

OPINION

from

Assoc. Prof. Dr. Tzvetalina Petkova,

lecturer in Family and Inheritance law at New Bulgarian University, appointed as member with Order Z-RK-283/02.07.2024 of the Rector of the New Bulgarian University as **member of the scientific jury** for the acquisition of the educational and scientific degree "Doctor" by Maria Georgieva Glushkova – independent research PhD student at the Faculty of Master Programs, Doctor program in Civil Procedure Law, professional area 3.6. Law, field of higher education 3. Social, economic and legal sciences, PhD topic „Preparation and submission of distribution under the Civil Procedure Code“

Biographical data for the PhD student

Mariya Georgieva Glushkova graduated Law at VTU "St. St. Cyril and Methodius" in 2001. By order No. № 3-PK-27 dated 06.10.2022 of the Rector of New Bulgarian University, she was enrolled as a doctoral student of independent training at the Faculty of Master Programs, Department of Law, with dissertation topic "**Preparation and submission of the distribution according to the Civil Procedure Code**". She was provided with the right of defence with order No. 3-PK-167 of 28.03.2024 of the Rector of New Bulgarian University.

Relevance of the research. Reasonableness of goals and objectives. Correspondence between the chosen methodology and research methodology with the set goal and tasks of the dissertation work.

The dissertation work "**Preparation and presentation of the distribution according to the Civil Procedure Code**" is 214 pages long, including a list of the literature used (bibliography), a list of the Internet sources used, a list of the primary and secondary legislative acts used (rules, regulations, interpretive decisions, other acts used), list of abbreviations. The thesis contains 103 footnotes. The bibliographic reference includes 24 titles. In accordance with the requirements of Art. 27, para. 2 Regulations for the Implementation of the Law on the Development of the Academic Staff in the Republic of Bulgaria, the dissertation contains: title page, table of contents, used abbreviations, introduction, four chapters, conclusion and bibliography. Each individual chapter is structured in numbered sections. A declaration of originality is provided.

The relevance of the research is explained with the lack of specific and clear rules on the essence of the processes of preparing and submitting a distribution according to the Civil Procedure Code (CPC). The lack of a in-depth, comprehensive and thorough study of this current problem leads to contradictory caselaw, creates obstacles among the enforcement officers and favors different interpretations and applications of the legal norms governing this issue. The relevance of the scientific work is also grounded with the lacunas of the new CPC regarding the manner and method of drawing up the distribution and their "replacement" with interpretive decisions. The practical benefits of the research consist in the doctoral student's attempt to bring clarity to the complex process of distributing a sum received between privileged and non-privileged creditors. Clarification of those practical issues ensures stability and security of the civil and commercial turnover, and hence satisfies the needs of the society as a whole.

The doctoral student outlines **the purpose of the research** - by exploring established caselaw and the interpretative decisions issued by the Supreme Court of Cassation (SCC), the specifics of the national

and European legislation, to develop and present a generalized, correct and lawful model, standard, model for drawing up and submitting a distribution in accordance with of CPC.

The rationale of the objectives and tasks of the dissertation work is traced through disclosure of the legal essence of the distribution and the consequences of its preparation and submission; it is substantiated both by the interconnectedness of the issues under consideration and the lack of an in-depth, thorough, and comprehensive study of the topic explored. The exposition of the dissertation work shows compliance of the set tasks and research methodology with the contributions achieved in the dissertation work.

The research methodology covers a wide range of research methods: analysis, synthesis and generalization of the existing theory and court practice, comparing it with European analogues through the study of the historical knowledge and experience in this field; empirical research (formulates both theoretical and practical tasks that are mutually intertwined and complementary). To solve some of the tasks, techniques of induction and deduction, logical thinking and judgments based on scientific knowledge are applied. The methodology chosen by the doctoral student fully corresponds with the set goals and tasks - a kind of amalgam of theoretical and practical-applied definitions and recommendations *de lege ferenda* is achieved.

Overall characteristic of the dissertation work

The title of Chapter one is "*Aim, Objectives and Research Method*". The doctoral student outlines the goals and objectives of the scientific research, the methods used and the expected results.

The second chapter is given the title "*Genesis and Development of Basic Institutions - Chirograph, Non-sequestrability, Privilege, Peremptory, Surety, Charges, Interest, Distribution and Their Modern Analogue (Brief Historical Review)*". The origin and development of basic concepts in law - chirograph, non-sequestrability, privileges, peremptory, suretyship, fees and interest, distribution - and their modern analogue are examined.

Chapter Three is "*Current State of the Problem*". In this chapter the doctoral student examines the existing contradictory jurisprudence in relation to the distribution. She explores the interpretive decisions on the subject of the dissertation work. She also reveals the differences between the distributions drawn up in the hypothesis of enforcement under the Special Pledges Act (SPA) and the universal enforcement on the one hand, and enforcement under the Taxation and Security Procedure Code (TSPC), on the other.

In the Fourth Chapter - "*Sum received in the enforcement agent's account. Drawing up, structure, content of the distribution*" analyzes the specifics of the bank accounts of state and private enforcement agents. The doctoral student examines the preparation process, structure and content of the distribution. The doctoral student examines the preparation process, structure and content of the distribution. In this regard, the issues related to inadmissibility of execution, non-sequestrability, peremption and limitation periods, contestability of the imposed and recorded liens and foreclosures, renewal of the registration of the mortgage and pledge are discussed. Attention is also paid to the role of privileges under Art. 136 of the Contracts and Obligations Act (COA) in the distribution, as well as the existence of the registration of the debtor under VAT Act (VATA), as well as the registration of the enforcement agents under VATA. Motions *de lege ferenda* are made.

In Chapter Five - "*Joined Creditors*", the doctoral student examines the consequences of previously registered real encumbrances - foreclosures, mortgages, claims, decisions, as well as previously registered liens on movable property. Controversial court practice related to the creditors included in the distribution under Art. 458 CPC in connection with Art. 191 TSPC; Art. 459 of the CPC, as well as

those added under Art. 456 CPC. Special attention is paid to the exact calculation of all claims and their repayment, the place of unsecured creditors in the distribution and the formula for calculating the amounts due to them in proportion. Regulation (EC) No. 1896/2006 and Regulation (EU) No. 655/2014 are also discussed.

The title of Chapter Six is "*Other distributions*". The problems of the other hypotheses of the distribution made following CPC are presented, namely – assignment of property instead of payment; assignment of the claim for collection or in lieu of payment (procedural substitution or forced assignment); sale of indivisible property in proceedings of judicial division. The mandatory requisites of the distribution decree are indicated as well as the consecutive actions of the public or private enforcement agent for scheduling and publicizing the distribution. Attention is paid to the payment of the amounts according to the effective distribution. Attention is paid to the payment of the sums after the distribution has become effective. The possible difficulties that would arise after the entry into force of the amendments of CPC as of 01.07.2024 when issuing an electronic enforcement order are discussed.

The **conclusion** reflects the main conclusions of the research done. The doctoral student gives arguments for the answers to the tasks set and offers her scientifically substantiated proposals for the development of the legal framework for the preparation and submission of distribution in accordance with the CPC.

Evaluation of scientific and scientific-applied contributions

The thesis submitted for defense deserves a very good overall assessment. The doctoral student handles basic and specific legal concepts well. The dissertation is the result of scientific work that reveals abilities for independent scientific research. A number of propositions *de lege ferenda* have been brought forward, some of which also have their own independent contributory significance.

The doctoral student does not limit herself to presenting controversial theses in the doctrine and judicial practice on certain issues, but gives a reasoned opinion in support of one or another these. As examples, p. 131 et seq., where the positions of item 6 and item 11 of Interpretative decision (ID) No. 2/2013 of the GACCC (General Assembly of the Civil and Commercial Chamber) of SCC are criticized; p. 135, where item 2 of ID No. 3/2015 of the GACCC of SCC, p. 91, p. 96, p. 104, p. 117, p. 124, p. 190, etc. is analyzed.

The collection and critical analysis of a large volume of judicial practice, incl. interpretative decisions related to the topic of the dissertation is a contribution as well.

Along with the highlighted merits of the dissertation, some of which have contribution importance on their own, the following important contributions should also be noted:

- Proposal *de lege ferenda* for invalidity of the waiver of protection under Art. 446a CPC (in similarity with Articles 444 and 446 CPC).
- Proposal *de lege ferenda* to amend Art. 435 CPC with a possibility for the claimant to challenge the act regarding the expenses.
- Proposal *de lege ferenda* to amend CPC - the act by which the expenses awarded by the state or private enforcement officer are challenged to be subject to 2-instance judicial review in similarity with the distribution. Unification of the proceedings on appeal of the act for expenses under Art. 435 and Art. 462 CPC.

- The proposed de lege ferenda amendments to the SPA regarding the appeal of the distribution made under the SPA;
- Proposal de lege ferenda to amend the Regulation for implementation of the VATA and Art. 131 of VATA, in conjunction with Art. 45, para. 7;
- Proposal de lege ferenda for amendment in Art. 136 of the COA, and to place among the privileges also the collection of the VAT by tax authorities, similar to the collection of the real estate tax by the municipality from the value of the property.

Evaluation of the publications on the topic of the dissertation

The doctoral student has 2 publications related to the dissertation work on the topic "Preparation and submission of distribution according to the Civil Procedure Code", as follows:

1. Glushkova, M. On some challenges in the preparation of the distribution according to the Civil Procedure Code, Special Pledges Act, Tax and Insurance Procedure Act and Commercial Act. NBU Yearbook, 2022 - electronic edition, vol. 1.
2. Glushkova, M. Complications in the execution of an European order for payment and an European account preservation order. Law journal, NBU, no. 2/ 2023.

The publications provide an opportunity for the scientific community to become familiar with the main theses of the dissertation research.

Opinions, recommendations and notes

Some notes and recommendations can be made to the dissertation work, which in no way impair its scientific value.

The aims, tasks and methods of research should not be singled out in a separate chapter, they are more of an introductory nature. The historical part about the origin and development of basic concepts in law (second chapter) is more suitable to enter as a separate paragraph into the third chapter. In this way, the problem of the disproportion of the volume of the heads will be overcome. For example, the first chapter consists of 6 pages, and the fourth - 63.

I would recommend researching the experience of foreign countries on the preparation and submission of the distribution. For example, in German law, the distribution procedure (Verteilungsverfahren) is regulated in detail by the German Code of Civil Procedure (ZPO, §§872-882). The research would only benefit from such a comparison, from which propositions de lege ferenda can also be extracted.

6. Conclusion

The presented scientific work meets the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria, the Regulations for the Implementation of the Law on the Development of the Academic Staff in the Republic of Bulgaria. Therefore I give my **positive opinion**

and suggest that the members of the scientific jury also **vote positively** for acquisition of the educational and scientific degree "doctor" by **Mariya Georgieva Glushkova**.

Member of the scientific jury:

Signature

assoc. prof. Tvetalina Petkova, PhD

25.09.2024