# REVIEW

by Assoc. prof. Ventsislav Lyudmilov Petrov, lecturer at the Faculty of Law of the Sofia University "St. Kliment Ohridski", member of the Scientific jury according to Order No. LS-180 of 09.09.2022 of the Rector of Burgas Free University

Regarding: competition for the academic position "associate professor" at Burgas Free University, professional direction 3.6. Law /Civil and Family law/.

Dear Mr. Chairman of the Scientific Jury,

Dear members of the Scientific Jury,

I have been pointed by Order No. LS-180 of 09/09/2022 of the Rector of Burgas Free University as a member of the Scientific Jury in a competition for the academic position of "associate professor" in professional direction 3.6. Law /Civil and Family law/. The competition was announced in SG No. 55 of 15.06.2022. I submit my review on time. One candidate submitted documents for participation - Anna Svobodenova Cholakova, chief assistant at BSU.

**Applicant data**

Anna Svobodenova Cholakova graduated from the Faculty of Law of the Sofia University "St. Kliment Ohridski" in 1994. In 2002, she completed a specialization in "Introduction to English Law and EU Law" at the Institute of Continuing Education of the University of Cambridge, Great Britain. In 2015, she acquired the educational and scientific degree "Ph.D." in professional direction 3.6. Law (Civil and Family Law) at the Faculty of Law and History of the Southwest University "Neofit Rilski", Blagoevgrad. Her dissertation work on the topic "Recognition of a child under Bulgarian family law" was published as a monograph in 2017.

Anna Cholakova has been a full-time lecturer at the Center for Legal Sciences at the Burgas Free University since 2001, successively holding the academic positions of assistant, senior assistant and chief assistant. She leads lecture courses (in some cases – a full lecture course, in other cases – a part of a course) and seminar classes on almost all disciplines dedicated to the various sections of Civil law – on Family and Inheritance Law, on Property

Law, on Civil Law - general part. She also taught other disciplines - Insurance Law (as a part-time assistant in the period 1996-2001) and Nature Protection Law. In addition to teaching as part of her classroom employment, Anna Cholakova has for many years been involved in extracurricular work with students - she takes an active part in the organization and holding of the annual Interuniversity Competition in Civil and Commercial Law at BSU, in which take part teams from almost all law faculties in the country and which in 10 years has become an authoritative academic event. All this testifies to the rich teaching experience of the candidate. Mrs. Cholakova also has practical legal experience - in the period 1996-2000, she worked as a legal consultant in the Regional Administration - Burgas. It is clear from the above that the only candidate in the competition has professional experience fully corresponding to the high academic position to which she aspires.

**Procedure data**

The submitted documents certify that the candidate meets the minimum national requirements under Art. 2 ZRASRB and PPZRASRB. All the requirements established in Art. 53 and 54 ZRASRB, as well as in Art. 56 and 57 of the Regulations for the development of the academic staff at the Burgas Free University were submitted. The documents required by the regulations have been submitted. There is no evidence of violations in the procedure.

**Habilitation work**

The candidate submitted the following monograph as a habilitation thesis - Cholakova, A. Hereditary transmission. Sofia: Nova zvezda, 2022. The work covers 186 pages (175 pages of text, 3 pages of contents and 5 pages of bibliography). The bibliography lists 66 titles (monographs, studies and articles), of which 50 are in Bulgarian and 16 in foreign languages (13 in Russian, 2 in Macedonian and 1 in Spanish). 394 footnotes have been made.

The topic of this book is and will always be relevant, given the specifics of relationships regulated by inheritance law. It has not been the subject of an independent monographic study in the Bulgarian legal literature.

The research is structured in an introduction, four chapters and a conclusion. Each chapter is divided into paragraphs and each paragraph into bullet points. The structure is well chosen and allows for a complete analysis of all aspects of the considered problem - its general characteristics; its requirements; persons to whom the right of inheritance passes; legal consequences.

In the introduction of the work, the topic of the problem is justified, the scientific methods used are indicated, the structure of the research is explained and its tasks are set.

The first chapter of the study is entitled "Historical and Comparative Legal Study of Hereditary Transmission". In its first section, the emergence of hereditary transmission in Roman law is analyzed, as well as the reasons that led to this emergence. A scientific explanation is given why archaic Roman law still does not know this object. The author works not only with the views expressed in the doctrine, but also with the texts of the Digests, which should be defined as the only correct approach when studying a given problem in Roman law. They adduce arguments in favor of the correct, in my opinion, understanding that in the classical period hereditary transmission was enforced by the praetor, but received normative anchorage only in post-classical law. The development of the legal framework of the transmission in Bulgaria was examined in detail, and a conclusion was made about the sustainability and continuity of this framework. The analysis made here and elsewhere in the book of the impact that the 1992 amendments to the Law of succession have on the phenomenon under consideration deserves attention. In the same chapter, there is also a section devoted to the comparative legal analysis of hereditary transmission. An overview of most of the main European civil legislations was made - French, German, Austrian, Russian; the legislation of North Macedonia was also examined. The changes in these legislations concerning the hereditary transmission were also considered, such as, for example, the 2007 amendments to the French Civil Code.

The second chapter of the work is entitled "General characteristics and requirements for hereditary transmission". The first section of this chapter deals with the legal nature of hereditary transmission. It is argued that: until the acceptance of direct inheritance, there are no preconditions for hereditary transmission; that upon acceptance of the direct inheritance, the transmission takes place automatically; that the disinheritance of the remote testator does not constitute a partial acceptance of the transferor's inheritance. In the second section, the factual composition is set forth, upon the manifestation of which the right of inheritance is acquired through hereditary transmission. In the last section of the Third Chapter, a comparison of hereditary transmission with similar legal figures is carried out - the right of substitution, the ordinary (hereditary) substitution, the passing to the next line of succession in succession by law.

The third chapter is devoted to the persons to whom the right of inheritance passes by hereditary transmission. It is clarified what marks a person should meet in order to acquire the quality of transmitter. The author correctly and reasonably assumes that these can be persons included in the circle of heirs of the transmitter or pointed by him in a universal testamentary disposition; who have capacity to inherit; are called upon to inherit the transmitter; have accepted his estate. The view expressed by her must be shared that both legal heirs of the transmitter and his testamentary heirs can inherit by transmission. She also correctly accepts

that it is not possible for the testator of the transmitter to become an heir by transmission of the first testator.

The last, fourth, chapter of the monographic study is logically devoted to the legal consequences of hereditary transmission. The different consequences of exercising each of the two options possessed by the transmitter in relation to the more distant inheritance are analyzied - to accept it or refuse it, as well as the consequences of the fruitless expiration of the deadline given to the transmitter under Art. 51 ZN. The hypothesis in which the transmitter dies before he has exercised the right of inheritance transferred to him by transmission has also been investigated.

In the conclusion of the habilitation thesis, the main theoretical propositions on the basis of which the research was conducted and which are components of the author's proposed concept of hereditary transmission are summarized and briefly stated. A good impression is made by the systematization of the propositions de lege ferenda made in the different parts of the work.

**Other publications submitted by the applicant**

In addition to her habilitation work, the author submitted another monograph for participation in the competition, which was published on the basis of her Ph.D. dissertation she defended in 2015. Regardless of the fact that this monograph has 75 points according to one of the indicators for the current competition, it should not be reviewed here, as it was the subject of review in the procedure for obtaining the educational and scientific degree "Ph.D.".

Anna Cholakova has also presented nine scientific articles. Some of them - Hereditary transmission in Roman private law - genesis and development. Legal Collection, Volume XXVII, 2020, pp. 240-250; Legal characteristic of the right of inheritance. – in: Collection of scientific studies in honor of the 80th anniversary of Prof. D.Sc. Tsanka Tsankova. S.: University Publishing House "St. Kliment Ohridski, 2022, pp. 285-297 - are on the subject of the habilitation work; the conclusions drawn therein are incorporated therein and will not be subject to independent analysis.

The article "The UN Convention on the Rights of the Child and the current regulatory framework of recognition in the Family Code of the Republic of Belarus", presented as a report at the International Scientific Conference of BSU in June 2015 and published in a special collection, should not be reviewed in the present procedure. Although issued after the defense of the Ph.D. dissertation, it is on her topic.

The presented article Cholakova, A. Will the effect of the chosen property-marital regime be suspended if one of the spouses is subsequently placed under guardianship./ In support of the negative answer. – in: Marriage and spousal relations. Family Law Discussant.

Plovdiv: "Paisiy Hilendarski" University Publishing House, 2022, pp. 94-107, should not be reviewed in the present procedure. The cited publication is not included in the National Reference List. However, it can be noted that it advocates a correct opinion, which is well argued.

In the article "Cholakova, A. Bulgarian family law in the last 25 years - development and perspectives. – in: Jubilee Scientific Conference of BSU, 2016, an overview of the development of the industry's regulatory framework over the last quarter of a century was made. Some de facto relationships that do not yet have a normative regulation or have only a particular one are also analyzed: de facto conjugal cohabitation, surrogate motherhood, legal separation. The author advocates the thesis that these expectations give rise to a number of questions of a legal and moral nature, which should be critically and multilaterally discussed and analyzed before proceeding with legislative reforms.

In the article Cholakova, A. The law on the organization of the Black Sea coast - a guarantee for sustainable development of the region. - in: Proceedings of the BSU Scientific Conference, 2018, a general analysis of the said law and the practice of its application was made, based on which the conclusion was reached that it contains many "elastic" concepts that enable the competent administrative authorities to apply the norms at their discretion. The conclusion is supported that the geographical conditions determine the need for enhanced international cooperation between the interested countries in the field of legal regulation of issues concerning the Black Sea.

In the article "On the right of inheritance in case of substitution due to unworthiness", published in Proceedings of the International Scientific Conference in memory of Prof. Dr. Christian Takov. S.: UI "St. Kliment Ohridski", 2019, the question of when the right of inheritance arises in favor of the substitute in the hypothesis of substitution due to unworthiness is considered. The conclusion was reached that the right of inheritance of the unworthy expires at the moment of discovery of the inheritance, accordingly it arises for the substitute at the same moment.

In the article "Acquisition of hereditas iacens by the State and Municipalities under Art. 11 of the Civil Code", published in Juridical Collection, Volume XXVI. Burgas: BSU, 2019, pp. 433-438, the problems caused by the provision of Art. 11 of the Civil Code, distributing ex lege the vacant inheritance between the state and the municipality, are analyzed. A number of weaknesses and gaps in the current regulation have been analyzed. It was concluded that one of the possible solutions would be to designate the state as the sole legal successor of a vacant inheritance. Arguments have been made that such an authorization, although reverting to the pre-1999 regime, would more fully satisfy the interests of the estate's creditors, as well as serve more effectively the needs of private international law.

In the article Cholakova, A. Surrogacy - some ethical and ethical-legal issues. – Studia iuris, 2020, No. 2, the moral and legal dimensions of the discussion issue on the regulatory regulation of surrogacy are examined. A number of arguments of an ethical and legal nature are indicated, which are recommended to be taken into account in the discussion regarding the legal regulation of public relations related to surrogate motherhood. The question was raised about the need to examine whether in the case of surrogate motherhood it can be unequivocally assumed that the "best interest" of the child is taken into account. The conclusion was reached about the need to comply with the provisions of chapter two of the Law on normative acts, according to which the impact of the normative acts should be predicted, thereby limiting rapid and thoughtless changes in the normative framework.

**Scientific contributions**

The habilitation work represents the first attempt at a comprehensive study of an important institution of inheritance law, such as inheritance transmission, which in itself can be qualified as a contribution. Moreover, as mentioned, due to the skillfully chosen structure, all aspects of the considered phenomenon are considered in the work.

The study of the reasons that led to the emergence of hereditary transmission in Roman law and the social conditions that determined the unprepared change over time is of a contributing nature. The thesis that archaic Roman law does not know hereditary transmission should be supported, as well as that the appearance of this phenomenon should be considered in a correlative relationship with the moment when the inheritance is no longer automatically acquired upon the death of the testator.

As a contribution, the good and critical analysis of the rich Russian literature on the matter - both old and very current - should be excellent. A qualitative scientific study in the field of law must also be based on a good knowledge of the main European legislations and the doctrine in the respective country, which can be followed in the course of its development up to the present day. Below, in the critical notes, attention is drawn to the fact that in the peer-reviewed work this has not been done in relation to other major European legislation and theory.

The distinction between hereditary transmission (which, according to the author, represents a passing of the right of inheritance and which occurs when the direct inheritance is accepted) and inheritance by hereditary transmission (which will occur only after the transmitter accepts the more distant inheritance) is also of a contributing nature.

It can be assumed that the stated and argued thesis that the right to a reserved part and the right under Art. 12, para. 1 ZN cannot be inherited by transmission due to their nature of subjective rights intuitu personae. Regardless of the disagreement of the author of this review

with these views, their correct justification should be qualified as a contribution to Bulgarian civil studies.

The proposition that a new paragraph should be added to the provision of Art. 57 of the Civil Code, which clarifies that when a testator has died before exercising his right to accept or reject the will, his heirs can acquire this right by transmission if they accept the legacy of the testator. This proposal de lege ferenda is a consequence of the author's correct thesis that hereditary transmission can be applied to inheritance by will as well as to acquisition by testament.

The proposal de lege ferenda to create a new paragraph in Art. 51 of the Civil Code, which provides for the provision of a new special term for the transmitters to accept the inheritance of the first deceased, after they have been duly notified by the competent court, is also of a contributing nature.

As a scientific contribution, the reasoned opinion that a special rule should be created for transmitters, according to which the deadline for acceptance according to the inventory of the inheritance by transmission should start to run after the discovery of the inheritance of the transmitter.

The author's thesis also deserves support, that in cases of unknown absence of a transferor, the ZLS should provide for the possibility of temporary entry into possession of his heirs - the transmitters - in the properties of the first testator - by analogy with the rule for temporary entry into the inheritance of the absentee according to Art. 10 ZLS.

**Critical notes and recommendations**

A number of criticisms and recommendations can be made to the work, set out below. They are made solely for the purpose of assisting the candidate in future research work and do not detract from the scientific conclusions reached in the research.

In addition to Bulgarian literature, Dr. Cholakova also used foreign literature, but only in Russian, Macedonian and 1 title in Spanish. As is well known, Bulgarian civil law, including inheritance law, is mainly adapted from French and Italian legislation. Quite a few things are also borrowed from German law (including, but not limited to, the division of shares according to the pandect system). From this point of view, it is appropriate in a scientific analysis to review the opinions in these countries. Indeed, the candidate has studied and analyzed the relevant legislation in detail, but an overview of the doctrinal positions in the countries mentioned would undoubtedly be useful.

As mentioned above, the author has analyzed in detail the arrangement of hereditary transmission in most of the main European legislations. However, the study of the Italian legislation can also be recommended, because, as is well known, the Bulgarian inheritance

law was adapted to a considerable extent from the Italian one - the Inheritance Law of 1890 was strongly influenced by the Codice civile of 1865, and the current Law for the inheritance - from the Codice civile of 1942 (a fact deliberately kept silent in the period from the adoption of the law until 1989, but clearly visible when comparing the texts).

The author has reviewed and correctly cited almost all the relevant literature in Bulgarian. In her habilitation work, however, she missed one article that is related to her topic - Petrov, Vasil. The right of inheritance - several aspects of discussion. – Contemporary Law, 2014, No. 3 (which the author cited in one of the articles presented in the competition). The arguments presented there could be used in the discussion, in which Dr. Cholakova also enters, on the question of whether hereditary transmission can be applied to inheritance by will.

The conclusion made on p. 37 cannot be shared that the rule of par. 541 of the Austrian Civil Code, by virtue of which the descendants of an unworthy heir are called in his place and in cases where the unworthy has survived the testator, is an example of hereditary transmission, such as our law does not allow. On the contrary, in the cited hypothesis, there is a right of substitution, which is also regulated by Art. 10 ZN.

The conclusion of p. 38 that the Austrian Civil Code regulates the right of inheritance as a right in rem cannot be supported either. It is probably a technical error and should have written "property" law.

When delineating the normative boundaries of the institute of hereditary transmission on p. 76, the provision of Art. 10a of the Civil Code, in which there are also prerequisites for the application of Art. 57 ZN.

The view, adopted on p. 96 as unalternative, that when a person is called to inherit both by law and by inheritance, the right to inherit can be exercised only once - on one of the two grounds - is not at all undisputed. There are quite a few arguments drawn from systematic and comparative law interpretation set forth in the doctrine in favor of the opposite view. An analysis of the possibility of hereditary transmission in sharing the other opinion would enrich the work.

**Conclusion**

Based on all of the above, I vote positively for the awarding of the academic position of "associate professor" in the field of higher education 3. Social, economic and legal sciences, professional direction 3.6. "Law" (Civil and Family law)" of Chief assistant Anna Svobodenova Cholakova, Ph.D.

19/10/2022 Reviewer:……

(Assoc. prof. Ventsislav L. Petrov, Ph.D.)

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