R E V I E W

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By Order of the Rector of Sofia University “St. Cl. Ohridski”I have been appointed a member of the scientific jury in the competition for associate professor in the professional field 3.6. Law (General Theory of Law), and by a decision of this jury I have been appointed to prepare a review.

In the competition for associate professor for the needs of the Faculty of Law of Sofia University “St. Cl. Ohridski”the only candidate is Mr. Simeon Efimov Groysman. He was born on October 9, 1987. and from 2012 holds the position of Chief Assistant in General Theory of Law at the Faculty of Law of Sofia University “St. Cl. Ohridski”. At the same time, from June 2016. he is also a lawyer at the Sofia Bar Association. Since 2015 is a doctor of law in the scientific specialty Theory of State and Law. Political and legal doctrines. The topic of his dissertation was "Morality and legal validity according to contemporary legal positivism".

In the competition for associate professor, Mr. Groysman presented mainly his monograph "Law and Power. From the unlimited state to the postmodern rule of law ", ed. Ciela, 2020, while presenting another monograph and 11 articles in scientific journals, as well as dozens of articles in collections. Most of the scientific articles are directly related to the issue of proposals for review of scientific work with which the candidate participates in the competition for associate professor. Therefore, his work is a natural continuation of Mr. Groysman's research, scientific efforts and analysis, the monograph does not come, so to speak, "out of nowhere".

The main work of the candidate "Law and Power" consists of 443 pages and includes an introduction, seven chapters and concluding remarks. In general, the work is devoted to the relationship between law and power, tracing this relationship in its historical and theoretical, philosophical and state-law aspects. The work is a serious, in-depth and comprehensive study of the problem, and it is no coincidence that the author has traced the relationship between the concepts of the time of the unlimited state to the postmodern supremacy of rights. This question, in itself, speaks of the original, creative thinking of the candidate, because he has drawn a logical and scientific chain from the point of view of the General Theory of Law. This fact speaks of the logical, systematic, orderly and analytical thinking of the candidate, which is evident in the text of the individual chapters of the book, as well as in general in the overall presentation of the book.

The first chapter of the paper is dedicated to the methodological basis of the research, as the author dwells on the relationship between the general theory of law and the philosophy of law. According to the author, the General Theory of Law is knowledge of legal systems. According to him, the General Theory of Law formulates conclusions that are applicable to different legal systems, and the philosophy of law is an abstract philosophical knowledge for the analysis of the relationship between existing legal systems. That is, the philosophy of law deals mainly with the question of ideas in law, and the general theory of law deals with the question of the application of these ideas.

The author also dwells on the so-called "legal method", which is also defined by him as a legal-dogmatic method and which serves as an explanation for the functioning of law. The legal method is more focused on practical law enforcement - source of law, legal norm, legal principle, etc. This method, according to the author, is a method of legal analysis that is part of legal positivism. Hence the author successfully connects this method with the problem of power, because legal positivism could not be considered abstractly, detached, ideal, but always in connection with the official source of law, namely power.

Chapter two of the work is dedicated to power. The author considers different interpretations of the definition of the term power. Of particular importance is the original idea of the division of power into factual and normative. In this way, Mr. Groysman connects power with law, with the norm, with the legal content, with the legal understanding of power, and not only with its understandings given by sociological, historical or political science. Of particular importance to the lawyer is the normative power, or as the author puts it, "the normative powers". Normative are those authorities that arise as a result of the prescriptions of a normative system and have as a consequence of their exercise the emergence of normative obligations for behavior. Authority is a concrete opportunity to force the addressee to obey. At the same time de facto power is the real ability of one legal entity to influence the behavior of another. De facto power, however, should not be ignored in law, because it exists in some legal systems, and also mainly and especially in civil law we talk about de facto power, but in these cases this power refers to property relations. Therefore, the author has rightly noted that the law regulates certain de facto powers in order to create guaranteeing legal authorities (normative powers).

Chapter three is devoted to the two meanings of power - power as force and power as authority. The author has traced the relationship between the two concepts in a historical context, and has also interpreted these concepts by inserting his own reflections on the understanding of the power and authority of power. In fact, this question is a continuation of the topic of factual and regulatory authorities. Power is characteristic mainly of factual authorities, while normative authorities are characterized by the concept of authotity. The author rightly emphasized that from a linguistic point of view in Bulgarian it is difficult to convey the relationship between power and authority. He examined the historical development and historical evolution between the two concepts. In this respect he showed an enviable both legal and general culture, which includes extensive knowledge in the field of history, philosophy, sociology.

The remaining chapters of the monograph are dedicated mainly and almost entirely to purely legal issues, i. e. they include questions and topics in the field of classical general theory of law and philosophy of law. The author has very successfully defined some basic legal concepts such as legal norm, legal order, legal relationship, legal system and others. These definitions are given and formulated in connection with the main thesis of his work, namely to prove the relationship between law and the state in the context of the development of both concepts.

The candidate has given an analytical assessment of the different understandings of the concept of law. According to him, there are two basic understandings of law: axiological and instrumental.

To the axiological understanding he includes mainly the classical philosophy of law, which is based on the theory of natural law, whose representatives in our country are Prof. Tseko Torbov and Popoviliev. To the instrumental understanding of law the author includes the teachings of Jellinek, Jhering and Kelsen. We could not agree with the latter - about Kelsen's teaching - because, in our opinion, Kelsen's teaching is completely independent and it cannot be reduced, so to speak, to any understanding, doctrine, doctrine or theory. The normative teaching or the normative doctrine of Hans Kelsen is philosophical normativism, it is not an instrumental understanding, insofar as by instrumental understanding we treat those doctrines that perceive law as a means to achieve certain goals, and this invariably leads to underestimation of law itself, to reduction to a registrar of events, to a system that simply registers relationships that, in any case, develop without the law in the social space. But the fact that, for example, the reviewer does not agree with an assessment does not mean that the author is wrong, and the reviewer is right, because here lies the rule of scientific freedom, of autonomous scientific and creative expression of will. What has been said, in this sense, should not be taken as a critique at all, but is simply part of a scientific discussion, of a cultural-scientific dispute that has always existed between lawyers.

According to the author, the instrumental understanding presents the law as a system of authoritative prescriptions, the application of which is guaranteed by a single center. And here it could be argued, insofar as a norm means something normal, correct, proportionate, reasonable, fair. The norm is a standard, a scale of behavior, and the prescription is something that is included in the norm. The prescription, to some extent, in our opinion, degrades the law, reduces it to a set of orders, not rules. The norm is closer to the rule, and the prescription is closer to the command.

In the monograph the author has examined in detail, analytically and in depth the problems of sovereignty, the legal order, the role of power as a creator of law, the concept of the Basic norm and many others that are related to the main theme of the work. These considerations are given in the correct legal language, they are in-depth in nature and reveal the rich both general and legal culture of the candidate. The author also focused on the role of the court as the creator of what the author calls a "legal prescription" and not a legal norm. But this, as we have already noted, is a moot point and we are unlikely to resolve it, namely whether it is a legal prescription or a legal norm. In this sense, Mr. Groysman also addressed the issue of validity - a major topic in law - by analyzing the different understandings, but also gave his opinion on the issue, which he did reasonably and well argued.

The issues of subjective rights and legal obligations are also considered in the book. The author interprets subjective rights as part of the concept of power. According to him, through subjective rights, the de facto authorities desired by the legal order receive institutionalization as valid legal prescriptions.

The monograph argues that subjective law is an empowered will. According to the author, every subjective right is a power guaranteed by the legal order. The author has argued in detail in this sense in defense of his scientific opinion.

The main contributing moments of the work are as follows:

1. The presented work examines the relationship between law and power, using the concepts of general theory of law and philosophy of law. The main conclusion that the author draws is that power should be limited to certain limits fixed by law, and that in fact in this respect the leading place has the law, not the power.

2. The science of General theory of law seeks the formulation of conclusions that are applicable to different legal systems, as well as to individual branch legal sciences. At the same time, the author gives an in-depth analysis of the concept of "law", which ultimately unites both legal systems and legal branches.
3. The author distinguishes between the general theory of law and the philosophy of law, emphasizing the fact that the philosophy of law gives more abstract knowledge, which is alien to positivism and legal empiricism.
4. For the first time in our legal literature, a critical and detailed analysis of the so-called "libertarian-legal" theory of Nersesyants is made. It serves as a main center, which indicates the possibility of formulating various authoritarian legal concepts. In this sense, the author even revised the theory of Nersesyants, because according to him the legal order can be explained through its attitude to power.
5. The candidate speaks in his work about the law as an order of power. He did not limit himself only to this definition, but developed his thought to the conclusion that the law is also a means of limiting power. One of these ways of limiting power is the principle of legality. Mr. Groysman elaborated on this principle, examining both the existing theoretical views and his assessment of the concept.
6. An important point in the work is the treatment of power in its two senses - as power and as authority. In German literature, this is distinguished as a primary force and legal means of expressing that force. Therefore, in the German language there are two expressions for - specifically - state power - one concept shows the primary, genetic, natural force, the other - emphasizes the legal organization, the legal binding character of this force. In this sense, the work would have benefited from this if the author had analyzed this problem according to the German state-legal science.
7. A contribution to the monograph is the consideration of the "three historical epochs of law". On this basis, the author speaks of two main and essential views of law - axiological and instrumental. According to the axiological understanding, the law is a limiter of power, and according to the instrumental understanding, the law is a kind of technology for exercising power. This is a new moment in legal doctrine. Of course, there can an argument over this proposal, but in our opinion, scientific freedom should be given priority over the narrow framework of existing teachings, which are sometimes repeated to a degree of banality in the legal literature. Therefore, the author deserves congratulations for the innovative thinking and innovative approach.
8. The treatment of the topic of law and sovereignty deserves special attention. The author speaks of a "gradual decline" of the notion of sovereign power, which leads to legal absolutism. That is, the candidate emphasizes the fact that the law is not only a product of the authoritarian expression of will, but also of universal principles, understandings, ideas, different views, including morality. This broadens the narrow understanding of law and adopts a broader and more liberal and philosophical view of the creation of law.
9. Special attention in the work is paid to the issue of the Basic norm. In this sense, the author makes a comprehensive analysis of Kelsen's "Pure Doctrine of Law", concluding that Kelsen's doctrine is "the highest poinf of modern thinking about law." The author has given a special place to the multilevel structure of law, to the notion of legal validity and to the role of this validity for the substantiation of the Basic norm. According to the author, the Basic norm is an universal legal answer to the connection between law and fact, as well as that between law and power.

10. With regard to the concept of "source of law", the author defends the view that power and non-power sources of law are possible, and in this sense, he has also specified the definition of the concept of "source of law".
11. In the monograph there is a place for the so-called "dead norms". These are legal norms, that have lost their applicability, despite their formal validity. In this way, the author has distinguished the formal validity from the existing, active validity.
12. The paper points out the main characteristics of the concept of "subjective right" through the prism of the question of power. Subjective rights are divided into those that have the character of normative authorities and those that have a purely power nature. That is, some originate purely from the legal norm, while others have power as their root.
13. A special place in the work is given to the concept of the legal order. This is completely understandable, as our legal literature overcomes, or at least is about to overcome, the old understanding of the existence of a legal system, but not of a legal order. The legal order is a projection of the legal norm, although this conclusion is not so convincingly represented in the work. Nevertheless the author's reasoned and independent thinking about the concept of the legal order deserves attention.

Some weaknesses in the work can also be pointed out. For example, the author was able to make a deeper and more prominent connection between law and power. At times, the thread of this connection is broken, its main and essential aspects are not well enough emphasized. No basic conclusion has been drawn, perhaps, this is left to the reader. In a monograph, the main thesis of the author should be more clearly present, which should pass as the main thread, so to speak, throughout the work. In this way, a study differs from a textbook, for example, in the latter - the author - whoever he is - writes everything he knows about all phenomena - and law, and state, and power, and freedom, and values for which it is quite modern to write lately.

Mr Groysman was also able to dedicate more space to the role of the court and case law in creating legal rules. The court is also part of the state power, albeit with its own peculiarities. If we talk about purely legal power, the court, in this sense, has the purest legal power, it is an emanation of law in its applied, empirical, but also in the law-making sense. The court, from our point of view, is not only a law enforcer, but also a law creator.

Also: regarding the Kelsen doctrine, in our opinion, it should be treated as a separate doctrine, and not among others or as part of what the author calls an "instrumental understanding" of law.

Despite these not very significant weaknesses, I believe that the work is written in high legal language, shows an excellent style of the author, his rich general and legal culture, deep and penetrating thought, analytical, freedom of expression and defense of their views. This is a guarantee for future creative success of the author. The idea of the work could be extended with a future study on the role of non-governmental actors in the creation of law and to ask and answer the question in general: is it possible for these subjects to create law?

It is about the importance of private law and the subjects of private law in legal relations and whether in the process of these legal relations there is no creation of law - for example, contracts in civil law, corporate rules and others, which are becoming increasingly important mainly in law enforcement. The question is, whether these non-authorities are able to create law, and not just to enforce it.

The candidate also meets the formal requirements for participation in the competition, as specified by the law. From this point of view and together with the creative achievement in the work, there are

all legal prerequisites for obtaining the academic position of associate professor of General Theory of Law.

Mr. Groysman also has experience as a lecturer, which is not insignificant. He teaches General Theory of Law at the Faculty of Law of Sofia University “St. Cl. Ohridski”. He is also an active lawyer, therefore he has the necessary practical knowledge and experience, he has knowledge of the case law and law enforcement. This is important for the cultivation in the lawyer not only of purely academic, but also of law and judicial knowledge. In this way, science is combined with practice, because law, in addition to science, doctrine, knowledge, is also a profession.

The candidate also speaks foreign languages required for each scientist - English, Russian, Italian, German. Obviously, the knowledge of these languages has enriched his culture, as well as contributed to the study and analysis of the relevant legal literature. In this regard, I will note that the cited authors and sources are correctly represented and reference to them is fully appropriate and justified.

Based on the above and the scientific work presented by the candidate, as well as on the additional scientific articles, I believe that there the legal requirements under the Law on the Development of Academic Staff in the Republic of Bulgaria and the Rules for its implementation are fullfilled and I propose to the scientific jury to elect Mr. Simeon Efimov Groysman for the academic position of associate professor of General Theory of Law at the Faculty of Law of Sofia University "St. Cl. Ohridski“.

19.10.20. Review:

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