

OPINION

**Offered by Prof. Silvy Vasilev Chernev, PhD,
Lecturer in Civil Procedure at Burgas Free University and
the Paisiy Hilendarski University of Plovdiv**

**RE: The materials submitted for participation in a competition for
the academic position of "Associate Professor" at Burgas Free
University in the professional field: 3.6. Law (Civil and Family
Law).**

**The competition for the position of "Associate Professor" was published in the State
Gazette, SG 55 of July 15, 2022. Chief Assistant Anna Svobodenova Cholakova, PhD,
university lecturer of Civil and Family Law at the Center for Legal Sciences, Burgas Free
University was the only applicant.**

DEAR COLLEAGUES, MEMBERS OF THE SCIENTIFIC JURY,

**I am delighted to offer this opinion on the application of Chief Assistant Anna
Svobodenova Cholakova, PhD, for participation in a competition for the academic
position of "Associate Professor" in the professional field: 3.6. Law (Civil and Family
Law) published in SG 55/15.07.2022.**

1. Information on the Competition

I am a member of the scientific jury in the competition in accordance with Order No. LS-180/09.09.2022 issued by the BSU Rector.

2. Brief Information on the Participants in the Competition

Chief Assistant Anna Svobodenova Cholakova, PhD, university lecturer at the Center for

Legal Sciences, Burgas Free University has applied for participation in the announced competition.

3. Meeting the Requirements for Occupying the Academic Position

3.1. The set of materials submitted by Ch. Ass. Anna Svobodenova Cholakova, PhD, meets the requirements of the applicable versions of the Development of the Academic Staff in the Republic of Bulgaria Act, the Regulations for the Implementation of the Development of the Academic Staff in the Republic of Bulgaria Act, and the Regulations on the Development of the Academic Staff of Burgas Free University (BSU).

3.2. The applicant holds a doctoral degree in law (awarded in 2015); she has successively occupied the positions of assistant, senior assistant and chief assistant in civil and family law for 21 years (since 2001, with the last position held since 2012). In addition to seminars, she has also given lectures on the relevant academic disciplines.

The applicant has submitted *Hereditary Transmission*, a published monograph, the *Nova Zvezda* publishing house, Sofia, 2022; and 9 other articles and reports. In the time after her doctoral dissertation defense she has also published the dissertation-based monograph *Legitimation of a Child under Bulgarian Law*, Burgas, 2017.

As regards the quality requirements, the answer will be provided after an analysis of the scientific publications submitted for evaluation.

3.3. Evaluation of applicant's educational and teaching experience

As stated herein, the applicant has a long experience as a university lecturer (21 years). Her hours of university teaching by far exceed the requirements of the applicable regulations.

My personal impressions are that her teaching method is not limited to academic teaching only, but is also focused on helping students acquire ideas and skills of the practical aspects of the relevant subject.

Ch. Ass. Cholakova, PhD, is actively involved in the guidance and instruction of many a students for participation in Student's Scientific Creativity competitions (held annually at BSU). On a number of occasions her work with students has resulted in awards given to students.

For 12 years, she has actively participated in the work of a study group on civil and family law, including in the preparation and holding of nine consecutive University-wide competitions on solving civil law cases. Her work with the study group continued online even during the nearly two-year period of distance learning.

In my opinion her teaching experience is completely adequate to occupy the position.

4. Brief Description of the Scientific Works/Publications Submitted

In the competition documentation the applicant has included a list of publications from the period after her doctoral dissertation defense in 2015, a total of 11.

The titles include the monograph mentioned herein submitted for habilitation, 9 articles and reports, as well as a monograph based on the dissertation thesis defended.

4.1. In consideration of the form of this Opinion and the competition characteristics, I will focus primarily on the key features of the monograph submitted, and only a few of the other works.

4.1.1. The monograph submitted is entitled *Hereditary Transmission*, the *Nova Zvezda* publishing house, Sofia, 2022

The work contains 186 pages and consists of an introduction, four chapters and a conclusion.

4.1.2. The introduction (pp. 7-10) contains a brief description of the origin of the institution of hereditary transmission as early as the age of Roman law; follow-up of the regulations under Bulgarian law, as well as a conclusion on the lack of research dedicated specifically to this institution. It also contains a brief description of the exposition.

4.1.3. Chapter One includes 3 paragraphs and is entitled «Historical and Comparative Legal Study of Hereditary Transmission» (pp. 11 – 75).

The first paragraph is dedicated to the institution of hereditary transmission in Roman law in its development. Included is an overview of the legal framework of the institution in certain modern legislations (France, Austria, Germany, North Macedonia and Russia - second paragraph). In fact, the relevant framework of the individual countries is also examined in its historical development, and with regard to Russia, attention is paid to the different framework that existed in some of the countries where Russian rule was established (the Baltic countries, etc.).

The last paragraph is dedicated to the development of the legal framework of the institution in consideration in Bulgaria (Customary law in the old Bulgarian state, the application of Justinian law and the Eclogue in the course of the history of the Bulgarian state prior to falling under Ottoman rule, and in more detail - the legal framework after 1890, contained in the two Succession Acts in force during that period of time.

The exposition of the entire chapter contains many details and a critical analysis both in historical and comparative legal terms.

4.1.4. Chapter Two is entitled: «General Characteristic and Prerequisites of Hereditary

Transmission» (pp. 76 – 121 p.).

The first paragraph is dedicated to outlining the content of the concept and the legal essence of hereditary transmission (pp. 76 – 94). After specifying the legal text of the current Inheritance Act (the "Inheritance Act"), the author reviews the existing literature (mostly expressed in fact in the mention of the institution in the development of the overall subject matter of inheritance law). For the purpose of the analysis, systematized concepts are introduced (initial legator, intermediate legator/heir and heir/s by transmission). For the same purpose, a distinction is made between «acquiring the right of inheritance» and «acquiring an inheritance» (p. 81).

Next, the issue of whose right of inheritance is exercised by the heir by transmission - the right of inheritance of his/her legator or his/her own subjective right, transferred to him/her and acquired in the order of general succession.

On page 91, the author offers her own definition of hereditary transmission.

Then follows an exposition treating transmission as a matter of fact and a distinction between «hereditary transmission» and «inheritance by transmission». Analyzed is the mechanism of hereditary transmission.

The prerequisites for hereditary transmission are analyzed in the second paragraph (pp. 94 – 113). Considered are hypotheses of the sequence discovery of two inheritances (including inheritance by law, by will and even by devise); the hypotheses of simultaneous death, of a no call, no show absence, of unexercised right of inheritance of the intermediate legator (and also of concludent acceptance of inheritance). The acceptance of the transferor's inheritance is considered as a prerequisite for hereditary transmission (p. 112).

In the exposition of the third paragraph, a distinction is made from similar legal instruments (pp. 114 - 121 - the right of substitution, hereditary substitution and the appeal over inheritance to collateral heirs).

4.1.5. Chapter Three is devoted to entities to which hereditary transmission applies (pp. 122 – 152).

First of all, the general case relating to the heirs of the transferor is considered (p. 122 et seq.)

The following paragraphs are devoted to the opportunities for transmission in legators and in regard to transferor's adoptees. Ineligibility for inheritance is considered as an impeding fact (p. 135 et seq.). The exposition considers the issue of whether it is necessary for the transferor to be alive (i.e. to have been born) at the time of the discovery of the first inheritance (p. 138 et seq. - in relation to the applicability of the fiction under Article 2, Para. 1, lit. «a» of

the Inheritance Act), and also in relation to the issues arising out of Art. 9A, the Inheritance Act. Consideration is given to the option of the state being a transferor.

The chapter ends with proposals to amend the current legal framework on issuing legal heir certificates (par. 8).

4.1.6. The last Chapter Four deals with the legal consequences of hereditary transmission (pp. 154 - 177).

The first part is devoted to general problems and the issue of the deadline set for the transferor on the basis of Art. 51, Para. 1, the Inheritance Act, as well as the effect of this deadline in regard to the transferor. Subsequently, the consequences of refusal and acceptance of inheritance by transmission are considered in detail (pp. 165 et seq.).

The last paragraph deals with the consequences in the event of the death of the transferor before he has exercised the right of the inherited right of succession (p. 177).

4.1.7. The work ends with a short conclusion where the results of the research are presented and *de lege ferenda* proposals are made.

5. Positive Features of the Work

5.1. First of all, it should be emphasized that the selected topic is dedicated to the institution of inheritance law, which is of a significant practical importance. The work under consideration is a typical comprehensive monographic study examining in detail the numerous aspects of this legal institution, considering that this legal institution is lacking such specific developments.

It should be noted here that regardless of the substantiality of the subject matter of inheritance law, many aspects of it still represent a challenge in the process of interpretation and application of the relevant regulations. At the same time, it seems that even among authors dealing with inheritance law issues, a conservative attitude can be observed to a certain extent (with the exception of some very recent developments). In the literature, questions are rarely raised about rethinking the regulations (even with certain provisions dating back to ancient times) and the relevant modernization thereof. This state of affairs makes a work like this one matter. In addition, it should be emphasized that in the course of the research, many issues outside the transmission are also approached, which also lack particular developments.

5.2. The exposition reveals the author's in-depth and detailed knowledge of the subject matter of inheritance law and civil law in general. She easily handles the problems of numerous institutions relating to various parts of the subject matter.

5.3. The extensive historical and in-depth comparative legal analysis has proved to be

both appropriate and useful.

5.4. The research approach includes a large number of literary sources: 49 titles in the Bulgarian language and 16 in a foreign language, among which Russian works prevail; there is also reference to Macedonian and Spanish sources. While reading the exposition, a categorical conclusion is made that no citations are formal, and the opinions and ideas contained therein have been rationalized by the author.

6. The work makes a worthy contribution to the issue of scientific and scientific-practical value

6.1. The general characteristic of the work offered hereinabove (cl. 5.1.), namely: the fact that consideration is given to a legal institution with wide practical application, and lacking specific studies, adds value to the work as a whole.

Extensive historical and comparative legal analyses provide a solid foundation for both the analysis contained in this work and for future research on the topic.

6.2. A specific contribution to our literature is the study of the origin and development of the institution of hereditary transmission under Roman law, followed by an analysis of a number of specific cases from this era.

6.3. A significant contribution is the formulation of a definition of transmission and the study of the prerequisites for the application thereof. The same applies to the introduction of additional terminology and the refinement of the existing one.

6.4. Part of the work is devoted to the category of persons to whom hereditary transmission applies - not only heirs by law, but also heirs by will and even by devise. Simultaneously, the explicit exclusion of the state and local governments is justified.

6.5. Contributions (whether or not they are absolutely admissible) related to the amount of rights transferred in the event of transmission (for example, the right to restore a reserved part), and also in the hypotheses of Art. 12, Para. 1 and 2, the Inheritance Act.

6.6. The *de lege ferenda* proposals are of scientific and practical value, including:

6.6.1. If the concept of applicability of transmission is accepted also with regard to inheritance by will (devise), it is a reasonable suggestion that a new paragraph should be added to the provision of Art. 5, the Inheritance Act, to clarify that when a legator has died before exercising his/her right to accept or reject the devise, his/her heirs can acquire this right by transmission should they accept the legator's inheritance.

In this connection, also acceptable is the suggestion that the irrefutable presumption established in Article 10a, the Inheritance Act, in the "Inheritance by law" section, should be included in

the general rules of the Inheritance Act for the avoidance of doubt with regard to its applicability also in the case of inheritance by will (Naturally, if adopted, such legislative authorization would necessitate that quite a few additional details are settled).

6.6.2. The idea to add a new paragraph in Art. 51 of the Inheritance Act, which provides for the provision of a new specific deadline for the transferors to accept the inheritance of the first deceased after having been duly notified thereof by the competent court. The same applies to the proposal to supplement the rule regarding the starting moment of the deadline for acceptance of the inheritance by inventory (Article 61, the Inheritance Act), introducing a new rule for transferors, namely: the period for acceptance by inventory for them shall begin to count after discovery of the transferor's inheritance.

6.6.3. There is definitely logic in the proposal under the hypothesis of Art. 12, Para. 1, the Inheritance Act, that the option of applying the transmission should to expressly be excluded.

6.6.4. The suggestions of a more general nature are also functional - for example, the idea of introducing a centralized system for settling inheritance relations; the proposal to expand the content of a legal heir certificate is also acceptable. Actually, it is high time to consider a certain type of protective proceedings in each discovery of inheritance in order to deal with the issues of intestate succession and the existence of testamentary dispositions. Under the current regulations, it is often not always clear for legal heirs whether there is competition with testamentary heirs.

7. Weaknesses of the Work Identified

The lack of use of a wide range of literary sources in Western languages could be defined as a weakness.

Perhaps some of the more extreme notions – for example, on applicability of transmission to a legatee/heir by devise – are in a need for further argumentation.

The weaknesses mentioned do not reduce the value and quality of the proposed work.

8. The other works proposed for discussion in the current competition are also of high value. Unfortunately, the format of this opinion does not allow for a specific discussion.

9. CONCLUSION

The scientific works of Anna Svobodenova Cholakova submitted for the competition fully meet the requirements of the law and other applicable regulations. The monograph is

thorough and comprehensive, historical and comparative-legal methods are widely used, the scientific approach is adequate.

The applicant reveals intelligent in-depth knowledge of family and inheritance law and analytical skills. No less significant is her teaching experience, which should also be highly appraised.

The papers (including the monograph) have considerable practical value.

In consideration of the above, I HEREBY SUGGEST that the ESTEEMED Scientific Jury propose to the competent authority to nominate Ch. Ass. Anna Svobodenova Cholakova, PhD, for the academic position of "associate professor" in the professional field: 3.6. Law, (Civil and Family Law) at Burgas Free University.

18.10.2022

Made by:

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