St Kliment Ohridski University Publishing House, C., 2017, 432-45.

representatives⁸ is a comparative study dedicated to the historical aspects of parliamentary immunity and its regulations in different countries.

Another study dedicated not only to parliamentary immunity but to all immunities adopted in the legal system of the Republic of Bulgaria is the study entitled "Immunity in the Valid Constitutional Law of the Republic of Bulgaria – types and legislation"⁹. It is interesting for its analysis of the different types of immunity in Bulgaria granted to persons holding various public offices. Penova, PhD's research is particularly valuable in its systematic integrity. Their main contribution consists in the complete, comprehensive and thorough clarification of the problem of immunities granted to various persons in the Republic of Bulgaria, their purpose and meaning. The author gives valuable conclusions for legal theory and parliamentary practice, which are supported by well-arranged and thought-out arguments.

All presented publications and works show Penova, PhD 's serious attitude to the matter of constitutional law. The works are thorough and in depth study on various aspects of public law. Penova, PhD's serious attitude towards the profession of researcher in legal sciences and her willingness and desire for scientific and research activity are beyond doubt.

I believe that her claims for professional academic development and for the acquiring the academic position of "Associate Professor" are justified, well-founded and substantiated.

⁸ Penova, Pl. Immunity of Political Representatives – comparative aspects and contemporary trends, Constitutional Legal Studies, 2017. "Post-Democratic Constitutionalism", St Kliment Ohridski University Publishing House, C., 2021, p. 135-161.

⁹Penova, Pl. Immunity in the Valid Constitutional Law of the Republic of Bulgaria – types and legislation, Constitutional Studies 2016, 70th Anniversary of the Republic, St Kliment Ohridski University Publishing House, 2018, 126-162.

Based on my personal impressions, the presented scientific production and the fulfilled legal requirements, I express my categorical opinion that Senior Asst. Prof. Plamena Penova, PhD has the necessary qualities and prerequisites to hold the academic position of "Associate Professor". I will vote *positively* and urge the other members of the jury to do the same.

29.10.2023 г.

Sofia

prof. Tsvetan Sivkov, Doctor of Legal Sciences