REVIEW

by Assoc. Prof. Dr. Raina Koycheva,

appointed by Order № РД-38-200/23.04.21 of the Rector of Sofia University "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, in the professional field 3.6. Law, announced for the needs of the Faculty of Law of Sofia University "St. Kliment Ohridski" in the State Gazette, issue 22 from 16.03.2021.

on the academic, teaching and research activity and the submitted scientific works of the only participant in the announced competition,

Associate Professor Dr. Nina Milkova Gevrenova

I. About the competition.

The competition for the academic position of "Professor" in a professional field 3.6. Law, scientific specialty "Labour and Social Insurance Law", at the Faculty of Law of Sofia University "St. Kliment Ohridski", Department of Labour and Social Insurance Law, was announced in the State Gazette, issue 22 of 16.03.2021. The only candidate, Associate Professor Dr. Nina Gevrenova, meets the minimum national requirements under Art. 2b of the Act on the Development of Academic Staff in the Republic of Bulgaria (ADASRB) (science-metric requirements) and as a result she was allowed to participate in the competition.

II. About the candidate.

Nina Gevrenova graduated with honors with a Law degree from the Faculty of Law at Sofia University in 1992, and the same year won a competition and started working as an "Assistant" in Labour and Social Insurance Law there. She has held the positions of "Junior Assistant" from 2001 to 2003, "Senior Assistant" from 2003 to 2014, and Associate Professor since 2014. Since 2017, she has been the Head of the Department of Labour and Social Insurance Law at the Law Faculty

of Sofia University. Assoc. Prof. Gevrenova has done specializations in Hungary in 1994 and 1995, and in Germany in 2006. In 2007, she successfully defended her dissertation on the topic: "Rules for internal labour order - a non-state source of labour law", and in 2013 acquired the academic position of "Associate Professor" with a habilitation thesis on the topic: "Special protection of workers and employees with reduced working capacity".

Assoc. Prof. Gevrenova has extensive teaching experience as over the years she has taught courses in Labour and Social Insurance Law at Sofia University "St. Kliment Ohridski" and Veliko Tarnovo University "St. St. Cyril and Methodius", and has also been a lecturer in numerous practical seminars. She is the research supervisor of Gergana Kirilova-Andreeva in the preparation of a dissertation on the topic: "Legal regime of social insurance contributions in the state social insurance", which was successfully defended and awarded the educational and scientific degree "Doctor", with Diploma № BT-204-0049, issued on 27.10.2020.

Nina Gevrenova also has extensive practical experience as a conciliator and arbitrator at the NIPA, a lawyer at SBA, a consultant on various projects and director of the Human Resources Department at the BTC.

III. Description of the scientific works of the candidate.

Nina Gevrenova participates in this competition with the monograph "Essential content of the individual employment contract", Sofia, Ciela, 2021, 359 p. and with the following studies and articles: "**Labour remuneration - regulation, interests and realities"** Part One. Legal Review, 2017, № 2, 110-121; "**Additional remuneration for acquired length of service and professional experience - regulation, expectations and realities**". Second part. Legal Review, 2017, № 7-8, 54-64; "**On some issues for the specified terms of individual employment relationships**" Anniversary collection dedicated to the 80th anniversary of Prof. D.Sc. Vasil Mrachkov. S., Labour and Law, 2014, 277-298; "**Social services - concept and basic legal characteristics**" Judicial world, 2014, № 1, p. 132-144; "**Effective legal protection - the new challenge to labour legislation**" Current issues of labour and social insurance law. V. VII. The challenges facing the Bulgarian labour legislation. S., Univ. ed. "St. Cl. Ohridski", 2015, p. 69-80; **"The subjective right of non-compliance with the term of the given notice - essence, procedure for exercise and legal consequences"** DE JURE, 2018, Official edition of the Faculty of Law of the University of Veliko Tarnovo "St. St. Cyril and Methodius", p. 5-12, **"The right to social assistance in the**

context of social support and social service” Current issues of labour and social insurance law. T. H. S., Univ. ed. “St. Cl. Ohridski”, 2018, p. 69-80. **"The trial clause - postulates, problems and reality"** Yearbook of Sofia University, Faculty of Law, Volume 86, 2019, p. 325-356; **"Termination by the employer of the employment contract with trial period"** Judicial world, Sibi, №1/2020, p.58-80 and **"On some issues regarding the internal salary rules as a non-state source of labour law"** Current issues of labour and social insurance law. V. XI. S., Un.Ed. "St. Cl. Ohridski”, 2020, p.68-90.

The book, studies and articles are published after the date of obtaining the educational and scientific degree "Doctor of Law" and the academic position of "Associate Professor"; they discuss issues other than the topic of the defended dissertation and habilitation thesis; they meet legal requirements and are subject to peer-review.

IV. Scientific contributions.

1. Scientific contributions in the monograph “Essential content of the individual employment contract.” The monograph is devoted to an important legal issue in the field of labour law of great theoretical and practical importance, and more precisely, the content of the individual employment contract - the most important and most frequently used reason for the emergence of employment relationships. The monograph is the first independent, in-depth and comprehensive study of the legal characteristics and elements of the essential content of the employment contract in Bulgarian labour theory, which is a reason of itself to consider it as the author’s real contribution.

The monograph has a volume of 359 pages, incl. a bibliography in Cyrillic and Latin, and a subject index. The paper is **well structured**, consisting of a preface, nine chapters and a conclusion. The first chapter is devoted to the general characteristics of the essential content - features, prerequisites and types of essential content. The remaining eight chapters are devoted to the individual elements of the essential content, following the same structure - legal regulation of the element, legal nature of this element, subject of negotiation, limits of contractual freedom, importance of the absence of a contractual clause and importance of negotiation of the respective clause. This leads to a streamlined systematics of the monographic work and at the same time shows the author using a completely new approach to the subject matter, in which, through the

prism of the elements of the essential content of the contract, in detail and consistently, she examines several of the most important institutes in labour law: working hours, remuneration, paid annual leave, notice, etc.

The closing part summarizes the most important conclusions that the author reaches and the related proposals for improvement of legislation.

Overall, the work is characterized by a **high theoretical value**, as is the careful study of the relevant legal literature and good knowledge of publications both in the field of labour law and in the field of civil law. The monograph uses many theoretical works by both Bulgarian and foreign authors, which enrich the author's theses and their arguments. The work also has **great practical applicability** with its deductions and conclusions. The in-depth study of the case law and the citation of a number of court decisions of the SCC and SAC are impressive, which proves the practical significance of the analyzed issues and at the same time the accuracy of the conclusions and the need and justification of proposals made regarding changes in labour legislation. The author demonstrates a very good knowledge of the entire labour legislation, and certitude in its systematic interpretation and analysis.

The monograph has many **specific contributions** and for the purposes of this review, I shall mention only some of them:

a) the author has seen that the essential content raises the contractual freedom to a different level compared to its other manifestations, because its negotiating not only determines the content of labour rights and obligations, but also the conclusion of the employment contract and the emergence of the employment relationship itself;

b) for the first time, in detail is argued the thesis that only the legal gap allows the negotiation to cause the consequences inherent to the essential content. The reasons are indicated as to why the legislator cannot provide this gap, because it is more important for him to explicitly regulate the most important rights of the worker and employee (minimum standards) and at the same time to allow non-state sources to regulate more favourable working conditions (exceeding the minimum standards);

c) for the first time, the thesis is defended that the contradiction with non-state sources must be settled as a separate ground for invalidity of the contractual clause, in which the norms of non-state sources replace it and supplement the content of the employment contract;

d) for the first time in our legal literature, there is talk of the existence of two types of essential content: substantive, the lack of which leads to lack of employment contract, and non-substantive, whose lack leads to the contract's conclusion not with the agreed content, but with the normatively regulated one, most favourable for the employee;

e) as a contribution, it should be noted that the author considers the problem of the possibility for the employer, through changes in the job description, to constantly change the content of the position held by the employee, which poses risks to the applicability of such basic principles of labour law such as the principle of defined position, prohibition of its unilateral change, and the principle of remuneration;

f) the existence of two types of place of work is argued - mobile and permanent, whose specifics follow the specifics of the positions performed, as for the first time the thesis is defended that in the sense of Art. 66, Para. 1, item 1 and Para. 3 of the Labour Code (LC), parties agree on two elements: type of place of work and, possibly, its boundaries;

g) for the first time, it is proved that, by virtue of Art. 66, Para. 1, item 8 of the LC, parties agree on two elements with respect to working time, firstly determining the "type" and secondly, depending on whether they choose full-time or part-time, agree on its "duration" and "distribution". The limits of contractual freedom are analyzed in terms of the choice of the type of working time, as well as in terms of its duration in full-time and part-time work, respectively;

h) for the first time, the thesis is defended that, by virtue of Art. 66, Para. 1, item 7, proposal one of the Labour Code, parties agree on two different elements with regard to the remuneration, namely: the payment system and the amount of the basic remuneration. Emphasis is placed on the fact that, depending on the chosen type of system (the duration-of-work system, the results-of-work system and the mixed system), parties to the employment relation reach an agreement on a different number of elements as part of the content of the employment contract;

i) analyzed in detail is the competition between the state and the different types of non-state sources in the process of determining the source which regulates the amount of the basic remuneration and/or the pricing, the amount of the paid annual leave and the notice period. The hypotheses of contradiction between the clauses of the employment contract and the norms of the state sources, of the collective labour agreements and of the internal salary rules, and the consequences of this contradiction, are considered in detail;

j) for the first time, the thesis is argued that remuneration is not part of the essential content of the employment contract, i.e. that lack of clauses on the amount of basic remuneration does not lead to complete invalidity and impossibility of the employment contract to serve as grounds for legal relationship, as it is replaced by the minimum wage provided by the decree of the Council of Ministers or by the minimum wage provided by another non-state source establishing a higher amount than the minimum wage;

k) the conclusion is substantiated that the additional remuneration for length of service and professional experience does not reimburse the labour actually provided and measurable, but the presumed improvement in the way the worker/employee works over the years, and others.

The monograph makes over **20 proposals for changes in the current labour legislation**, most of which are appropriate and justified. For example:

a) proposals for major changes in the provision of Art. 66, Para. 1 of the Labour Code are made, which will retain the parties' obligation to agree on the elements included in the substantive and non-substantive essential content, but at the same time will exclude the elements with imperative regulation and those that have no relation to the rights and obligations in the future legal relation;

b) proposal for change in the provision in Art. 66, Para. 2 of the Labour Code which aims to precisely regulate the limits of contractual freedom in determining more favourable working conditions for the employee not only in comparison with those established by state sources, but also in comparison with those regulated by non-state sources;

c) proposals for changes in the provision of Art. 74 et seq. of the Labour Code which regulate invalidity. The author proposes to supplement them with the rule that the lack of clauses

within the meaning of Art. 66, Para. 1 of the Labour Code does not lead to absence of employment contract, when there is a provision in a state or non-state source which replaces them and instead fills in its content;

d) proposals for creation of legal definitions of the concepts of position, job description and full-time work, which would contribute to avoiding the existing contradictions and different interpretations in practice;

e) proposals for unification of the legislative approach with regard to the negotiation of the notice period upon termination of all additional contracts and others.

2. Scientific contributions in the studies and articles submitted for review. The presented studies and articles are dedicated to current and important topics in the field of labour law and social assistance, are well structured, and the opinions expressed in them are logically sound.

The study "The trial clause - postulates, problems and reality" makes a good impression, analyzing the trial clause and the special consequences it has on the employment relationship. The analysis of the options to negotiate a clause and a term within the same employment relationship is well structured, logically substantiated and well-argued. The thesis formulated for the first time about the negotiation of three elements within the trial clause, realized under different preconditions and limits, should be shared as correct. I support the author's proposals for changes in Art. 70 and Art. 71 of the Labour Code, the adoption of which would overcome different interpretations and would facilitate practical use of the trial clause.

The study "Termination by the employer of the employment contract with trial" is characterized by in-depth analysis and excellent knowledge of the practice of the Supreme Court of Cassation. Deserving attention is the thesis about the preclusive nature of the trial period and the detailed examination of the valid reasons, in the presence of which it ceases to run.

It is commendable that Assoc. Prof. Gevrenova, in her articles “Social services - concept and basic legal characteristics” and “The right to social assistance in the context of social support and social service” turns her lense onto the problems of social assistance, which are unjustifiably neglected in our legal literature.

A good impression is left by the fact that most of the books, studies and articles of Assoc. Prof. Gevrenova are known, used and quoted by the authors writing in the field of labour law and social assistance.

IV. Critical remarks and recommendations.

It is customary to give some critical remarks and recommendations to the works submitted for review. However, it is extremely difficult for me to formulate such with regard to the monograph "Essential content of the individual employment contract" - neither in terms of the structure of the paper which is extremely streamlined, balanced and seriously considered, nor in terms of argumentation of theses and validity of conclusions which, as I have already mentioned, are logically sound and backed up by quoting an impressive amount of theoretical work and case law, nor in terms of language and style, which is characterized by a wealth of terminology and precision. Obviously, this is a truly well-thought-out work, the result of many years of extensive experience and in-depth consideration. The only critical remark I could make is a small inaccuracy in quoting the Russian authors, in which Assoc. Prof. Gevrenova did not take into account the fact that in Russian sources, they are given in genitive, indicating the affiliation of the work, in which an “a" or "ya" is added to the masculine nouns, and to those in the feminine - "oy" or "ey", but in Bulgarian they should be quoted without this ending: for example Gusova, Lyutova, Mavrina, Snigirevoy should become respectively Gusov, Lyutov, Mavrin, Snigireva.

VI. Conclusion

1. I express my totally positive assessment of the overall teaching and research activities, and for the scientific papers submitted for review, of Assoc. Prof. Dr. Nina Milkova Gevrenova.

2. I believe Assoc. Prof. Dr. Nina Gevrenova has fully met the requirements of Art. 2b of the ADASRB (science-metric requirements) for holding the academic position "Professor", and I propose to the scientific jury to adopt a decision, with which to select her and to propose to the Faculty Council of the Faculty of Law of Sofia University "St. Kliment Ohridski” to elect Assoc. Prof. Dr. Nina Milkova Gevrenova to the academic position "Professor "in the professional field 3.6. Law, scientific specialty "Labour and Social Insurance Law".

Date: 07.06.2021 **Kind regards,** ……