

OPINION

by **Dr. Angel Yordanov Shopov, Associate Professor at the Law Faculty of Paisii Hilendarski University of Plovdiv**, area of higher education 3. Social, Economic and Legal Sciences, Professional field 3.6. Law (Civil and Family Law) on the scientific works submitted for participation in a competition for the academic position "Associate Professor", professional field 3.6. Law (Law of Obligations), announced by the New Bulgarian University (NBU) in SG No 14/18.02.2022 **with Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva** as a candidate

I. Evaluation of the compliance with the minimum national requirements and the requirements of the New Bulgarian University

I am appointed as an external member of the scientific jury with order of the Rector of NBU 3-RC-183/24.03.2022. Evident from the applicant's self-assessment report and the evidence attached thereto the candidate has held the position of Chief Assistant in NBU for more than two years and meets the minimum national requirements under Article 2b of the Development of the Academic Staff of the Republic of Bulgaria Act (DASRBA) and the additional requirements of NBU provided in Art. 58, para. 1 of the Regulation on the Development of the Academic Staff in NBU (RDA).

No duly established plagiarism in the applicant's scientific papers has been reported.

II. Research work and results

1. Assessment of the monographic work, including assessment of the research and applied science contributions of the author

Subject of the assessment is the monographic work of the candidate "Compensation for damages in case of contractual liability", NBU, Sofia, 2021, 424 p. The work meets the requirements for a monograph specified in § 1, item 10 Additional Provisions of the DASRBA. It summarizes the existing knowledge in the field and gives new ideas based on the conclusions reached; it has a scientific editor and scientific reviewers, an ISBN and it is in a volume well above the minimum of 100 standard pages required for a monograph. The book contains detailed content, a comprehensive bibliography, and the text has an impressive number of footnotes (973) with references to other scientific works.

The monograph consists of three chapters – loss subject to compensation, damages for pecuniary loss and special cases of compensation. The author does not follow the traditional structure in which the topic is examined in the context of contractual liability and its prerequisites. She prefers to examine directly the damage to be compensated and then to

analyze the problems related to the calculation of the compensation. Dr. Tsoneva's approach is original and provides us with new knowledge about the analyzed phenomenon. The historical and comparative legal elements are skillfully interwoven into the analysis. In line with the trends of the last 10-15 years, when drawing comparisons Dr. Tsoneva does not simply lay out the relevant foreign national and European legal regimes but also discusses them with sufficient ease.

The author traces, where it is systematically appropriate, the framework of the UN Convention on Contracts for the International Sale of Goods, as well as the soft law related to private law (UNIDROIT Principles of International Commercial Contracts (PICC), Principles of European Contract Law (PECL) and the Common Frame of Reference (CFR). In a comparative perspective, a serious advantage of the monograph is that alongside the traditional references to German and French scholarship, legislation and caselaw, an aptly balanced attention is given to the Anglo-Saxon treatment of the analysed issues.

Herein below I will address some of the major contributions of the monographic work offered to the jury:

- Following a detailed analysis of each category, the author outlined and emphasised the risk to confuse the concepts of "direct and immediate harm" and "foreseeable harm" in Bulgarian theory and practice;

- It is considered that, in cases of negligence, the foreseeability of the damage at the time when the contract was made, is sufficient criterion for setting limits on the liability for breach of contract;

- Additional issues of causation are discussed, such as its interruption when a new causal factor intervenes in the causal chain (act of creditor or third party or act of God);

- After exploring the concept of the mitigation rule established in Art. 83, para. 2 of the Contracts and Obligations Act (COA), it is clarified why this rule cannot be explained by means of causation and the categories of direct/foreseeable damage;

- Within the term "creditor's fault" under Art. 83 COA the institutes of loss contributed to the creditor and mitigation of loss are distinguished conclusively - para. 1 and 2 of the provision respectively. The conclusion reached by Dr. Tsoneva that in case of loss contributed to the aggrieved party the conduct of this party can be an act as well as an omission (the creditor has at least shown negligence in his own interest) can be supported;

- An in-depth analysis of the concepts of "positive" and "negative" interest, distinguishing them from positive and negative loss;

- Review of the guiding principles for calculation of the compensation for damages in cases of contractual liability, the different types, advantages and disadvantages of the methods for measuring damages;

- Attention is given to the type of damages within the structure of the compensation, some related to the performance itself and some related to the damage in a strict sense defined as the consequence flowing from the non-performance. A correlation is found between these species and the division of damage in Roman law *in interesse circa ipsam rem* and *extra rem*;

- The concept of *interesse* is analysed;

- The advantages and, in general, the practicality of awarding future damages are explored;

- The scope of application of Art. 80 COA is reestablished;

- Various understandings of non-pecuniary loss are reviewed and one of them is supported with arguments. The evolution in their application in cases of contractual liability is tracked and additional reasoning is given why legal entities can claim compensation for such damages. Very interesting and innovative is the analysis how the division of legal entities – commercial companies and nonprofit organizations – affects their ability to claim such damages;

- Liquidated damages clauses are explored as well as the latest legislative approaches in the field influenced by European law.

The monograph is a thorough, contemporary and original study on a topic which is fundamental for private law.

However, just a few critical notes can be made, which may sound more like recommendations:

- when using foreign texts, originals are recommended. I mean the writings of French authors (Potier, Domat), which the author used in translated versions;

- for fullness of the study, the book should include several works of Bulgarian authors on the issues of specific performance, pre-contractual and tort liability, non-pecuniary loss, nonprofit organizations as well as loss attributed to the creditor in cases of contractual liability;

- it is appropriate to refer to one of the forms of fault by using only the term *intent*, not the term *fraud* – the actual COA reflects this difference in contrast to the old COA, repealed in 1951.

2. Evaluation of the contributions of the other publications attached which are made after the appointment on the academic position "Chief Assistant Professor", including assessment of the requirement for review of the publications

In brief, I will examine here one of the articles submitted for review by the candidate on a topic other than that of the above mentioned monograph - "Horizontal action of fundamental human rights in relations between individuals", Collection of the Scientific Conference "Human Rights – 70 years after the adoption of the Universal Declaration of Human Rights". S., "St. Kl. Ohridski", 2019 (also could be found at <http://www.sadebnopravo.bg/biblioteka/2020/3/4/>)

The article makes an reassessment of the established understanding that fundamental rights have a vertical effect in the relations between citizens and the state. It explores and gives arguments for the impact and effect of fundamental rights in the relations between private individuals. The process of "constitutionalization" of Bulgarian private law is outlined. The author's conclusions are convincing and supported by conclusions based on case law.

Apart from that, the candidate has published one more monograph ("English and Bulgarian tort law", Avangard Prima, Sofia, 2019), which meets the requirements of DASRBA, but it is not the main habilitation work in the current procedure.

I shall give an overall opinion about the publications submitted for participation in the competition. They not only meet, but also sufficiently exceed the quantitative metric requirements. They also represent, each one of them, original and up-to-date scientific works demonstrating the author's ability to conduct in-depth research using solid historical, comparative and theoretic argumentation.

There are original scientific, scientific-applied and applied contributions in Dr. Tsoneva's publications. The other works submitted in the application for the competition (18 studies and articles) are printed in magazines and scientific collections, 2 of them – indexed in worldwide databases, the others - scientifically reviewed. The applicant has submitted a sufficient number of scientific papers published after acquiring the educational and science degree "Doctor", which were not used for this degree.

3. Citation by other authors

Dr. Tsoneva's publications are cited (generally in substance and in a positive way) by a number of Bulgarian authors in a significant number of works.

III. Teaching and lecturing activities

Dr. Silvia Tsoneva was appointed Assistant Professor at the NBU in 2001. She held the academic position of Senior Assistant Professor since 2005 and of Chief Assistant Professor since 2012. She teaches classroom and extracurricular courses in Law of Obligations, training course in Law of Obligations, Consumer Law, Stock Exchange Law and project work on Law of Obligations. She is part of the lecturers for the course "Practicum in Civil Law Sciences" and teaches in the Program "Applied Linguistics" at NBU. She runs the students' law club on Law of Obligations within the Civil law students' group.

The average score from student satisfaction surveys is 4.47 (at a maximum score of 5.00).

IV. Administrative and social activity

Dr. Silvia Tsoneva was director and program consultant of the Law Program at NBU from 2005 to 2017. Member of the Accreditation Committee of the Master's Degree Faculty, member of the Board of the Law Program and of the Council of the Law Department at NBU. Erasmus Coordinator for the Law Programme.

Member of the Editorial board of Law Journal (NBU) from 2005 to 2022. Member of the Alliance of Lawyers in Bulgaria.

V. Personal impressions of the applicant (if any)

I have very good impressions as we have participated together in the annual meetings of the scientific project "The Common Core of European Private Law", usually held in Turin/Trento, Italy.

VI. Opinions, recommendations and notes on the applicant's activities and achievements

I have given them above in this opinion statement.

VII. Conclusion

I give positive assessment of the academic activity of the applicant chief assistant Dr. Silvia Stoyanova Tsoneva and I confidently vote in support of the proposal to allow her to be elected by the Academic Council to take the academic position "Associate Professor" in the scientific field 3.6. Law (Law of Obligations) in the Department of Law at the New Bulgarian University.

Date: 06.06.2022 Plovdiv

Signature: