

R E V I E W

By Associate Professor Dr Krasimir Stoyanov Koev – Professor of Civil Law (general part) and Commercial Law at the Burgas Free University

REGARDING: Materials, presented in the competition for the academic position of “Associate Professor” at the Burgas Free University under Professional classification 3.6 Law, academic specialty Civil and family law

The “Associate Profession” Competition was announced in the State Gazette, Issue 55 dated 15th July 2022. The only candidate who entered the competition is Chief Assistant Professor Dr Anna Svobodenova Cholakova – Professor of Civil and Family Law at the Law Sciences Centre at the Burgas Free University.

DEAR MEMBERS OF THE ACADEMIC JURY,

I present the following review regarding the candidacy of Chief Assistant Professor Dr Anna Svobodenova Cholakova in the competition for the academic position of “Associate Professor” at the Burgas Free University under Professional classification 3.6 Law, academic specialty Civil and family law, announced in the State Gazette, Issue 55 dated 15th July 2022.

1. Competition details

I was included in the academic jury in the competition according to Order No. LS-180/09.09.2022 of the Rector of the BFU.

2. Brief information about the participants of the competition:

Chief Assistant Professor Dr Anna Svobodenova Cholakova, professor at the LSC at BFU, has submitted the paperwork required to register in the announced competition.

3. Meeting the requirements necessary to fill an academic position.

3.1. The materials presented by Chief Assistant Professor Dr Anna Svobodenova Cholakova meet the requirements of the applicable versions of the Academic Faculty Development in Republic of Bulgaria Act, the Regulations for applying the AFDRBA, and the Regulations for the academic faculty development in BFU. She has devoted herself entirely to teaching and research activities since 2001 until present time.

3.2. The candidate is a doctor of law since 2015, having consecutively held the positions of assistant professor, senior assistant professor and chief assistant professor in civil and family law for 21 years (counted since 2001, whereas she has held the latest position since 2012). Apart from the practice sessions, she has given lectures in civil law (general part), family and inheritance law.

Before that, the candidate graduated with a master's degree from the Law Faculty of the Sofia University "Sv. Kl. Ohridski", between July 1995 and June 1997 she was a court candidate at the Regional Court – Burgas. During the period between October 1995 and June 1997, she was a freelance assistant professor in insurance law at the Law Science Centre at the Burgas Free University, between 1996 and 2000 she worked as a legal advisor in the District Administration of Burgas District.

For her participation in the competition, she has presented a published monographic work "Hereditary transmission", "Nova Zvezda" Publishing House, Sofia 2022 and a total of 9 articles and papers. In the period after defending her doctor's dissertation, she has also published a monography, based on her dissertation work "Child Recognition in Bulgarian Law", Burgas, 2017. The presented additional materials and the monography on the basis of the defended doctor's dissertation have significant academic contributions, but due to the limited volume of the current review, they cannot be looked into more thoroughly.

3.3. Evaluation of the academic-teaching activity of the candidate

It is evident from her biographical details that the candidate has had a longstanding experience as a university professor (21 years), and the lectures held by her as university teaching experience exceed repeatedly the requirements of the applicable normative regulations.

As her colleague of many years at the BFU I have personal and direct impressions from her teaching activity, which is not limited to just academic teaching but is also aimed at the students acquiring practical knowledge and skills in their respective areas of interest.

Chief Assistant Professor Dr Anna Svobodenova Cholakova is actively participating in the preparation and guidance of multiple students for their participation in competitions in Student Academic Creativity (held annually at the BFU), whereas her work and leadership skills with the students has led to them earning awards at the final ranking on multiple occasions.

Since 2011 the candidate actively participates in a civil and commercial law workshop, including organising and holding nine consecutive Interuniversity National Competitions in resolving a civil law case study. Her work in the workshop continued online in the MTeams platform during the two-year period of distance learning. She has also regularly participated in the “Student Practices” Project of the Ministry of Science and Education at BFU as an academic advisor.

Having considered the above stated I think her teaching experience is more than adequate for the competition position of “associate professor”.

4. Short review of the presented academic works/publications

For her participation in the competition, the candidate has presented a list of publications for the since defending her doctor’s dissertation in 2015 – a total of 11.

The above-mentioned monographic work, presented for attaining the academic rank, is among the titles, together with 9 articles and papers (in total), as well as a monography, based on her defended dissertation work.

4.1. Having in mind the form of this review and the particularities of the competition, I will focus above all on reviewing the monographic work, whereas I have given my general evaluation of the rest in the above text.

4.1.1. The presented monographic work is entitled “Hereditary transmission”, “Nova Zvezda” Publishing House, 2022.

The work consists of 186 pages, an introduction, four chapters and conclusion, featuring 394 citations in footnotes.

4.1.2. The introduction (pages 7-10) includes a short description of the origin of the institute of hereditary transmission since Roman Law and briefly follows its regulation in Bulgarian legislation, whereas it reasonably finds a lack of research, dedicated to it specifically as an institute. It also contains a short description of the thesis.

4.1.3. Chapter one consists of 3 paragraphs and is named “Historical and comparative-legal research of the hereditary transmission” (pages 11 to 75).

The first paragraph is dedicated to the institute of hereditary transmission in the Roman Law and its development through the age of the XII tables (archaic Roman Law), the Republic, the Principate and the late Imperial Ancient Roman Law. After that, there is a detailed review of the legal regulations of the institute in some of the modern legislations (France, Austria, Germany), as well as of Republic North Macedonia and the Russian Federation – in the second paragraph, which is the essential academic contribution. The regulation of the institute in the different countries is also looked at in its historical development and with regards to the Russian Federation, a different regulation is looked at, one which existed in some of the countries, which had Russian rule (the Baltic countries, etc.), as well as the different principles in comparison to the Western European countries, which this institute was developed from in Russia itself.

The last paragraph is dedicated to the development of the legal regulation of the institute in question in Bulgaria, both with regards to the usual legislation in the old Bulgarian state and with regards to applying the Code of Justinian and the Ecloga in the First and Second Bulgarian States, and, in a lot more detail, the regulation after 1890 until present time, which is contained in both Inheritance Acts, active for that period.

The statement of the whole chapter contains a multitude of details and serious analysis, not only in historical plan, but in a comparative plan, as well, which is one of the undisputed advantages of the monography.

4.1.4. Chapter two with a subtitle of “General characteristics and premises of the hereditary transmission” (pages 76 to 121).

The first paragraph looks into the content of the concept and the legal essence of hereditary transmission (pages 76-94). After indicating the legal text of the active Inheritance Act (IA), the candidate gives a detailed review of the existing one. Considering the legal analysis of the institute, she introduces systematic terms (original heir, intermediary legator/heir and heir(s) by transmission) for better clarity and practicality of the statement. She makes the important distinction between the concepts of “acquiring the right to inherit” and “acquiring an inheritance” (page 81).

She also looks into the question of whose right to inherit is actually exercised by the heir by transmission – the right to inherit their legator or their own subjective inheritance right, which has passed to them and is acquired in according to the regulations of the general right receiving.

On page 91, the candidate offers her academic definition of hereditary transmission as a legal concept.

She thoroughly looks at the question of transmission as a factual structure, the legal consequences of implementing it, and also makes a distinction between the definitions of “hereditary transmission” and “inheriting by transmission”. She follows the mechanism of legal actions of the hereditary transmission.

The second paragraph looks at the legal premises for hereditary transmission (page 94-113). A number of hypotheses are looked into, which deal with the continuity of the discovery of two inheritances (including when inheriting by law, by will and even by bequest), the hypotheses about simultaneous death, absence without notice, unexercised right to inherit of the intermediary heir (as well as the inheritance acceptance by conclusion). As a premise, she looks at the acceptance of the inheritance by the transmitter as a premise for hereditary transmission (page 112).

The statement of the third paragraph makes a distinction of similar legal figures (pages 114 – 121): with substitutions; with hereditary substitution and with the summons to inherit for heirs from a subsequent order.

4.1.5. Third Chapter is dedicated to the subjects, towards which hereditary transmission is applicable (pages 122-152).

First, she looks at the general case regarding the heirs of the transmitter (page 122 and subsequent) and in the following paragraphs, she looks at and analyses the possibilities for covenanters’ transmission and with regards to children adopted by the transmitter. The unworthiness to inherit is also looked at and analysed as an obstacle for the transmission (page 135 and subsequent). She also looks at the question of whether it is necessary for the transmitter to be alive (i.e., to have been born) as of the moment of discovering the first inheritance (page 138 and subsequent – in relation to the applicability of the fiction according to Article 9A IA), as well as the problems arising in connection to Article 9A IA. She looks into the possibility of the government to be a transmitter.

The chapter finishes with suggestions for changes in the active legislation regarding the issuance of Inheritance Certificate (§. 8).

4.1.6. The last chapter – Fourth, looks into the problems of the legal consequences, which affect the hereditary transmission (pages 154 – 177).

The first part is dedicated to the general circumstances and the problems with the deadline, set for the transmitter on the grounds of Article 52, Paragraph 1 IA, as well as the effect this deadline has with regards to the transmitter. Further on, she looks in more details at the consequences from the refusal or acceptance of the inheritance by transmission (page 165 and subsequent).

The last paragraph looks into the consequences of the hypothesis regarding the death of the transmitter before they have exercised their inherited right to inherit (page 177).

4.1.7. The work finished with a brief conclusion, which shows the academic research results and a few suggestions de lege ferenda are made.

5. Positive characteristics of the work

5.1. First of all, I must point out that the reviewed work is a typical, complete monographic research, which looks at, in detail, the multiple aspects of this legal institute, regarding which there is a lack of research until now;

5.2. For the first time this research clarifies in detail the elements of the factual structure of the hereditary transmission and it defines systematically its definition, making the distinction between the terms of “hereditary transmission” and “inheriting by transmission”;

5.3. Also of interest is the legal analysis of subjects, which the right to inherit passes through via transmission when it is unexercised. We should accredit the arguments, given by the author which support the thesis that the incompletely adopted person can be a transmitter.

5.4. Contributing moments de lege ferenda are the suggestions for a new paragraph to the regulation of Article 57 IA, according to which the heirs of a covenantor, who has died before exercising their right to accept or refuse the covenant, may acquired this right by transmission, if they accept the inheritance, as well as a change in the irrefutable premise of Article 10a IA so that it encompasses the heirs according to will;

5.6. A significant contribution is the analysis of the circle of people, to which the hereditary transmission is applied – not only heirs by law, but those by will or covenant, with the exception of the state and municipalities.

6. Weaknesses found in the work:

- lack of using a larger number of literature sources in Western languages – the used literature is mostly in Bulgarian and Russian;
- disproportion of the chapters, whereas the first chapter takes up around half of the work volume;
- some of the conclusions require a more detailed and in-depth legal justification.

Of course, these weaknesses do not reduce the usefulness and quality of the presented work.

7. CONCLUSION

The academic works of Anna Svobodenova Cholakova, presented for the competition meet all the requirements of the law and other applicable normative regulations. The monographic work is in-depth and wide-ranging, the historical and comparative-legal methods are used extensively, the academic materials are enough.

The candidate has demonstrated serious in-depth knowledge in the area of family and inheritance law, as well as her analytical skills. But her teaching activity is no less significant, which should be quantified with a high positive grade.

The works (including the monographic one) have significant practical usefulness.

Considering the above stated, I PROPOSE the RESPECTABLE Academic jury to make a decision, through which to propose to the appropriate organs that they choose Chief Assistant Professor Dr Anna Svobodenova Cholakova for the position of an Associate Professor in Burgas Free University in professional classification 3.6 Law, academic specialty “Civil and Family Law”

19.10.2022

Statement prepared by:

Associate Professor Dr Krasimir Koev