



REVIEW

BY

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APPOINTED WITH ORDER No. 525/21.02.2023 ISSUED BY THE RECTOR OF THE TRAKIA UNIVERSITY,
CITY STARA ZAGORA AS MEMBER OF A SCIENTIFIC JURY FOR THE COMPETITION PROCEDURE FOR THE
ACADEMIC POSITION OF "ASSOCIATE PROFESSOR" IN THE "PUBLIC LAW" SCIENCE SPECIALTY,
PROFESSIONAL ORIENTATION 3.6 "LAW", HIGHER EDUCATION SPHERE "SOCIAL, ECONOMIC AND LEGAL
SCIENCES"

FOR THE NEEDS OF THE FACULTY OF ECONOMICS OF TRAKIA UNIVERSITY, CITY STARA ZAGORA,
PUBLISHED IN THE STATE GAZETTE, VOL. 99 OF 13.12.2022

1. One candidate has been admitted to the competition procedure – Petar Radoslavov Iliev, doctor of law.

The candidate Petar Radoslavov Iliev was born in 1978 in Sofia. He graduated from the Law Faculty of Sofia University "St. Kliment Ochridski" in 2003 with excellent grades. In 2012 he was awarded the scientific and educational degree of Doctor of Law. From 2006 until 2021 he was an academic (assistant, assistant professor) at the Law Faculty of Sofia University "St. Kliment Ochridski". He is the author of tens of scientific publications on public law and private law issues in both legal and business editions.

He has a law practice, participates actively in the public life, and is the leader of authoritative institutions in the sphere of the international economic relations.

2. The candidate Petar Iliev participates in the competition procedure with one monograph, four study works and eight articles, published in the period from 2013 until 2023.

The organisation of the judicial power is a dominant topic in the scientific research of the candidate. Three study works and the monograph research "Principles of Organisation and Functioning of the Judicial Power in the Bulgarian State of Law" (2023) are dedicated to this topic.

The second group of published works are dedicated to the analysis of various of the citizens' constitutional rights. The third group includes research on constitutional aspects of the state bodies – functions, powers, competence.

This review encompasses the dominant topic in the scientific research performed by the candidate.

3. The habilitation work presented by the candidate for the purpose of participation in the present competition procedure, is "Principles of Organisation and Functioning of the Judicial Power in the Bulgarian State of Law" (2023) (Euromedia advertising agency, 2023).

The work is a original scientific research of contributive character. The research is novel in the modern Bulgarian legal science on the so-defined issue.

In the spirit of normativism, reigning in Europe and respectively in Bulgaria at the start of the 20th century, the "legal principles" are interpreted as norms, as a kind of legal norms. This thesis is justified when the law is defined as a system of legal norms. In reality the legal matter consists not only of norms; it includes also rules, situations and principles. All of them are "normative" in the sense of Kant's thesis of their manifestation of something that is ethically due, but not all of them are legal norms as logical constructs. This is why the principles in the case are normative, but are not norms. The principles carry their own different legal meaning, which allows for them to be studied independently. The author connects the principles of judicial power with "conditions and requirements" (page 9). This explanation is generally valid for each principle, thereby making the distinction between the subject of the study and the normative position including the legal relation – parties – rights and obligations.

4. The main body of the work is structured on the basis of this methodological position. For the first time in the Bulgarian constitutional law doctrine, the author has catalogued the principles of organisation and functioning of the judicial power, which is a meaningful scientific contribution. In terms of subject and scope, no such research work exists in the Bulgarian legal science.

The candidate has divided the principles into primary and secondary, and has listed twenty-three primary and thirteen secondary principles. The objective criterion for their distinction is the legal rank of their establishment – constitutional and sub-constitutional. The ordering is unconditional. Simultaneously, on the basis of such categorical ordering, the research outlines some new theoretical problems. One of them is the structure and organisation of the judicial power in relation to the court system. It is evident that some of the principles encompass the entire organisation of the judicial power, while others focus only on the organisation of the work of the courts of justice. This combination, as evident from the analysis, raises the question of the place of the investigative bodies and the prosecution office within the judicial power itself, and, from the point of view of the modern democratic government, the lack of merit in the thesis of them being equal to the court.

Another theoretical problem raised by the research work of Petar Iliev, concerns the model, for formula of the judicial power. In the Bulgarian constitutional model, the organisation of the judicial power follows the example of the executive power's organisation, complicated with the formation of the Supreme Judicial Council in the capacity of "executive power" of the judicial power itself. At the same time, its control is supplemented by the "three important people". The result is the lack of control over the "heads" of the judicial power and at the end, as pointed out by P. Iliev, the sovereign cannot control the political government.

The next question is whether the established principles are sufficient to guarantee the effective functioning of the judicial power – firstly, when complied with, and secondly, when breached. In this context I value the work of Petar Iliev as a modern and meaningful research, which creates the conditions for new scientific developments.

5. The originality of the scientific work of the candidate Petar Iliev is also based on the method used. The method is of positive legal nature, which lends normativistic character to the research itself. The specific feature is uniting the normative regulation and the case law of the Constitutional Court. The author has some doubts whether the Constitutional Court is a court of justice and therefore uses the expression "constitutional jurisdiction". The analysis is

supplemented with scientific arguments of which the author has expert knowledge, and uses ably.

The practical combination of the legal provisions (constitutional, as well as those of the law), and the case law – interpretative decisions of the Constitutional Court in all research works presented for the competition procedure, are the very own original face of the scientist Petar Iliev.

The referral to case law in the normative analysis is a known theoretical method, which has mixed reception. Some authors only study the normative regulations, others – only the court deeds, that have evolved into standard case law or the interpretative decisions of the supreme courts, others go for both the law and the case law. The problem is about the legal character of the judicial deeds in the “Case Law” sphere, and more specifically in the positivist conception of the “sources of law”. In other words – the question is whether the “case law” is a “source of law” or not. From the positions of legal psychology – the actual scientific explanation of the law, its source, are the public needs; in the positivism, the term “source” denotes the notion “form of law”.

In essence the problem is whether the case law as a source (or form) is a state of the law, i.e., - whether it represents an imperative legal content, which is to be infused in the practice as an applicable legal prescription thereof. There is no definitive answer. In the last few years, prof. Iv. Rushev has provided proof for the thesis (mainly on the grounds of normative deeds), that the case law is not the law, not a source of law.

As made evident from the presented research works, P. Iliev maintains the opposite opinion. In the public law and specifically in the constitutional law matter he researches on, his thesis is justified and entirely true. In that sphere the interpretative decisions of the Constitutional Court are a source of law (a judicial form according to our understanding). With minimum conditionality we can accept that the legal regulation of various public relations (public needs) is different, which also defines the different character of the judicial practice.

In the specific case, the interpretative decisions of the Constitutional jurisdiction are a necessary source of constitutional and legal regulation. In its entirety, the regulation and its regulative meaning provide the content, which Petar Iliev has denoted and researched as law. This is his method, which he has applied throughout his entire scientific body of work.

In that sense one could ask the question “How does one explain the meaning (Why?) and the content (What?) of the constitutional provisions regarding the matter, subject to organisational approach, in case there is no interpretation for it?”. In correspondence with the concept of P. Iliev – the answer is obvious – the interpretation is an action aimed at the identification of the exact meaning of the provisions. The borders of the meaning, written down in text, represent a logical constant value. If established and exercised as a part of the adopted methodology, it will easily be adapted to the missing field. I am convinced that the method will work successfully.

6. In the spirit of the thorough and responsible theoretical research, P. Iliev complements the analysis of each question asked with scientific works – “the scientific knowledge”, as he defines it. The scientific knowledge is very vast in scope and can affect the research in various ways – to expand it; to restrict it; to justify it, etc. In the presented habilitation work the author has made a correlation between the state of law theory and the research on the principles of organisation and functioning of the judicial power.

The state is the necessary organisational form of existence of the separate ethnic and social community, of the individual society. As in any organisation, the state is a power regime that needs to be legitimized. In the New Age, the ruling, governing of the state is justified with new social values. As made evident from the text of the acting Constitution, the state is legitimized through power of the people and through lawfulness: the Republic of Bulgaria is (must be) a democratic state and one which is a state of law. Specifically, the "state of law" is an expression of the constitutional foundation, according to which the state government, ruling, including through the application of the judicial power, is legally measured, defined and established.

The very definition of the Bulgarian state as a state of law bears ideological load in the sense of opposition to the socialist state. The ideology is not science and the interpretation of ideological theses cannot result in theoretical knowledge. Evidence of that are some of the "exotic" formulations of the "state of law" notion in some of the Constitutional Court's decisions (for instance the ones quoted by the author on page 160, page 161 of the work).

Much more appropriately, Petar Iliev defines the lawfulness attributable to the judicial power, through the normatively established principles. The principles of organisation and functioning of the judicial power are part of the elements of governing, defined as a manifestation of the state of law. The legality, the supremacy of law, the rule of law, are designations of the state of law as a principle of government. This theoretical construction is more general and encompasses all other facets of the state of law, as denoted in the legal theory.

The content definition of the state of law on the basis of principles – in this case the organisation and the functioning of the judicial power, raises the question of ensuring and realisation of the content of lawfulness, respectively – of the state of law. In the sphere of normativism this question has no answer, however, research like the one performed by Petar Iliev increasingly point towards the social essence of the law, towards the legal reality.

The significance of every scientific research corresponds to the problems it focuses on; their resolution objectifies the progress of knowledge. Furthermore, in the case of Petar Iliev's work, its methodological approach provides further scientific value, which increases the level of its contribution.

In conclusion:

Given the scientific value of the presented monograph work and of the other accompanying publications, as well as the long years of successful practice as academic instructor of Dr. Petar Radoslavov Iliev, I can categorically state my positive view as a member of the present jury for his selection for the academic position of "Associate Professor in Public Law" in the Faculty of Economics at the Trakia University.

05.04.2023

prof. dr. Lachezar Dachev

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