TO
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№ Z-RK-183/24.03.2022 of the Rector of NBU in the competition for associate professor announced in SG, no. 14/18.02.2022

REVIEW

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Regarding: competition for an **associate professor** in the scientific subject "Law", (Law of Obligations) at the New Bulgarian University with the only candidate in the competition: Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva

1. Information about the competition and the candidate

The competition was announced in SG, issue 14/18.02.2022 for the needs of the Department of Law at the New Bulgarian University in the field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law (Law of Obligations).

The only candidate in the competition is Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva from the Department of Law at the New Bulgarian University. She was born on September 5, 1974. She graduated Law at the New Bulgarian University, where she was successively assistant, senior assistant, chief assistant. Ch. Assistant Dr. Silvia Tsoneva is a member of the Accreditation Commission at the Master's Faculty of NBU. She regularly participates as a member in the meetings of the Program Council of the Law Program. She was a program consultant and director of the Law Program from February 1, 2005 to October 31, 2009 and from January 21, 2012 to February 28, 2017. Dr. Tsoneva is Erasmus Coordinator of the Law Program. She participated as a trainee in the trainings organized for the teaching and administrative staff of NBU. She is responsible for the students' group in Law of Obligations within the Civil Law Studies' group.

Ch. Assistant Professor Dr. Silvia Tsoneva has specialized in Contract Law and Tort Law at the University of London in 2012-2013, at the University of Neuchâtel with a scholarship from the Konstantin and Zinovia Katsarovi Foundation in 2018; in 2013 she was member of the Common Core Working Group on Causation in Tort Law, and in 2009 was member of the Common Core Working Group on the Protection of Real Property. She was also a fellow of the Max Planck Institute, UNIDROIT, the Swiss Institute of Comparative Law and others. She has been a member of the Union of Lawyers in Bulgaria since 2020 and of the Veliko Tarnovo Bar Association since 2001. She speaks English and French.

I. Assessment of compliance with the minimum national requirements and the requirements of the New Bulgarian University for holding the academic position

It is evident from the report, which is submitted and the documents presented that the candidate meets the minimum criteria in the competition for "associate professor", fulfilling the minimum national requirements according to LDASRB (art. 2b) and the Regulations for its application (art. 1a, para 1). Ch. Assistant Professor Dr. Silvia Tsoneva has held the position of "Chief Assistant" at NBU for more than two years and meets the minimum national requirements and the additional conditions of NBU under Article 58, paragraph 1 of the Regulation on the development of academic staff in NBU. No plagiarism is established in the scientific works of the candidate.

She collects 50 points for the indicators in group A, 100 points for the indicators in Group B, 305 points for the indicators in group Г, 300 points for the indicators in group Д, 95 points for the indicators in group Ж, 70 points for the indicators in group З and 85 points for the indicators in group И.

II. Research (creative) activity and results

In the competition Ch. Assistant Professor Dr. Silvia Stoyanova Tsoneva participates with 3 scientific papers and publications in total. The works for obtaining the educational and scientific degree "Doctor" are not included in the scientific production submitted for this competition.

1. Evaluation of the monographic work, including evaluation of the scientific and scientifically applied contributions of the author

The monographic work presented for review "Compensation for damages in case of contractual liability", NBU, 2021, is dedicated to a classic institute of the law of obligations, which is traditionally of interest to both Bulgarian legal scholarship and practicing lawyers (judges, arbitrators, insurance agents, legal advisers and others).

The topic of compensation for damages in contractual liability has been studied in a number of monographs by Bulgarian and foreign authors, which is a testamony to its relevance and importance. In this regard, it should be emphasized that the author has analyzed the available literature by Bulgarian and foreign authors who have worked on the topic and it is presented correctly when defending the opinion she supports. I am also pleased to indicate the rich court and arbitration practice (including foreign) contained in the book.

The structure of the work covers the main issues that arise in determining the compensation for damages in contractual liability. **Chapter one** deals with the issues of direct and foreseeable damages in the light of the historical and comparative legal review. Attention is paid to the mitigation of loss and contributory negligence. **Chapter Two** deals with the issue of determining the amount of damages - one of the most important issues on the topic. **Chapter three** explores some special cases of compensation with particular attention paid to the issue of non-pecuniary losses and liquidated damages. Compensation for non-pecuniary damage in contractual liability is particularly relevant in the light of European Union law and the interpretative practice of the Supreme Court of Cassation.

Terminology is precise, polemics are correct, and the transition from one question to another is smooth and in logical consequence.

In particular, the main scientific and applied scientific contributions of the applicant are as follows:

1. The issues of compensation for damages in case of breach of contract have been examined sequentially and in a logical connection both with regard to the damages subject to compensation and the determination of the compensation, ie. in a pragmatic and easy to understand way that differs from the approaches used so far to abstractly determine these categories.

2. The historical and comparative method of exploring each issue in the UN Convention on Contracts for the International Sale of Goods, UNIDROIT Principles of International

Commercial Contracts, the Principles of European Contract Law and the Common Frame of Reference of Private Law, as well as French and English law, which thus enables more clearly to “crystallize” the contours and specifics of Bulgarian law.

3. The concepts of "direct and immediate damage" are distinguished from "foreseeable damage". In accordance with the theory of adequate causation, it is stated that in order to classify losses as indirect, it is necessary to establish other causal factors occasioned by the breach and loss only comes as an atypical result and therefore not subject to compensation. The position that bad faith as a form of fault is equated with intent and should be understood as the debtor's attitude to the non-performance itself, and not as an attitude to the consequences arising from the non-performance, is sufficiently substantiated. Foreseeability, in turn, concerns the amount of damages that could have been foreseen at the time of the conclusion of the contract.

4. The institute of breaking the chain of causation is studied, in which a new causal factor of a different nature - action of the creditor, a third party or Act of God intervenes in the causal process. The conclusion that the debtor is not liable for the losses that occurred after the severance of the causal link due to lack of a causal link between the losses and breach of contract is substantiated. Breaking the chain of causation is distinguished from indirect losses.

5. The essence of the rule for reduction of the damages under art. 83, para. 2 OCA is clarified. The author argues that the rule is based on the principle of good faith, as well as a strong economic logic related to the goal of creating and maintaining an optimal market environment in which participants can act in a economically mature and rational way. It is made clear why the rule relates not only to the determination of the losses to be compensated, but also to the calculation of the compensation, in particular to the applicability of the abstract method, and to the moment of assessing damages. It is proposed in the OCA to explicitly regulate the right of the creditor to receive the costs he has incurred in connection with limiting the damages, even if his efforts proved fruitless.

6. The issue of compensation of non-pecuniary loss suffered as a result of breach of contract has been examined. It is proposed to adopt the de minimis non curat lex rule, which provides that compensation is not due when damage is insignificant. Attention is drawn to the need to strengthen judicial review of the foreseeability of non-pecuniary damage as a consequence of a negligent breach of contract. The answer to the question posed in interpretative case № 1/2021 of the Supreme Court of Cassation for calculating the compensation for non-pecuniary loss in case of loss attributable to the victim should also be considered as contribution.

7. The author's contribution to the clarification of the concepts of "positive" and "negative" interest with respect to damages in cases of tort, invalidity of the contract and breach of contract as well as the survey of the respective Bulgarian legal doctrine and case law should be emphasized. It is argued that damages for breach of contract must be determined in accordance with the positive contractual interest of the creditor. The author substantiates the conclusion that when calculating damages for positive interest, provided costs incurred are viewed as costs the creditor would not have incurred had he not concluded the contract, it is possible to speak of a negative contractual interest.

8. Various ways of calculating the compensation are presented, including a formula for calculating the compensatory, moratory and resolutory compensation, which corresponds to the amount of the economic value of the failed performance, all costs that the creditor would not have incurred and all benefits that he would have gained had the contract been performed, minus the value of the performance received by the creditor, the value of the performance from which the creditor is released, the costs that the creditor saves and all the benefits that arise for him as a result of the breach, if any.

9. The structure of the damages and the losses related to the performance due under the contract and the losses in a narrow sense as a consequence entailed after non-performance is

discissed and analyzed. A correspondence has been found between these groups of losses and the division of losses in Roman law into *interesse circa ipsam rem* and *extra rem*.

10. The difference between the monetary assessment of the damage, expressed as loss of value resulting from non-performance, and the claim for reduction of the price or the remuneration in case of defects of the thing or of the performed work is examined. Two methods of calculating the reduction are shown - linear and proportional, and it is concluded that in applying the linear method there is practically no difference between the reduction of the price and the monetary compensation.

11. Interesting is the concept of 'future damages', understood as costs that the creditor will have to incur at a future moment and the benefits that he will lose after the moment of determining the compensation. It is justified why future damages may also be subject to compensation, provided there is certainty that they will occur.

12. The institute of compensating losses with benefits has been studied. It is concluded that it is applicable not only when there is a direct causal link between the benefits and the debtor's default, but also when the relation is indirect and the benefits arise from the creditor's actions to reduce the losses frowing from the breach. Where the benefits arise neither directly from the breach nor from the creditor's actions to limit the damage, but come from third parties, a different condition must be set for the compensation. It is proposed that such a criterion be the compensatory nature of what is received by the person concerned.

13. The possibility set out in art. 80 of the OCA losses to be repaired by the creditor at the expense of the debtor is analysed. The opinion of the author is to replace the judicial authorization of the creditor with a requirement for the creditor to notify the debtor before taking respective actions.

14. Comprehensive review has been made of the various opinions in literature on the time for assessing damages. Assuming that costs incurred are valued at the time when they are made, and lost benefits are determined according to their value at the time when they should have been realized, it is claimed that the problem with the time for asssessing damages exists mainly in connection with value of the performance due under the contract. Out of various possible solutions, support is given to the date of the court decision, adjusted by the rule for reduction of losses within the meaning of Art. 83, para. 2 OCA.

15. I fully support the argumentation presented by Dr. Tsoneva why the termination of the contract under Art. 87 of the OCA has no effect on the fact of non-performance and its consequences and the reasoning why damages under Art. 88, para. 1 of the OCA compensate the positive interest. Interpretative decision № 7/13.11.2014 on case 7/2013 of the Supreme Court of Cassation has been critically analyzed.

Critical notes and recommendations

1. The monographic work would benefit if, in addition to liquidated damages, other example of setting in advance the scope of contractual liability are also included such as arrha and earnest payment.

2. Along with the other problems analyzed in the work, the problems of the compensation related to changes in the exchange rate of the currency of the contract and the practical problems that arise for the business entities as a result of such changes can be discussed.

3. It is worth making a comparison between contributory negligence in contractual and tort liability and its impact on the amount of the compensation due.

2. Evaluation of the contributions in the other attached publications, made after the appointment on the academic position "chief assistant", incl. Assessment of the requirement for peer review of publications

II. "English and Bulgarian tort law", Avangard prima, Sofia, 2019

This study deserves admiration, as it presents the peculiarities of English tort law in a suitable to the Bulgarian reader way, which enriches the comparative literature in our country and expands our horizons and knowledge of tort law. A significant amount of case law of English and Bulgarian courts has been systemized and analyzed.

A comparison is made (where possible) with Bulgarian law by way of which the author shows that it is possible to have different legal solutions for a single economic problem, which in the end reach similar or identical results.

The concepts of "duty of care" in English law, "pure economic loss" and "mental disorder" that foreign legal systems deal with are clarified and this understanding facilitates the application of soft-law instruments such as the Draft Common Frame of Reference and the Principles of European tort law.

III. "Horizontal effect of fundamental human rights in the relations between private parties", Collection of reports from Scientific Conference "Human Rights - 70 years after the adoption of the Universal Declaration of Human Rights". Prof. S.J.D. M. Novkirishka-Stoyanova, Assoc. Prof. Dr. M. Belov, Ch. Assistant Professor Dr. D. Nachev. S., UI "St. Cl. Ohridski ", 2019. / Indicator Γ, 7.12. in the Appendix /

The article is of interest to the legal community as it justifies the possibility of applying the horizontal effect in the relations between citizens and the state with regard to fundamental human rights. The doctrine and case law in our country on the issues of "constitutionalization" of private law, mainly in the field of contract and tort law, are critically analyzed.

3. Citation by other authors

The author has a total of 47 citations, which are described in detail in the Report of publication citations of the author Silvia Stoyanova Tsoneva CA-2-2021.

III. Teaching and learning activities for the candidate

Dr. Silvia Tsoneva was appointed an assistant at NBU in 2001. Since 2005 she has held the academic position of "senior assistant", and since 2012 - chief assistant. She teaches classroom and extracurricular classes in law of obligations, seminars in law of obligations, consumer law, stock exchange law and paperwork in law of obligations. She is a lecturer of the course "Practicum in Civil Law". She also teaches in the program "Applied Linguistics" at NBU and is responsible for the students‘ group in law of obligations.

I believe that the teaching activity and the academic expertise of Ch. Assistant Professor Dr. Silvia Tsoneva fully meet the requirements of the announced competition for "Associate Professor" in the professional field 3.6. Law (Law of Obligations).

IV. Administrative and public activity

Ch. Assistant Professor Dr. Silvia Tsoneva was Director and Program Consultant of the Law Program of NBU during the period 2005-2017. Member of the Accreditation Commission of the Master's Faculty, member of the Program Council of the Law Program and of the Council of the Department of Law of NBU. Dr. Tsoneva is the Erasmus Coordinator of the Law Program. Member of the editorial board of the Law Journal of NBU from 2005 to 2022. Member of the Union of Lawyers in Bulgaria.

V. Personal impressions of the candidate

My personal impressions of Dr. Silvia Tsoneva are that she is an extremely responsible teacher, a diligent researcher, a supportive and hard-working colleague who can be relied on. Her achievements emphasize these qualities.

7. Conclusion

In conclusion, I express my clear belief that the works of Ch. Assistant Professor Dr. Silvia Stoyanova Tsoneva presented in the competition for associate professor, have been written at a high theoretical level and unconditionally meet the requirements of Art. 24, para. 1, items 1, 2, letters “a” and “b”, items 3 and para. 3 of the Law for the development of the

academic staff in the Republic of Bulgaria (LDASRB) and of art. 58, para 1 of the Regulation for the development of the academic staff in NBU. For this reason, I will support with a positive vote the application of Ch. Assistant Professor Dr. Silvia Stoyanova Tsoneva for holding the academic position of "Associate Professor" in the professional field 3.6. Law (Law of Obligations) in the Department of Law of the New Bulgarian University.

June 17, 2022
Sofia

Signature:
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