To

The members of the scientific jury

In the competition for the academic position

"Associate Professor" in 3.6. Law (Law of Obligations),

Announced in SG 14 / 18.02.2022 by the New Bulgarian University

REVIEW

by

PROF. DR POLYA GOLEVA

Dear Madam Chair of the Scientific Jury

Dear members of the Scientific Jury,

1. I have the pleasure to be appointed by order № 3-РК-183 /24.03.2022 of the Rector of the New Bulgarian University based on decision of the AC 07/22.03.2022 as a member of the scientific jury in a competition for the academic position Associate Professor in PF 3.6. Law (Law of obligations).

Following the instructions of the Head of the Department of Law and after the first meeting of the Scientific Jury, I have been nominated by the Chairman of the Scientific Jury as a reviewer, for which I would like to thank.

The only candidate in the competition is Ch. Assistant Professor Silvia Tsoneva, who presented a list of scientific works, a report for the original scientific contributions, as well as other documents required by the Law on the Development of the Academic Staff in the Republic of Bulgaria. They should be analyzed in this review in order to determine whether the candidate meets the requirements for the academic position "associate professor".

2. Habilitation work

I will start with the last monograph - "Compensation for damages in case of contractual liability", published by the New Bulgarian University, 2021.

On the face of it, the habilitation work meets the requirements of the law - it is published by a university-publishing house, there are two reviewers - habilitated persons in the same science area - Prof. Dr. Tanya Yosifova and Assoc. Prof. Dr. Tsvatalina Petkova, there is a scientific proofreader - Assoc. Prof. Dr. Katerina Yocheva. The monograph is dedicated to a topic that has not been the subject of research in the previous scientific works of the candidate - the dissertation and other works published before 2022.

The book has 398 pages. It contains a list of abbreviations, appendix of selected legal texts, soft low, international agreements, bibliography, and summary. There are 973 footnotes in the book.

3. General presentation of the content of the monograph

The monograph begins with an introduction in which the author states her willingness to explore damages for breach of contract not applying the traditional approach, which deals with the topic in the context of contractual liability and its prerequisites, but using a peculiar approach. In this way the author represents the modern trend of the new normality, encompassing one of the most conservative science - law, to step into it with a new approach. This is an endeavor that I personally appreciate. It is time for innovative approaches in all areas of law.

Mrs. Tsoneva decided as a real shooter to focus on the core of the studied phenomenon - losses, their compensation and its calculation. Thus, from the very beginning, she brings forth the originality in the habilitation work and teases the curiosity of the reader, accustomed so far to the boring introductory classics. An interesting begining. I have always believed that the path taken by a researcher is an essential element of the scientific study. In fact, the author decides to shorten the traditional route of approaching the topic of damages, bypassing the boring repetitions of the basic issues - what is contractual liability, its elements, breach of contract. In other words, she directly goes to the target - losses and causation, as well as to their calculation, an issue to which our theory has not really paid special attention so far. I approve this approach. Compensation for damages in case of contractual liability has been so far left to the end and very often it was not explained in detail, but only added to the other consequences of non-performance of the contract. Furthermore, having in mind that in practice,

especially in commercial relations, damages are replaced by liquidated damages clause and courts only have to arrange its calculation by a chartered accountant. Paying special attention to damages, the author makes a significant contribution in making the legal regulation of damages a distinct institute of the law of obligations having its own specifics – in many countries it has long stood out as an independent part of private law - Indemnity Law , Schadenersatzrecht, Damages, Compensation des dommages. By the way, perhaps the candidate would have found a broader area to manisfest herself if she had entered the interior of compensation for tort, which is not yet infected with the penalty virus.

The introduction shows the traces that Common Law, with which Mrs. Tsoneva was breastfed, has left in her legal consciousness. The combination of conservative and dogmatic legal thinking of the continental and above all French law, enshrined in the Obligations and Contracts Act, and the economic approach of Common law creates a mixture suitable for new perceptions of the phenomenon called damages for breach of contract. As in her other works, Mrs. Tsoneva enriches the readers' knowledge with the interesting ideas of English lawyers, who are known for their practicality. Such is, for example, the concept of "effective breach", according to which the debtor is allowed to breach and pay compensation if this would be more cost-effective for him than if he had performed the contract - p. 15. Here, this understanding meets my disagreement caused by the neglect for the creditor's interests and the principle of strict performance. I would also like to make a banal note to the author - in the introduction she deviates to express her unbridled love for the Common Law, as it is known in our country. I also advise her not to use the word 'legal family' so often. I like that in the introduction she tried to formulate the main question, which may be answered at the end of the monograph - whether compensation is the price for breach paid by the debtor or a surrogate of breach - p. 16.

It is a good idea of the author that in the introduction she clearly outlined the subject of the study - first chapter - losses considered through the lens of causality and foreseeability; second chapter - the calculation of compensation and the various methods of calculation, including the already known concepts of positive and negative interest, abstract and concrete approach, loss suffered and lost profits, future loss is added too. The third chapter, with the title "special cases of damages", deals with compensation for non-pecuniary loss, compensation for damages in case of rescission of the contract, default interest, liquidated damages clause, compensation according to the benefits to the debtor.

Considerable attention is paid to the criterion for distinguishing direct and indirect damages. The study of foreseeability of loss and the limits of contractual

liability outlined in Art. 82 OCA is profound. I agree with the view that bad faith is the debtor's mental attitude towards non-performance and not towards the damage resulting from it. I will not enter into a dispute on the merits of the conclusions made by the author on the issues of causation, intervening causation, mitigation of loss under Art. 83, para. 1 and under para. 2 OCA. The study is superficial, there are no examples from the case law that could enable analyzing the situations. In addition, Mrs. Tsoneva did not discuss Art. 85 OCA in the context of breaking the chain of causation. On the other hand, the author thoroughly studies the hypothesis of Art. 83, para. 2 of the OCA and reaches accurate conclusions and proposals based on some texts of the Insurance Code. However, I will allow myself to point out some incompleteness. With regard to "creditor's fault" under Art. 83, para. 2 OCA she missed the dissertation "Loss inflicted by the debtor in case of contractual liability" by Andrian Slavchev and the publications related to it, made in 2020 and 2021. There is also an omission on pages 137 and 138, on which ID 1/2021 of the Supreme Court of Cassation is discussed. In 2021, I published an article dedicated precisely to this interpretative case in "Commercial and Obligation Law" no. 9, pp. 42-53 with the title "Reduction of compensation for non-pecuniary damages in case of complicity by the victim". I note this fact because on page 2 of the report on scientific contributions Mrs. Tsoneva added the answer to the question posed in TD 1/2021 of OSGTK of the SCC, but unfortunately someone was ahead of her ....

With regard to the contribution pointed out by Ms. Tsoneva in item 7 of the list of contributions, I would like to clarify that the concepts of "positive" and "negative" interest are not created by Bulgarian but by German theory and practice and were developed by Karl Lorenz in his course "Schuldrecht. Allgemeiner Teil ", Muenchen, Beck Verlag, 1976. Unfortunately, it is difficult for me to accept the logic of her statement that" for the purposes of calculating compensation for positive interest, one of the components in its structure can be represented as the costs the creditor would not have incurred if he had not made the contract and thus to see in it an expression of a specific negative contractual interest '. The logic in her statement is incomprehensible to me. Compensation cannot be claimed for expenses that the creditor would not have incurred had he not made the contract, which he did conclude but the debtor did not fulfill.

The study of the abstract and the concrete method for calculating damages, compensatio lucre cum damno, future damages and the compensation under art. 80 OCA should be assessed positively. To make compensation full, the author presents a formula based on the economic value of the promised performance and all costs that the creditor would not have incurred and all benefits that he

would have gained had the contract been performed (profit lost) minus the value of performance received, etc. However, the work confuses the issues of compensation for non-performance of a contractual obligation (what is the topic of the work) with compensation for tort. It is inappropriate to involve the insurance value and indemnity, because the insurance contract is specific in this that it is not a matter of default, but performance due by the insurer under the insurance contract and the amount of which is determined by the actual or the reparable value of the insured item. Such big and unnecessary deviation from the main line of research should not be done.

I did not receive a clear answer from the work on the main question posed in the introduction of the research. The author points out as contribution the last part of the chapter entitled "Special cases of compensation" – a topic not studied separately in our country which deals with the possibility to calculate damages for breach of contract not according to the damage caused to the creditor, but to the benefits received by the debtor. The idea is revolutionary and very dangerous. It displaces the concepts of "unjust enrichment" and "wrongful harm" and destroys the institution of contractual liability. If the debtor didn't gain much benefit and the creditor has suffered significant damage, what would be the result. I think the author reasonably refuses to accept and propose de lege ferenda such reasoning as a legal norm.

In the conclusion, which was presented as contributions in the habilitation work, I did not find an answer to the question posed in the introduction - is the compensation the price of non-performance or is it a surrogate for non-performance.

The interest of Ch. Assistant Professor Silvia Tsoneva to the concept of causation, through which she explains the limits of contractual liability, is obvious. However, I would recommend that she verify both the views she shares in theory and the supported concept of direct and foreseeable damages, and whether it is able to explain the causality between the breach of contract and damages. Will it not remain a beautiful ingenuity, an unsubstantiated babble?

The contemplative approach is inevitable, but how useful it is for contractual and court practice, will it provide the matrix of justice to solve the important and difficult issue of causality between phenomena, leaves me a little doubtful. The author did not apply to the initially declared original in her opinion approach the source material with which each lawyer builds his concepts - court decisions, practice of the SCC and other courts, didn't explore the issue of causation, but

indulges in complex reasoning, derived from foreign writings and foreign legal solutions.

4. Second monograph

As second monograph in this competition, the candidate presented her book "English and Bulgarian tort law", published by "Avangard Prima", Sofia, 2019. Although the focus in the competition is on the habilitation work, the second monograph also emphasizes the skills of Mrs. Tsoneva to conduct legal research. The value of this work is that the author introduces us thoroughly and competently to English tort law, which she studied for two years from the source, completing an English online course with the same title. In order to clarify the complex and generally unknown concepts of English tort law, which differs significantly from continental tort law, Mrs. Tsoneva tries to compare them with the concepts present in Bulgarian tort law, to draw a parallel between them, to include other foreign legal regimes when making comparisons. The author skillfully and with a high degree of self-confidence works with the subject of English tort law, and therefore provides us with something more than a textbook on this hitherto unknown law. I believe that the very generalization and explanation of foreign law is a significant contribution to the Bulgarian legal literature. Not only we didn’t have so far a book on English law, even one translated from English into Bulgarian, but we didn’t have a long-term comparative law study such as this monograph. I don’t know why this monograph was not presented by the candidate as habilitation work and why it was not widely distributed among Bulgarian lawyers, but in my opinion it is better written and more useful than the former (of course, without belittling the former). Apart from the fact that Mrs. Tsoneva is profoundly acquainted with the English doctrine, she also introduces us to valuable court decisions that are clearly and understandably presented and would be extremely useful for Bulgarian lawyers, given the opportunity to give consultations to Bulgarian citizens - wrongdoers or tort victims in UK. The work covers all the main topics of English and Bulgarian tort law and makes comparison between them. Besides wrongfulness, the author has analyzed causality, strict responsibility, responsibility for omission. The book acquints us to concepts known to English law, but unknown to Bulgarian law, to various hypotheses of tort such as insult, defamation, competition torts, trespass to land, etc.

The value of the candidate's work lies not only in disclosing the complex and unfamiliar to us legal ideas of English lawyers in a clear "continental law" style, but also in the restless search of the author of new ways for exploring tort law. The author rightly decides from the very beginning that the current

descriptive approach, used in many countries to analyze the elements of tort and its legal consequences is boring and does not lead to anything new and different, but only confirms what has been written so far and takes the non-traditional decision to delve into Bulgarian tort law through English tort law. This innovative approach is also observed in the habilitation work of the candidate. And this is exactly the creative power of Mrs. Tsoneva. She passes through the tidy, albeit a labyrinth, English garden to enter the miserable and messy courtyard of Bulgarian tort law with scattered broken pots from the Roman era, several exquisite French furniture combined with iron German ladders and weeds growing from our modern laws constantly between them. It is an extremely difficult task to compare the concepts and institutions of two very different tort law systems. There are few comparative works in the Bulgarian doctrine, but we have not had such an original and rich work. And here again, it is not a question of making some mechanical placement of legal rules (in English law they do not always exist, but must be derived from court decisions, and in our country court decisions are not so valuable in the field of tort), but analyzes legal processes in order to draw conclusions and summaries, which are brilliantly concentrated and systematized in the conclusion. For the first time in our modern Civil law literature, a work has been created that does not describe the legal system of one country or another, but combines the achievements of doctrine and jurisprudence of a leading country in the history of modern law and creates a new scientific product. I will take the words of the author at the end of the conclusion that we must go beyond the traditional approach to tort law in our country and observe the Bulgarian system, illuminated by the English Tort Law. Apart from the fact that the candidate succeeded with the task set in the introduction, she did it lege artis, with a very good knowledge of English law, with accurate demonstration of legislative approaches, with intelligence, scientific precision and good faith.

Both monographs have high scientific, learning and innovative value. We should not spare superlatives for Mrs. Tsoneva, who is known for her modesty. Therefore, with a clear conscience, thanks to my experience, I allow myself to note that Silvia Tsoneva has great research talent, perseverance, patience and creative potential, for which I can say with deep conviction that Bulgaria is too small.

5. The applicant presented as a third work "The horizontal effect of fundamental human rights in the relations between private parties." Collection of reports in the scientific conference "Human Rights - 70 years after the adoption of the Universal Declaration of Human Rights", PH "St. Cl. Ohridski", 2019. Mrs. Tsoneva points out as a contribution the analysis of fundamental rights in the

relations between private law parties and the study of the process of constitutionalization of private law.

6. After writing and successfully defending her dissertation in 2009, Mrs. Tsoneva reported two monographs that were analyzed in this review, two articles in English, 16 articles in Bulgarian, 30 citations, participation in three international projects.

7. I did not find plagiarism from other scientific works.

8. As far as teaching activity is concerned, the candidate meets the requirements of art. 24 of the Law for development of the academic staff in the Republic of Bulgaria. She has developed a course in Consumer law, which she teaches to the students in Program of Law of the New Bulgarian University. Since the academic year 2020-2021, she has been teaching of the mandatory course "Law of Obligations" at the same university, which is 165 lecture hours. In other words, Mrs. Tsoneva's teaching load is guaranteed.

9. Conclusion

The candidate also meets the other legal requirements for holding the scientific position "Associate Professor". As I have already mentioned, in 2009 she obtained the educational and scientific degree "doctor" in the same subject - law. At least two years have passed since then. Prior to the competition and at the announcement of the competition, as well as at the time of her assessment, she held the academic position "Chief Assistant" at the same university. She has presented a monograph and other publications in specialized scientific journals, which do not repeat the works presented for the acquisition of the educational and scientific degree "Doctor". There is no duely proven plagiarism in her scientific papers. Mrs. Tsoneva has extracurricular activities with students, participates in research projects and is a member of the Union of Lawyers.

The above gives me reason to assume that the candidate Silvia Stoyanova Tsoneva meets all legal requirements under Art. 24 - 28 LDASRB and therefore I believe that the scientific jury should take a decision and make a proposal to the Academic Council of New Bulgarian University that she is awarded the academic title "Associate Professor" in the competition announced in PF 3.6. Law (Law of obligations) in the Department of Law of the New Bulgarian University.

Date 28.06.2022 r. Signature: