

REVIEW

by Prof. Tzvetan SIVKOV, Doctor of Law,

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“St. Kliment Ohridski”

for a member of a scientific jury for conducting a competition for the academic position

of “Professor” in Labour and Social Insurance Law,

announced for the needs of the Faculty of Law at Sofia University “St. Kliment Ohridski” in

the State Gazette, issue 22 of 16.03.2021, in the professional direction

3.6. Law, Labour and Social Insurance Law

There has rarely been an occasion for me in which to accept with such great pleasure and satisfaction the opportunity to be a member of a jury in a competition for an academic position. I was delighted, firstly, because it is a professorship competition, and secondly, because the participant in this competition, Assoc. Prof. Dr. Nina Gevrenova, is a student of mine, and she developed as a lawyer, researcher and lecturer right before my very eyes. I have been watching her methodical rise for decades, up until this moment when she rightly claims this high scientific and academic recognition which in its essence corresponds to her qualities, creativity, rich practical experience and teaching work with generations of students. However though, this is a competition where I have the task to present a review of her activities and research work qualifying for an academic degree, so therefore I shall stop here with my personal impressions of her and assessment of her development.

Assoc. Prof. Nina Gevrenova is the only candidate for the position of "Professor", for which she has the necessary number of lecture courses in compulsory subjects at the Faculty of Law. Her professional development is an example of consistent evolution: from an expert lawyer to lecturer and researcher in the field of labour and social insurance law. She has climbed all the steps of the academic hierarchy: Assistant - 1992; Junior Assistant -2001; Senior assistant - 2003; Associate Professor – 2014. Since 2017, she is Head of the Department of Labour and Social Insurance Law at the Faculty of Law at Sofia University. She is also the scientific supervisor of several doctoral

students, such as Sen. Assistant Gergana Kirilova, who has already successfully defended her doctoral degree. Assoc. Prof. Nina Gevrenova reads base courses in Labour and Social Insurance Law at Sofia University “St. Kliment Ohridski” and at Veliko Tarnovo University “St. St. Cyril and Methodius”, mainly in their Faculties of Law, but also in other units of the universities. She has extensive practical experience as a lawyer, conciliator and arbitrator at the National Institute for Conciliation and Arbitration (NICA), as HR director at the BTC, and elsewhere. Assoc. Prof. Gevrenova has also had specializations abroad - Hungary - 1994, 1995, and Germany – 2006. In 2007, she successfully defends a dissertation on the topic: "Rules for internal labour order - a non-state source of labour law". Her research work qualifying for an academic degree to acquire the academic position of "Associate professor" is titled: "Special protection of workers and employees with reduced working capacity". All the above is an illustration of her systematic, consistent, deserved and logical growth as a theorist and practitioner in the field of labour and social insurance law.

The main work, which was presented to me to assess and to participate in the competition for "Professor", is related to the essential content of the individual employment contract on the basis of the Bulgarian legislation. The presented monograph has 9 chapters, an introduction, a conclusion, a subject index, and is over 359 pages in volume, which is impressive for a composition of this kind. Of course, this is an external, formal characteristic, which in itself does not show, nor does it prove the theoretical and practical value of the work. The used literature is presented, which shows the in-depth preparation of the author for the research work, and her good knowledge of the Bulgarian and foreign literature on the subject, as well as the practice of various judicial institutions. Thus, the research work is based on a rich body of theoretical literature and a diverse and thoroughly analyzed and meaningful practice of the SAC, SCC and the control bodies in the field of labour law. The quoted literature and case law show a high level of knowledge of the matter, of the various sources, and correspond to the requirements of a research work qualifying for the academic degree of Professor. The sources used by Assoc. Prof. Gevrenova are so diverse and finely selected that they can serve as a basis for work in the field of theory and practice of labour law in general and specifically in the matter of individual employment contracts, significantly exceeding their citation in the presented research work.

The structure of the research work for academic degree is very well thought out and allows the research to exceed the expected analysis of the elements of the essential content of the

employment contract. Consistent analysis of the subject of negotiation, limits within which parties have the right to bargain, and specific consequences of violating these limits, all that helps the author draw and defend a number of conclusions of serious theoretical and practical significance. The logical arrangement of the main issues related to the individual employment contract allows the author to introduce all the important points of the characteristics of this legal institute and to cover their features and the relevant case law. As a result, the habilitation thesis represents an analytical work with a clear logical order of the material used, interesting conclusions and significant proposals for changes in the current legislation.

Labour law occupies a special place because it has a number of elements that are mainly related to constitutional, civil, contractual and administrative law. Assoc. Prof. Gevrenova skillfully examines the problems of the individual employment contract through the prism of different legal areas. She invokes theoretical achievements in these fields, using, both historically and in their modern development, a number of basic institutes of civil law. Extremely interesting are her reflections and analysis of the employment contract as a coordination of wills, realized as a result of freedom of bargaining in its entirety in view of the achieved legal consequences. The study of the legal gap is also very good, which in my opinion is important not only for labour law, but also a general theoretical significance for the law in general. In fact, in a sense, there is a creative development and enrichment of some theses of our colleagues dealing with the theory of law.

Of particular interest to me was the consideration of the nature of the negotiation in the individual contract as a public law obligation. The author rightly substantiates that the state and the institutes of public law defend the need for real bargaining and real coordination of opposing wills and interests. This is the place for protection of the public interest - once there is a real coordination of wills arising from the relationship between two legal entities - employee / worker and employer, it is not just protection of their personal interests. Thus, in fact, are protected the interests of society. The author rightly emphasizes the need for public legal regulation of private law relations, because this is about protecting basic public interests. This is extremely important because labour rights of citizens and positions of employers are important for any society, especially now in a period of extraordinary epidemiological situation.

I just mentioned how labour law is strongly related to administrative law. I hold a positive opinion on the views of Assoc. Prof. Gevrenova on the legality and correctness of the acts of the

Executive Agency "General Labour Inspectorate". The author builds on her good knowledge of the control of legality and expediency, and examines in detail their manifestation in relation to internal regulations and orders of employers. The actions and acts that are within the framework of legality and those in the field of expediency are correctly defined, which allows to draw reasonable conclusions for the assessment of legality and control over them. Particular attention should be paid to the analysis of the control over internal labour regulations and internal salary rules because of the employer's ability to "violate"- with their help - the already agreed labour rights. Serious attention should be paid to the proposals made in this regard for changes in their positive state regulation / sanction, the adoption of which would increase the effectiveness of the regulation and the legal protection provided with their help. It is good, in theoretical research and in practice, to keep in mind that the legislator gives some priority to legality over expediency, and that the court has the opportunity to assess whether the acts were issued in times of operational independence, according to the Administrative-Procedure Code. In my opinion, the argumentation expressed by the author has not only theoretical value. It can also serve as practical guidelines in the work of the employees of this state body and thus help it, so as to avoid some court cases.

I am extremely impressed by the good analysis of the practice of the Supreme Administrative Court and a number of administrative courts. It is presented with skill and professional knowledge of both the court decisions and their internal logic. The habilitation work not only precisely describes and discusses motives and operative parts of their rulings, but stepping on them, consistently builds and defends its theses and proposals for changes in the labour legislation. I especially want to point out the case law of the administrative courts mentioned by the author regarding the subject of contracting in full and part-time work (p.175), where the vast practice again proves the great importance of the issues analyzed and the opinions expressed. I also give a positive assessment of the analysis of the practice of the SAC and other administrative courts (p. 281), according to which by virtue of Art. 270, Para. 2 of the Labour Code, "the labour remuneration is paid in advance and in finality every month, unless otherwise agreed". Here, not simply court decisions are indicated, but an analysis of their essence is made and most importantly, the obligation of the employer for regular payment of wages is analyzed, because the terms under Art. 270, Para. 2 of the Labour Code are legal and specific, and are mandatory for him.

I would like to pay special attention to the conclusion of this paper. Here is not just a summary of the results achieved. Visions for enriching and improving the legislation are also

presented, with one important feature: that changes should reflect the development of societal relations and be linked to an increase in the efficiency of regulation and protection. The importance of the expansion of non-state sources and the competition between their norms has been noted and evaluated. The competition between them should lead to the application of the most favourable regime possible for the worker, is the conclusion made by Assoc. Prof. Gevrenova.

Undeniable are the contributions of Assoc. Prof. Gevrenova, which can be deduced from her monograph, and for the purposes of this review I indicate only a small part of them. The three features that the essential content of the employment contract must have are analyzed, as well as the content of the freedom to contract provided by the legislator. Interesting are the opinion and arguments that only the legal gap guarantees real bargaining and the related to it legal consequences. Criticized is the lack of an explicit provision that if the elements of the essential content are not agreed upon, parties will not conclude an employment contract unless there is a provision to replace the missing clause (p. 30-34). An important and true conclusion is made that in the future, the system will be developed and enriched through various types of non-state sources, which for the first time are so detailed and systematically analyzed (p. 40-41). For the first time, a number of theses on the contract subject are formulated, including about the type and boundaries of the place of work, about the basic remuneration system and its amount, about the notice period, which, in my opinion, raise many questions before both theory and practice. Of particular importance is the thesis formulated for the first time that, with the exception of the amount of percentage for each year of length of service, the state regulation in relation to the remaining elements to do with additional remuneration for service and professional experience, has no value and does not play the role of a minimum standard that non-state sources and parties to the employment relationship cannot violate (p. 237-238). Even if it sounds "scandalous" in view of the whole focus of labour law and its deeply social function, its credibility is supported not only by the arguments of the author, but also by the cited practice of the Supreme Court of Cassation and the Supreme Administrative Court. In this respect, serious attention should be paid to the proposals for changes (p. 244, 245) which to limit the possibilities of the employer to worsen the regime and the payment of this additional remuneration.

In the period following her habilitation, Assoc. Prof. Gevrenova has published 14 studies and articles, several collections of annotations and selected practice of the SAC in the field of social insurance and social assistance. The 10 studies and articles submitted for participation in

the competition show the overall attitude of the author towards the development of the theory in the field of labour law. They are dedicated to a variety of topics relevant to theory and practice, such as fixed-term employment contracts, contracts with a probationary clause and the employer's right to terminate the employment relationship on the basis of the clause, labour remuneration, basic and various types of additional remuneration, etc. Each of these topics shows the author's ability to analytically analyze the issues, to substantiate and logically arrange their arguments and to make reasonable and important proposals for changes in labour legislation. The proposals made concerning the structure of remuneration and the repeated negotiation of clauses for a certain period of time increase the effectiveness of the necessary protection, without hampering the right to free enterprise.

Particularly impressive are the articles related to social services and the right to social assistance, in which the theses of the author and the practice of the SAC clearly "foresee" the withdrawal of the state from the social services' sphere for the weakest and poorest Bulgarian citizens and the significant limiting of the constitutional right until receiving of social benefits.

The engaged tone and the depth and argumentation in the works of Assoc. Prof. Gevrenova is proved by the large number of citations that her works have in reputable publications such as the textbooks and books by Mrachkov and Professor Sredkova, in a number of studies and articles by authors analyzing various labour issues.

What has been stated so far in my review leads to the conclusion that the presented research work for an academic degree and the works submitted in this competition should be given a positive evaluation. They undoubtedly show and prove the growth of Assoc. Prof. Gevrenova as a scientist, lecturer and as a practicing lawyer with in-depth knowledge, broad interests and very well-structured, reasoned and practical works.

Based on the above and because Assoc. Prof. Gevrenova fully meets the minimum national requirements under Art. 2b of the Act on the Development of the Academic Staff in the Republic of Bulgaria (scientometric requirements), I categorically express my positive opinion regarding her participation in the competition for the academic position "Professor" in the field of Labour and Social Insurance Law. I believe she is a worthy candidate, and I will support both her scientific and professional growth. I express a positive opinion and will vote in her favour. If I may, I also

suggest to the other members of the jury to express a positive view on the development of Ms. Nina Gevrenova as a professor.

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Sofia

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