OPINION

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Regarding the scientific papers submitted for participation in a competition for the academic position of associate professor, in professional field 3.6. Law (Law of Obligations), announced by the New Bulgarian University (NBU) in SG, issue 14 of February 18, 2022

with candidate **Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva**

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

Silvia Tsoneva was born on September 5, 1974. She has a master degree in Law and International economic relations.

Chief Assistant Professor Dr. Silvia Tsoneva has obtained the scientific and educational degree "Doctor" in the professional field 3.6. Law, scientific subject 05.05.08 "Civil and Family Law". The topic of her dissertation is "Legal nature of securities", with supervisor Prof. Dr. Polya Goleva and reviewers: Prof. Vladimir Petrov, Ph.D. and Prof. Dr. Grigor Grigorov. The public defense was held on April 28, 2009 before the Legal sciences' SSC.

Dr. Tsoneva is the author of the monograph "Compensation for damages in case of contractual liability", Sofia: NBU Publishing House, 2021, ISBN 978-619-233-168-9. Reviewers are Prof. Dr. Tanya Yossifova and Assoc. Prof. Dr. Tsvetalina Petkova, scientific editor: Assoc. Prof. Dr. Katerina Yocheva. The monograph deals with a topic of primary importance in the field of the law of obligations. It is the habilitation work of Dr. Tsoneva.

The candidate has also published a monograph, which is not presented as a major habilitation thesis: Tsoneva, Sylvia. English and Bulgarian tort law. Sofia: Avangard Prima, 2019, ISBN 978-619-233-168-9, with reviewers: Prof. Dr. Polya Goleva and Prof. Dr. Mario Bobatinov, with scientific editor: Assoc. Prof. Dr. Katerina Yocheva.

It is evident from the self-assessment report of the candidate and the evidence attached to it that Dr. Silvia Tsoneva has been Chief Assistant at the NBU for more than two years. There is no duly proven plagiarism in the scientific works of the candidate. Dr. Silvia Tsoneva meets the minimum national requirements for scientific, teaching and/or artistic or sports activities in the field of higher education 3. Social, economic and legal sciences, Professional field: 3.6. Law, determined by the Regulation for application of the Law for the development of the academic staff in the Republic of Bulgaria, as well as the requirements of the Regulation for the development of the academic staff of NBU and Appendix 2 thereto for the minimum national requirements and requirements of NBU for candidates for scientific degree and for the academic positions of "Chief Assistant", "Associate Professor" and "Professor" (under Art.2b LDASRB; art. 58, para. 1 RDASNBU).

II. Research (creative) activity and results

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

1.1. General characteristics of the monographic work

The monograph "Compensation of damages in case of contractual liability" addresses one of the most important topics of the law of obligations, which is always relevant and with great importance in practice. In this situation, with so much literature and case law on the issue of damages for breach of contract, the task to write a valuable book that stands out and adds value to the available Bulgarian academic literature becomes extremely difficult.

The approach chosen to the topic is interesting. It does not follow the traditional survey approach on the topic based on dealing with the elements the contractual liability, in which the concepts of non-performance, damage and causation are considered separately and consequently. What we see here is an original approach to the topic, which refracts the issues under consideration from a new perspective and explores them from a different point of view.

The very structure of the monograph, consisting of three chapters, stands in a way that is not typical for the researched topic. The first chapter is devoted to determining losses that are subject to compensation, the second – calculating the compensation for these damages, and the third - specific cases of compensation.

Chapter one begins with the issues of direct and foreseeable loss. The caselaw in our country on the issues of causation between the breach of contract and the losses is analyzed. In the absence of legal definition of direct damages, it is established that Bulgarian contract law resorted to the theory of adequate causation to determine losses. However, this approach is found to confuse direct with foreseeable loss. Therefore, it is suggested that the division between direct and indirect losses is made on the basis of another criterion, namely - the intervention of other factors in the causal process and their impact on the nature of the relationship between the breach and the consequences. The concept of "bad faith" within the meaning of Art. 82 OCA is also analysed.

In the first chapter significant attention is given to the rule of reduction of losses under Art. 83, para. 2 OCA. This is perhaps the most comprehensive and in-depth study of this institute in our legal literature so far. According to the author, the rule of reduction of losses unreasonably remains in the shadow of the institute of contributory negligence. The author gives reasons to explain why, although both loss attributable to creditor and reduction of loss are hypotheses of a common phenomenon, the reduction of loss must be considered separately, emphasizing the features that significantly distinguish it from the loss, attributable to creditor.

The first chapter continues in a natural way with the issues of loss attributable to creditor, and at the end the author gives her opinion on Interpretative case № 1/2021 of the Supreme Court of Cassation on determining compensation for losses in case of contributory negligence. Although the interpretative case concerns tortious liability, the question raised is important for clarifying the nature of contributory negligence and especially for the caluculation of damages in case of contributory negliegence.

The second chapter is devoted to calculation of damages for pecuniary loss. It is argued that calculation is based on the combined application of the principle of full compensation, the theory of difference and the theory of interest.

The monograph argues that there is a mixture in case law and legal doctrine of the concepts of negative and positive interest, on one hand, and negative and positive loss, on the other. This is claimed to result in ambiguity and internal contradictions. Positive interest is the interest in the performance of the contract and damages for this interest include compensation for losses suffered, sometimes referred to as negative loss, and lost profits, respectively referred to as positive loss. It is considered that only for the purposes of calculating damages for breach of positive interest, the losses suffered can be considered as loss suffered from the conclusion of the contract and thus to be identified with a negative contractual interest.

An important contribution of the monograph is the suggestion of a general formula and unified structure of the compensation, common for the compensatory, moratory and resolutory compensation. The formula is based on the so-called net result and corresponds to the amount of the economic value of the promised 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 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.

It is assumed that in the structure of damages two categories of loss can be distinguished - those that show up as the difference in the values of the parties' considerations and those that flow as a consequence of the breach. This division is associated with the long-forgotten division of damages in the Roman law of circa ipsam rem and extra rem.

The author presents different ways of calculating damages and shows cases where damages mathematically can be presented in different ways. For example, the costs incurred by the creditor on the contract can be considered both as costs that would have been covered if the debtor had performed the contract as well as costs that the creditor would not have incurred if he had not concluded the contract.

It is explained why the creditor's claim for reduction of the price in case of non-performance of the contract is not considered in our country as a form of monetary compensation. The linear and proportional methods for calculating compensation are discussed and it is explained why calculation by the linear method practically results in no difference between price reduction and monetary compensation.

The concrete and abstract method for calculating damages for pecuniary loss are studied and presented in detail. It is accepted that although the abstract method is not statutory provided for in our legislation, it can and should be applied when the prerequisites for it are met.

Current problematic issues of losses suffered and lost profits are considered.

Special attention is paid to the concept of future damages, suggesting that future damages could also be subject to compensation, provided there is certainty about them to occur.

The institute of offsetting losses with gains has also been studied in detail. It is suggested that compensatio lucri cum damno should be analysed per categories - when the benefits arise directly from the default of the debtor, when they arise from the creditor's actions to reduce damages and when they arise from third parties behaviour.

Article 80 of the OCA has been critically analyzed in light of recent amendments made in French law on this subject.

The author discusses the moment for assessing damages and from the possible decisions gives support to the moment of the court's decision, with proper respect for the mitigation of losses rule under art. 83, para. 2 OCA.

The third chapter considers several specific cases of damages. First of all, the issue of compensation for non-pecuniary loss in case of contractual liability is studied in detail. Special attention is given to compensations to legal entities - non-profit legal entities and traders are considered separately.

The second type of specific compensation discussed is damages in case of termination of contract. Various opinions contained in the doctrine are analyzed in detail and it is argued that compensation for termination should respect the positive interest.

The issues of default interest and lump sum compensation are considered as well as some practical issues related to liquidated damages which are subjected to critical analysis.

There is an interesting discussion of an insufficiently researched issue of contract damages, based not on the loss caused to the creditor, but on the benefits that debtor gained from non-performance.

The work stands out with its own style of writing and polemical reasoning. Rich literature is analyzed, national and foreign, and significant number of court cases. The citations are made correctly and accurately.

Specific feature of the work is that each problem is placed in a historical and comparative law context, with in-depth study of the genesis and treatment of the issue in different legal systems. Constant reference and comparisons are made to the Principles of European Contract Law, the Draft Common Frame of Reference, the UNIDROIT Principles, the Convention on the International Sale of Goods.

1.2. List of contributions:

• Suggesting a different approach when analyzing the issues of damages for breach of contract, namely - direct and targeted analysis of the losses subject to compensation, followed by calculation of damages to compensate these losses. Study of the legal phenomenon in a non-traditional way, which undoubtedly enriches the conclusions reached about it so far in legal science and provides a different perspective to knowledge. Author's approach to the topic, refracting the issues under consideration from a new perspective, exploring them from a different point of view.

• Conclusion that due to the lack of a legal definition of direct damages, Bulgarian contract law resorts to the theory of adequate causation and that this approach results in confusion between direct and foreseeable damages. Suggestion that the division between direct and indirect damages is carried out on the basis of another criterion, namely - the intervention of other factors in the causal process and their impact on the quality of the relationship between breach and result. A detailed analysis of the concept of "bad faith" within the meaning of Art. 82 OCA.

- Thorough and comprehensive study of the mitigation of losses rule under Art. 83, para. 2 OCA - the first such detailed analysis in our legal literature. Stating and defending the view that the mitigation of losses rule is unjustifiably overshadowed by the institute of contributory negligence (although both institutes are hypotheses of the common phenomenon) and must be

considered separately. Outlining the specifics of the rule, which make it substantially different from contributory negligence.

- Reaching the conclusion that mixing the concepts of "negative and positive interest" and "negative and positive loss" in case law and legal doctrine leads to ambiguity and internal contradictions. Supporting the view that positive is the interest in the performance of the contract and that compensation includes losses suffered, sometimes referred to as negative damages, and lost profits, respectively referred to as positive damages. Solely for the purpose of calculating damages for positive interest, can losses suffered be regarded as loss entailed as a result of the conclusion of the contract and thus identified with a negative contractual interest.
- Suggesting a general formula with unified structure of the compensation, common for the compensatory, moratory and resolutory compensation, based on the so-called net result and corresponding to the amount of the the economic value of the promised 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 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. Conclusion that in the structure of compensation two categories of damages can be distinguished - those standing as difference in the values of the two considerations and those that are consequence of the breach; relation found to the long-forgotten division of damages in Roman law - circa ipsam rem and extra rem.
- Presenting different ways for mathematically calculating damages. Explanation why the creditor's claim to reduce the price in case of non-performance of the contract is not considered in our country as a form of monetary compensation. Analysis of the linear and proportional method for calculating compensation and explanation why in applying the linear method there is practically no difference between the reduction of the price and the monetary compensation. Detailed research and analysis of the concrete and abstract method for calculating damages for pecuniary loss. Defending the abstract method (although not legally regulated in our legislation) and its application when the prerequisites for it are present.
- Conclusion that future losses can also be subject to compensation, if there is certainty about them.
- Detailed study of offsetting losses with benefits. Conclusion this should be analysed per categories of cases - when the benefits arise directly from the breach of the debtor, when they arise from the actions of the creditor to reduce losses flowing from breach and when they arise from third parties’s acts.
- Critical analysis of Article 80 of the OCA in the light of the recent amendments made in French law on this topic.
- Discussion of the issues related to default interest, lump sum compensation and critically analysing practical issues of the liquidated damages clause.
- Discussion of a topic not explored in detail in our country - the issue of damages based not on the loss caused to the creditor, but on the benefits that the debtor has gained from non-performance.
- Analysing problems in a historical and comparative legal context, with in-depth study of the genesis and treatment of the issue in different legal systems. Ongoing reference and comparison with the Principles of European Contract Law, the Common Frame of Reference, the UNIDROIT Principles, the Convention on the International Sale of Goods.

1.3. Recommendations

Some recommendations can be made to the work, which in no way change my assessment of its high scientific value. The monograph can be enriched with some additional questions that the title of the topic suggests to be included – earnest money, compensation for damages in a wider range of contracts and more.

2. Evaluation of the contributions in the other attached publications, made after the appointment of the academic position "Ch. assistant ", incl. assessment of the requirement for peer-reviewed publications

Dr. Tsoneva is the author of the monograph "English and Bulgarian tort law", Avangard Prima, Sofia, 2019, ISBN 978-619-239-165-2. The work is a comprehensive, in-depth and analytical presentation of English tort law, which enriches the comparative law literature in our country and expands the horizons and knowledge of tort law. The case law of the English and Bulgarian courts has been systemized and explained.

Bulgarian tort law is presented and studied on each topic in parallel with English law and in combination with a rich comparative law study. A different perspective on contemporary tort law in search of the dimensions and essence of Bulgarian law is presented.

The monograph deserves high assesment. It reveals Dr. Tsoneva's enduring scientific interest in the subject of law of obligations and fills a serious gap in our legal literature.

3. Citation from other authors

The works of Ch. Assistant Professor Dr. Silvia Tsoneva have been cited 30 times in monographs and collective volumes with scientific review. According to this criterion, the candidate received 300 points, with a minimum of 50 required for this indicator. According to a report of November 22, 2021 of the Attestation Commission for long-term attestation of Ch. Assistant Professor Dr. Silvia Stoyanova Tsoneva before the announcement of the competition for associate professor in the professional field 3.6. Law. Dr. Tsoneva has two reports published in scientific journals, referenced and indexed in world-famous databases of scientific information.

III. Teaching and learning activities

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 of chief assistant. She teaches classroom and extracurricular classes in law of obligations, trainings in law of obligations, consumer law, stock exchange law and paperwork in law of obligations. She takes part as lecturer in the course "Practicum in Civil Law Science". She also teaches in the program "Applied Linguistics" at NBU. She organizes the students' group in law of obligations within the group of civil law.

The average score from the student satisfaction surveys is 4.47 (with a maximum score of 5.00)

IV. Administrative and public activities

Dr. Silvia Tsoneva was Director and Program Consultant of the NBU Law Program from 2005 to 2017. Member of the Accreditation Commission at the Master's Faculty, Member of the

Program Council of the Law Program and of the Council of the Department of Law of NBU. Erasmus Law Coordinator. Member of the editorial board of the NBU Law Journal or NBU from 2005 to 2022. Member of the Union of Lawyers in Bulgaria.

V. Personal impressions of the candidate

I have known Dr. Silvia Tsoneva for more than 20 years. My personal impressions of her as a student, teacher and colleague are excellent. She is responsible, organized, consistent in her work and demonstrates professional expertise at a high academic level. She has broad common knowledge and enduring scientific interests in the field of law of obligations, which contributes to her scientific development. These personal impressions harmonize with my idea of Dr. Tsoneva as an established and respected expert, researcher and lecturer, who rightly enjoys high respect from students and colleagues in the academic community.

VI. Opinions, recommendations and notes on the activities and achievements of the candidate

I give a positive assessment of the academic activity of the candidate Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva and I strongly suggest to the Scientific Jury to take a positive decision and propose to the Academic Council of NBU to elect Chief Assistant Professor Dr. Silvia Stoyanova Tsoneva for the academic position of "Associate Professor" of the New Bulgarian University in the professional field 3.6. Law (Law of Obligations).

Date:

June 20, 2022 Assoc.Prof. Dr. Tzvetalina Petkova