

## Opinion

By: Yanaki Boyanov Stoilov, Professor at "Sofia University St. Cl. Ohridski", appointed as a member of the scientific jury according to Order of the Rector of Sofia University "St. Cl. Ohridski" № RD 38-254/06.07.2020, assigned to prepare an opinion according a decision of the jury from 08.09.2020.

The competition for the academic position of associate professor of General Theory of Law, field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law, scientific specialty Theory of the state and law was announced by Sofia University "St. Cl. Ohridski" in SG, issue 57 of 26.06.2020.

Candidate: Simeon Efimov Groysman, head Assistant Professor of General Theory of Law at the Faculty of Law of Sofia University "St. Cl. Ohridski".

1. Information about the academic development and professional work of the candidate.

Simeon Groysman's academic activity began in 2012, when he acquired the position of Assistant at the Faculty of Law at Sofia University "St. Cl. Ohridski". Since 2016 he has been a Chief Assistant in General Theory of Law. He conducts seminars and lectures to students of law, international relations and other specialties. Since September 2016 he has been a doctor of law with a dissertation under the title "Morality and legal validity according to contemporary legal positivism". His dissertation was also published as a book entitled "Law and Morality: The Problem of Legal Validity in the Reading of Contemporary Legal Positivism", Sofia, Ciela, 2017.

Simeon Groysman teaches mainly General Theory of Law and Philosophy of Law. He teaches a lecture course on the Erasmus program - Theory and constitutional organization of public power in English.

He is a lecturer on the implementation of Regulation (EU) 2016/679 on personal data protection.

He registered as junior lawyer (2013) and lawyer (2015) at the Sofia Bar.

From June 2016 to May 2020 he was Scientific Secretary of the Law Faculty of Sofia University "St. Kl. Ohridski".

S. Groysman shows a serious attitude to academic activity, a high level of knowledge of the subject and attention to students.

## 2. Scientific activity of the candidate:

### 2.1. Papers submitted for participation in the competition:

- Law and power. From the unlimited state to the postmodern supremacy of rights, Sofia, Ciela, 2020. The 444-page monograph contains an introduction, seven sections, a conclusion and a bibliography, which includes 144 titles in Cyrillic and 128 in Latin alphabet.
- Law and power: On the idea of V. S. Nersesyants of power theories of law - In: Legal Science in the Modern World: Russia and Bulgaria. Moscow: Prospect, 2020;
- On the symbolic power of the Bulgarian criminal law - In: Scientific readings on Sanctions in Law, Sofia, Sofia University Publishing House "St. Kl. Ohridski", 2019;
- Legal Realism versus Legal Ideology: On Explanatory Models of Judicial Activism - In: The Role of Courts in Contemporary Legal Orders. The Hague: Eleven, 2019;

- Law and power: A dialectic of the border - In: Law and Limits, Sofia, Sofia University Publishing House "St. Cl. Ohridski", 2018;
- "The Omnipresent Administration", Ius Romanum, 2018;
- The power to punish and the power to educate. - In: Contemporary Challenges to Criminal Law, Sofia, Sofia University Publishing House "St. Cl. Ohridski", 2018;
- Sovereignty of Law and the Legal State. A Contemporary Point of View on the Theory of Hugo Krabbe. - In: Rule of Law at the Beginning of the Twenty-First Century. The Hague: Eleven, 2018;
- Republican Legitimacy and Extraordinary Power: Political and Legal Reflections on the Machiavellian Reading of the Roman Dictatorship. - Ius Romanum, 2017;
- Legal principles as purposive legal prescriptions, In: Scientific readings on Legal norms and legal principles, Sofia, Sofia University Publishing House "St. Cl. Ohridski", 2017;
- Criminal law as protection of values - In: Scientific readings in memory of V. Ganev and N. Dolapchiev. Sofia, Sofia University Publishing House "St. Cl. Ohridski", 2017.

## 2.2. Scientometric indicators:

It is noteworthy that the papers submitted by the candidate (a published habilitation thesis and ten articles) significantly exceed the minimum national requirements for the position of associate professor. More than 20 citations (references to his works) have been noted, including by Russian authors, half of which are of the book "Law and Morality" and the rest from the articles Criminal Law as Protection of Values, Legal Principles as Purposive Legal Prescriptions and "Soft Law and the concept of law".

### 2.3. General characteristics of the candidate's scientific activity:

The candidate's research activity in question can be related mainly to several thematic circles: placing the law in relation to power; the role of law, and in particular its principles, in relation to values and objectives; the relationship between the sovereignty of law (of rights) and the legal state. Using general theoretical positions S. Groysman enters the field of criminal law as well.

### 3. Scientific contributions and comments on the scientific content:

3.1. The habilitation work "Law and Power. From the Unlimited State to the Postmodern Supremacy of Rights" contains several contributions to the general theory of law.

- S. Groysman takes as a methodological basis of the study the positivist legal approach, which corresponds to the consideration of law mainly as a normatively expressed power phenomenon. He uses one of the popular definitions of power to characterize law. "Where we speak of law, there is always a relationship of power and subordination, or a relationship of freedom from another's power, which freedom, in turn, is guaranteed through power" (p. 25).

In some places he turns aside from the strictly positivist approach, because the purely descriptive explanation of legal phenomena turns out to be insufficient to reveal their complex nature. In such cases, he uses the analysis of social foundations of law or legal realism. The author points out, "that a good legal theory is based primarily on a realistic sociological explanation of the normative reality modeled by it" (p. 26). This understanding is manifested in the qualitative distinction of legal principles and rules, in the consideration of the general theory of law as knowledge of the general characteristics of functioning of legal systems, in the claim that rights gain supremacy in the legal system and especially in the so-

called anti-powers. In conclusion, he summarizes that Western legal thought is turning from legal instrumentalism to legal axiology, the latter finding expression in postmodern interpretations of human rights. I consider these additions and deviations from the main research approach not as a disadvantage, but as an advantage, which makes the analysis more reasoned and in-depth.

- The law is presented as a social order of power (it is based on powers, regulates powers and creates authorities - p. 75). However, this applies to a greater or lesser extent to other types of social norms. In part, the answer to the question posed is derived from several distinctive features of law. Such is the coercion, which, I agree with the author (following the line of M. Weber), is not necessarily physical, but is "organized" (in this sense I would call it "organizational" coercion, which is carried out through special bodies and procedures). The parallel between the legal-sociological aspect (how power acts through law) and the legal-dogmatic aspect (how law acts through power) is successful - p. 76.

- S. Groysman connects the theory with history, which allows him to establish that with the change of law over time, the very understanding of law changes in part. He marks the three great historical epochs (traditional, modern and postmodern), through which law and views pass through it, in order to arrive at what he calls postmodern law. Characteristic of the latter are the internationalization of the protection of human rights and the creation of supranational legal structures. In this regard, the role of strong courts, which show judicial activism in resolving "hard cases", has been critically considered.

- S. Groysman, as well as a number of other authors, refers to the views of H. Kelsen, which he commented extensively. His merit is that using his very good language training, in addition to presenting these views in detail, he uses the nuances of terminological meanings. The formalistic approach used by the neo-Kelsenians led some of them to develop logical-mathematical formulas. So did S.

Groysman (Chapter VI of the book). However, I am not sure whether such formulas have a real practical meaning beyond the illustrative function they perform in the theoretical construction of his research.

- From the classic problem of state sovereignty S. Groysman, following H. Krabbe on the sovereignty of law, came to the idea of sovereignty of rights. The latter are at the heart of the contemporary understanding of the legal state.

- The author contributes to the comparison of empowering, rights granting and delegating legal norms (pp. 331-334; 336-338). He draws a dialectical conclusion that law is both an order of empowerment and an order for empowerment. Powers, counter-powers and anti-powers (human and civil rights) operate in it - pp. 401-409.

### 3.2. Scientific contributions contained in other publications of the author:

In this opinion, I want also to pay attention to topics that have found a place in other publications, the importance of which is not limited to their inclusion in the habilitation work.

S. Groysman distinguishes between the legally limited dictatorship, serving the republican spirit (according to Machiavelli) and the dictatorship, creating a parallel legal order in order to preserve the political community (according to C. Schmitt).

According to the candidate in democratic governments, the supreme principle of law is shifting from the good of the people to the supremacy of human rights. This trend, dictated by decades of strongly liberal views, has been reinforced by judicial activism in the practice of a number of high courts and supranational judicial institutions. However, the commented question hardly has an unambiguous answer, because placing the emphasis entirely on the cited view of human rights risks contradicting the established understanding of democracy.

The consideration of legal principles as targeted legal prescriptions is already substantiated in the legal literature (H. Avila). What S. Groysman draws attention

to is that the purpose of principles is to preserve or achieve a certain value. This is interesting, to call it a "circular" approach, in which the goal itself is determined by value. Thus, two opposing views in legal theory and philosophy seem to be reconciled - between the target theories of law, which are positively rationalistic, and the value ones, which are ethically justified.

Another important and interesting issue that S. Groysman reflects on is the role of strong courts in resolving complex cases. One point of view is that each legal system has its own ideology, expressed in its principles, which are interpreted and applied by judges. According to the other, the interpretation of legal realism is rather an authoritarian process in which judges create new rules in the course of the administration of justice.

S. Groysman found that the introduction of a sanction is a kind of consecration on behalf of the law of a value that is protected by the sanction norm. He warns of the danger of certain criminal sanctions becoming an empty symbol of values and institutions.

#### 4. Conclusion.

The candidate fully meets the requirements of the Development of the Academic Staff in the Republic of Bulgaria Act, the Regulation for its implementation and the respective internal Regulation of the Sofia University. He shows extensive knowledge, analytical skills and motivation for teaching and research work. Therefore, and in accordance with the findings and assessments contained in my opinion, I strongly recommend **the scientific jury to propose to the Faculty Council of the Faculty of Law to vote Simeon Efimov Groysman to be elected associate professor of General Theory of Law at Sofia University "St. Kl. Ohridski "**.

26. 10. 2020 г.

Prof. Dr. Yanaki Stoilov