

OPINION

By **Ass. Prof. Natalia Vassileva Kisselova, PhD**

on the competition procedure for the acquisition of the academic position ‘Associate Professor’ in professional field 3.6. Law (Criminal Law) in the Law Faculty of the Sofia University ‘St. Clement of Ochrid’, as announced in SG Issue No: 24/17.03.2023

I. Brief Presentation of the Applicant

1. By virtue of Sofia University Rector’s Order No: RD 38-182/21.04.2023 I have been appointed internal member of the academic jury responsible for the competition procedure for the academic position ‘Associate Professor’ in the Sofia University in the field of higher education ‘Social, Economic, and Legal Sciences’, professional field 3.6 ‘Law’ (Criminal Law) as announced for the purposes of the Department on Criminal-Law Studies (DCLS) in the Law Faculty of the Sofia University. The only applicant in the competition procedure announced in the State Gazette Issue No: 24/17.03.2023 and the SU webpage is ch. ass. Iva Dimitrova Pushkarova, PhD - lecturer in DCLS of the SU LF. All documents and the procedural involvement of the competition have been in compliance with the requirements of the relevant legal and university acts regulating the career development of the academic personnel.

Dr. Iva Pushkarova has been a lecturer in Law Faculty of the Sofia University ‘St. Clement of Ochrid’ since 2007 – first as part-time, and since the autumn of the same year as a permanent lecturer. The candidate graduated as a master in law from the LF and later became full PhD student in the Department on Criminal-Law Studies. She assumed the title ‘Doctor in Criminal Law’ in 2009 after having defended her PhD thesis entitled ‘Forms of Organised Crime under the Criminal Code of the Republic of Bulgaria’ (Diploma No 33214/25.05.2009). She gradually grew in the academic positions of ‘part-time assistant professor’, ‘senior assistant professor’ and ‘chief assistant professor’ (since 2010). All of her academic attestations conducted by the Law Faculty between 2007 and 2022 have resulted in excellent assessments.

Dr. Iva Pushkarova is actively involved in the professional life of the LF and other faculties of the SU ‘St. Clement of Ochrid. Since 2011 she has been conducting the courses on Criminal Law in the Police Faculty of the Ministry of Interior Academy. She has been participating as an expert, analyzer or consultant on criminal-law issues in a huge variety of study projects of public, nongovernmental, and international organisations.

Currently the candidate conducts classes and lecturing courses in the ‘Law’ and ‘International Relations’ specialties and master programs such as the ‘International Security’ Programme, in the LF.

2. Along with her academic engagements, Dr. Iva Pushkarova occupied the position of Head of the Pardons Committee with the President of the Republic (2012-2017).

3. As part of the competition procedure for the acquisition of the academic position ‘Associate Professor’ Dr. Pushkarova has presented a list of all her publications, a list of publications presented for review, an author’s self-assessment reference to scientific achievements in the reviewed publications, a check-list for accomplishment of the minimal requirements as established by Article 2b of the LDAPRB for ‘Social, Economic, and Legal

Sciences', professional field 3.6 'Law' (Criminal Law), as well as references to citations with full bibliographical description of the publications which have been cited and the publications which cite them.

4. I personally know the candidate. We have graduated and started our academic careers at approximately the same time. We have worked together in the Pardons Committee with the President of the Republic.

The colleague Pushkarova is tolerant in her relations with her colleagues and students, diligent and devoted to science and education. She is actively involved in making criminal-law science popular among students. She is distinguished for her creativeness and expressed profoundness and high-scientific quality of her studies which is less and less to be found in the academic performance of younger academic generations.

II. Scientific-Research Activities

1. The Candidate has presented for review:

1.1. A monographic study:

Pardon in the Bulgarian Criminal Law and in the Practice of the Head of the State'. S.: Siela, 2020, 407 pages, ISBN:978-954-28-3245-4.

1.2. Nine scientific studies and articles in the field of Criminal Law:

1. Abduction in Cummulation with Other Crimes: Jurisprudence Problems Of Legal Qualification And Penalty Individualisation. In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Sofia, 2021, Vol 87, p. 116-152, ISSN (print):0081-1866;
2. Serial Crime in Bulgaria: Criminological Characteristic and Judicial Practice. In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Vol 88, p. 104-134, ISSN (print):0081-1866;
3. Recovery and Reflection Period Granted By the International And EU Law To Victims Of Human Trafficking: European Practice. In: Annual of the Ministry of Interior Academy, Sofia, MoIA, 2020, Vol. 31, p.67-10, ISBN: 1312-6415;
4. Maritime Piracy as an International Crime. Differentiation From Similar Crimes Under The National Law. In: Jus Romanum: Mare Nostrum, Sofia, Sofia University “St. Kliment Ohridski”, 2021, p. 456-472, ISSN (online):2367-7007;
5. Pardoning According To the Law of Men and God: A Glance at The Influence Of The Christian Ethics And Doctrine Over Granting Of Supreme Mercy. In: Law and Religion, Collection of Reports, Sofia, Sofia University “Sw. Kliment Of Ochrid”, 2021, p. 347-360, ISBN: 9789540751337;
6. Pardon In Roman Legal Tradition. In: JusRomanum, Sofia, Sofia University “St. Kliment Ohridski”, 2020, Vol. 2, p. 721-741, ISSN (online):2367-7007;
7. Adaptation of Penalties Imposed By A Foreign Court Within Transfer Procedures Of Bulgarian Nationals. In: Scholarly Readings: Predictability of Law. Collection of reports. Sofia University “St. Kliment Ohridski”, 2021, p. 241-254, ISBN: 9789540754789;
8. Criminal Repression Established For Preventive And Regulative Purposes: Issues In Cases Of Criminal Protection Of Administrative Regulations And Duplicating

Administrative And Criminal Offenses. In: 50 Years Administrative Offences and Penalties Act – History, Traditions, Future. Collection of reports. Sofia University “St. Kliment Ohridski”, 2020, p. 228-240, ISBN:9789540749754;

9. Schemes Of Financial And Economic Crime In Europe: Bulgarian Judicial Practice. In: European Prospects For the Development of Criminal Legislation. Collection of reports. Sofia University “St. Kliment Ohridski”, 2014, p. 96-110, ISBN: 9789540737225.

The lecturing and scientific activities of Dr. Iva Pushkarova satisfy the conditions established in Article 24 of the Law on the Development of the Academic Personnel in the Republic of Bulgaria, and its Enforcement Regulation, as well as the requirements set out in Article 105 of the Regulation on the Conditions and Procedures for Acquisition of Academic Titles and Occupation of Academic Positions in the Sofia University ‘St. Clement of Ochrid’ for the acquisition of the academic position ‘Associate Professor’ in the Law Faculty of the Sofia University ‘St. Clement of Ochrid’.

2. Express notification should be granted to the **basic scientific achievements** in the field of Criminal Law which are present in the monographic study ‘Pardons in the Bulgarian Criminal Law and in the Practice of the Head of the State’, submitted for review as the major habilitation thesis.

2.1. The presented monography is the third consecutive work in the Bulgarian legal science which is dedicated to pardon as a legal institute. Aleko Konstantinov had prepared and successfully defended a habilitation thesis entitled ‘The Right to Pardon on the Occasion of the New Criminal Law’ (1896) with the purpose to become Associate Professor in Criminal Law in the Sofia University Law Faculty. The second jurist who has worked on this topic is prof. Boris Velchev, Dr. Sc. – ‘Pardon according to the Bulgarian Criminal Law’. S.: Sofi-R, 2001, 255 pages.

2.2. In summary, the monography presents a complete, systematized, and scientifically substantiated concept of pardon subjected to a uniform principle-based approach, conformable with the enforced Constitutional regulations and consistent with the needs of the practice of the collective and individual head of the state since 1945. It is the first time in the scientific literature that a complete and integral typology of the solved pardon cases has been created. A historical periodization of pardon has been introduced, consistent with its legally established model, but also with the peculiarities of the holder of the powers to pardon, the practice, and the legal environment. Outlined is the evolution of pardon from an expression of the personal morals of the head of the state towards a legal institute, based on objective standards of decision-making and decision-issuing. The factors which impact the normative and practical model of pardon have been scrutinized separately and in their correlation, based on which a system of criteria for assessing their impact has been established and defended

2.3. A concept of exceptionality of pardon has been developed and defended, where pardon is viewed as a legal instrument for alleviation or substitution of the penalty, or for remission of its unserved part. A uniform methodology has been developed to allow recognition of exceptionality in various fact situations and it has been demonstrated as an applicable standard in case-examples from the practice

2.4. A classification of the types of pardon has been substantiated according to a complex criterion which includes the impact over the legal relations of penalty execution and

the past-conviction status of the person with respect to the type of the penalty. Based on this, for each type of pardon a separate system of minimal criteria and approaches has been established, which also constitutes a standard of proof when pardon is being justified. A methodology has been constructed for comparing the effects of the different types of pardon in similar and various fact situations, as well as in cases of factual and legal complications with the view to selecting the most appropriate solution. A system of criteria has been elaborated to sustain differentiation of the two types of partial pardon. Pardon via remission of the unserved part of the penalty is linked to the phenomenon of 'correctional (rehabilitation) regress' which has been substantiated as a typical element of a complex ground justifying this type of pardon.

2.5. Entirely developed in depth is the institute of pardon via substitution of life penalties which has been introduced by 2006 amendments in the law for the first time since 1951 and therefore has been absent from the scientific literature. A thesis is substantiated that this type of pardon is limited to the right of the head of the state to only substitute the penalty with the next more lenient one and in this connection the borderline with the full pardon as remission of the whole unserved part of the gravest penalty has been clarified.

2.6. The work contributes to the conceptual differentiation of pardon from amnesty and enriches the criteria for determination of their scopes of application. The phenomenon of 'collective pardon' which is not normatively established in Bulgaria has been identified as used in practice and defined by its features (1998-1999). Identified and analysed are types of amnesty limited in scope only to some elements of the legal relation of penalty's execution which are only to be found in the practice.

2.7. *De lege ferenda proposals* have been made, among which I would specifically distinguish the following:

- overcoming normative gaps in the sphere of execution of the pardon edicts, especially relevant when the penalty does not contain deprivation of liberty;

- overcoming the inconsistent Constitutional provision to restrict the election rights only of imprisoned persons but not of persons serving a life sentence by proposing that these restrictions be abolished entirely for all convicted persons due to their being incompatible with principles of the democratic rule-of-law state (Article 42, subparagraph 1 of the Constitution);

- abolishment of the life-long penalty of 'deprivation of driving license forever' as provided for by Article 342, subparagraph 4 of the Criminal Code which at present may only be alleviated via partial pardon and which has been reasoned as incompatible with criminal-law principle.

3. **Substantial achievements in other publications** which I have grouped in the following way:

3.1. **Related to the powers of pardon** ('Pardoning according To the Law of Men and God: A Glance at The Influence of the Christian Ethics and Doctrine over Granting of Supreme Mercy'. In: Law and Religion, Collection of Reports, Sofia, Sofia University "St. Kliment Of Ochrid", 2021, p. 347-360, ISBN: 9789540751337; 'Pardon In Roman Legal Tradition'. In: JusRomanum, Sofia, Sofia University "St. Kliment Ohridski", 2020, Vol. 2, p. 721-741, ISSN:2367-7007).

The publications study the historical backgrounds of pardon.

3.2. Focus on criminality and other criminal-law institutes (the study entitled ‘Serial Crime in Bulgaria: Criminological Characteristic and Judicial Practice’. In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Vol 88, p. 104-134, ISSN (print):0081-1866; the article entitled ‘Schemes Of Financial And Economic Crime In Europe: Bulgarian Judicial Practice’. In: European Prospects For the Development of Criminal Legislation. Collection of reports. Sofia University “St. Kliment Ohridski”, 2014, p. 96-110, ISBN: 9789540737225; the study entitled ‘Abduction in Cummulation with Other Crimes: Jurisprudence Problems Of Legal Qualification And Penalty Individualisation’. In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Sofia, 2021, Vol 87, p. 116-152, ISSN (print):0081-1866; the study entitled ‘Recovery and Reflection Period Granted by the International and EU Law to Victims of Human Trafficking: European Practice’. In: Annual of the Ministry of Interior Academy, Sofia, MoIA, 2020, Vol. 31, p.67-10, ISBN: 1312-6415; the article entitled ‘Maritime Piracy as an International Crime. Differentiation From Similar Crimes Under The National Law’. In: Jus Romanum: Mare Nostrum, Sofia, Sofia University “St. Kliment Ohridski”, 2021, p. 456-472, ISSN (online):2367-7007; the article entitled ‘Adaptation of Penalties Imposed By A Foreign Court Within Transfer Procedures Of Bulgarian Nationals’. In: Scholarly Readings: Predictability of Law. Collection of reports. Sofia University “St. Kliment Ohridski”, 2021, p. 241-254, ISBN: 9789540754789; the article entitled ‘Criminal Repression Established For Preventive And Regulative Purposes: Issues In Cases Of Criminal Protection Of Administrative Regulations And Duplicating Administrative And Criminal Offenses’. In: 50 Years Administrative Offences and Penalties Act – History, Traditions, Future. Collection of reports. Sofia University “St. Kliment Ohridski”, 2020, p. 228-240, ISBN:9789540749754)

Not only the articles and studies, presented for review, but also other works of Pushkarova’s (which have been presented as part of her entire scientific production) demonstrate a lasting and profound interest in all areas of the criminal-law theory and practice. Her theses excel in argumentation and original author’s stands.

I will allow myself to focus the attention on a problem on which the author has been working and which far exceeds the narrow legal circles – the concept of ‘inflation’ of the criminal law which has been introduced by the author in a study not presented for review in this procedure. It is used in the context of the concepts of overcriminalisation and overpenalisation. Nowadays we witness populist inclinations of a consecutive number of legislatures and a deceptive conviction that the increase of the gravity of the penalties for criminal offences is the only remedy against crime.

4. With the view of the last amendments in the LDAPRB (SG Issue 30/2018, in force since 04.05.2018) I do establish substantial scientific achievements and scientific originality in the publications of the author Dr. Pushkarova, as well as reliability and authenticity of the scientific data on which the publications are based.

5. Critical Comments and Recommendations

I have no serious critical comments or recommendation but I would, however, suggest that the author furthers the comparative studies of the right to pardon and the right of the head of the state to remit non-collectable state claims.

The publications show analytical depth, excellent legal language, and the author's stands both as a citizen and a jurist.

CONCLUSION

The document, the materials and the habilitations thesis as presented for review by ch. ass. Iva Dimitrova Pushkarova, PhD in this competition procedure for the acquisition of the academic position 'Associate Professor' in Criminal Law, do satisfy all requirements established by the Law on the Development of the Academic Personnel in the Republic of Bulgaria, its Enforcement Regulation and the Regulation on the Conditions and Procedures for Acquisition of Academic Titles and Occupation of Academic Positions in the Sofia University 'St. Clement of Ochrid'. They contain substantial scientific achievements which have been published in the presented monography, in scientific periodicals (also issued online) and academic volumes. All theoretical works also bear practical applicability. Dr. Pushkarova's scientific and lecturing competences are doubtless. Based on this I find it justified to hereby state my **favourable assessment** and most confidently recommend that the Academic jury submit a report-proposal to the Faculty Council of the SU LF that ch. ass. Iva Dimitrova Pushkarova, PhD, be elected at the academic position 'Associate Professor' in the Sofia University 'St. Clement of Ochrid' in the field of higher education 'Social, Economic, and Legal Sciences', professional field 3.6 'Law' ('Criminal Law').

Sofia, 29 May 2023

/Ass.Prof Natalia Vassileva Kisselova, PhD/