REVIEW

by

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In the State Gazette, issue 57 of 26.06.2020, a competition was announced for the acquirement of the position of associate professor in the professional field 3.6 Law (General Theory of Law) for the needs of the Faculty of Law of the Sofia University "St. Kliment Ohridski". Only one candidate participates in the competition - Chief Assistant Professor Dr. Simeon Efimov Groysman.

By Order № RD 38-254/06.07.2020 the Rector of Sofia University "St. Kliment Ohridski" appointed a scientific jury for the competition with the following members: Prof. Yanaki Stoilov, Prof. Daniel Valchev, Prof. Tencho Kolev and Prof. Malinka Novkirishka (internal members); Prof. Dimitar Radev, Assoc. Prof. Boyka Cherneva and Assoc. Prof. Hristo Paunov (internal members). As a member of the scientific jury, I present this review.

The review contains the following main parts:

1. Fulfillment of the conditions for holding the academic position of *associate professor*.
2. Biographical data and previous scientific and teaching activity of the candidate.
3. Scientific works submitted for participation in the competition.
4. Conclusion.

1. <u>Fulfillment of the conditions for holding the academic position of associate professor</u>

Dr. Groysman submitted the documents for participation in the competition required under Art. 107 of the Regulations for the conditions and the procedure for acquirement of scientific degrees and holding academic positions at Sofia University "St. Kliment Ohridski". These documents certify the fulfillment of the necessary conditions for holding the academic position of associate professor under Art. 105 of the same Regulations, namely that the candidate:

(a) holds an educational and scientific degree of Doctor of Laws;

(b) has held the academic position of Chief Assistant at the Law Faculty of Sofia University "St. Kliment Ohridski" not less than two academic years;

(c) submitted a published monograph, which does not repeat the presentation for obtaining the scientific and educational degree of doctor;

(d) meets the minimum national requirements and the additional requirements of Sofia University for the position of associate professor of law;

(e) there is no legally proven plagiarism in his scientific works.

As can be seen from the submitted documents, in respect of Dr. Groysman there are all the conditions for holding the academic position of associate professor, provided in the Act on the Development of Academic Staff in the Republic of Bulgaria, in the national Regulation for its application and in the Regulations for the conditions and the procedure for acquirement of scientific degrees and holding academic positions at Sofia University "St. Kliment Ohridski".

2. <u>Biographical data and previous scientific and teaching activity of the candidate</u>

Simeon Efimov Groysman was born on October 9, 1987 in Dobrich. In 2006 he graduated from high school in his hometown and in the same year he went to the Faculty of Law at Sofia University "St. Kliment Ohridski" as a law student. He graduated in 2011, and the following year he was appointed an assistant in the Department of Theory and History of State and Law at the same faculty. In 2016 he defended his doctoral dissertation on "*Morality and legal validity according to contemporary legal positivism."*

Simeon Groysman's research and teaching activities are well known in university circles. He teaches seminars and lectures in General Theory of Law, Legal Terminology, Philosophy of Law in Bulgarian and in English for the Erasmus students at the Faculty of Law at Sofia University "St. Kliment Ohridski". Along with that he delivers lecture courses in General Theory of Law at the Academy of the Ministry of Interior. From June 2016 to May 2020 he held the position of Scientific Secretary of the Faculty of Law of Sofia University "St. Kliment Ohridski", administratively ensuring the implementation of the procedures for acquiring scientific-educational and scientific degrees and conducting competitions for academic positions. My personal impressions are that he has always taken teaching, research and other university activities seriously and responsibly. He not only has a rich general and legal culture and the ability to follow a methodologically correct thought process, but also is able to create an academic atmosphere in the classroom and to arouse students' interest in the topic taught.

Simeon Groysman has been enrolled in the Sofia Bar Association as a junior lawyer since 2013, and since 2015 he has been a lawyer in the same bar. In 2017 he passed an internship

in the Department of Theory of State and Law and Political Science at the Faculty of Law of Moscow State University. In 2017 and 2018, it conducted training seminars on the implementation of Regulation (EU) 2016/679 on personal data protection.

3. 3. Scientific works submitted for participation in the competition.

To participate in the competition, Dr. Groysman presented the following works:

(a) Law and power. From the Unlimited State to the Postmodern Supremacy of Rights [in Bulgarian]. Sofia, Ciela, 2020, 444 p .;

(b) Republican Legitimacy and Extraordinary Power: Reflections on the Machiavellian Reading of the Roman Dictatorship [in Bulgarian], Ius Romanum, Iuventutes 2017, pp. 1-12;

(c) Legal principles as Purposive Legal Prescriptions [in Bulgarian] - In: Scientific Readings on Legal Norms and Legal Principles", eds. Panayotov, D. Valchev, Kr. Manov, S. Groysman, Sofia, University Publishing House "St. Cl. Ohridski", 2017, pp. 333-349;

(d) Criminal Law as Protection of Values [in Bulgarian] - In: Scientific Readings in Memory of Venelin Ganev and Nikola Dolapchiev, eds. Pl. Panayotov, D. Valchev, S. Groysman, Kr. Manov, Sofia, University Publishing House "St. Cl. Ohridski", 2017, pp. 292-312;

(e) Law and Power: Dialectics of a Border [in Bulgarian] - In: Law and Borders, eds. D. Valchev and S. Groysman, Sofia, University Publishing House "St. Cl. Ohridski", 2018, pp. 163-186;

(f) The Power to Punish and the Power to Educate [in Bulgarian] - In: Contemporary challenges to criminal law, eds. Plamen Panayotov, Georgi Mitov, Nikoleta Kuzmanova, Sofia, University Publishing House "St. Cl. Ohridski", 2018, pp. 275-290.

(g) The Omnipresent Administration [in Bulgarian], Ius Romanum, 1/2018, pp. 548-591;

(h) Sovereignty of Law and the Legal State: A Contemporary Point of View on the Theory of Hugo Krabbe - In: Rule of Law at the Beginnings of the Twenty-First Century, ed. M. Belov, Eleven International Publishing, 2018, pp. 45-68;

(i) On the Symbolic Power of the Bulgarian criminal law [in Bulgarian] - In: Scientific readings on the Sanctions in law, eds. Panayotov, D. Valchev, Kr. Manov, S. Groysman, Sofia, University Publishing House "St. Cl. Ohridski", 2019, pp. 403-417;

(j) Legal Realism versus Legal Ideology: On Explanatory Models of Judicial Activism

- In: The Role of Courts in Contemporary Legal Orders, ed. M. Belov, Eleven International Publishing, 2019, pp. 139-152;

(k) Law and Power: On the idea of V. S. Nersesyants of power theories of law [in Russian] - In: Jurisprudence in the modern world: Russia and Bulgaria, Moscow, Prospect, 2020, pp. 266-282.

Dr. Groysman's scientific interests can be defined mainly in two separate, albeit often intersecting, lines.The first line of scientific interest can be broadly defined as *importance of values in the understanding of law*. To this line (apart from earlier works of the author, including his doctoral dissertation) we should include the articles presented in this competition: *Criminal Law as Protection of Values*, 2017 and *Legal Realism versus Legal Ideology: On Explanatory Models of Judicial Activism*, 2019, and from a certain point of view, the articles *Legal principles as Purposive Legal Prescriptions*, 2017 and *Sovereignty of Law and the Legal State: A Contemporary Point of View on the Theory of Hugo Krabbe*, 2018. Traces of this interest can be found in virtually all of the author's publications.

Dr. Groysman's second line of scientific interest concerns *the relationship between law and power*. To this line of scientific interests should be included and the most part of the monographic research *Law and power. From the Unlimited State to the Postmodern Supremacy of Rights*, 2020, as well as the presented articles: *Law and Power: Dialectics of a Border*, 2018; *Republican Legitimacy and Extraordinary Power: Reflections on the Machiavellian Reading of the Roman Dictatorship*, 2017; *The Power to Punish and the Power to Educate*, 2018; *The Omnipresent Administration*, 2018; *Sovereignty of Law and the Legal State: A Contemporary Point of View on the Theory of Hugo Krabbe*, 2018; *On the Symbolic Power of the Bulgarian criminal law*, 2019; *Legal Realism versus Legal Ideology: On Explanatory Models of Judicial Activism*, 2019 and *Law and Power: On the idea of V. S. Nersesyants of power theories of law*.

In the following lines I will focus mainly on the monographic work *Law and Power*, with a subtitle *From the Unlimited State to the Postmodern Supremacy of Rights*, 2020, in so far as it largely integrates parts of other publications presented, and in view of the fact that in it Dr. Groysman attempts to construct a comprehensive theory of the law-power relationship.

The work is 444 pages long and is structured as a classic monograph, consisting of an introduction, seven sections, a conclusion and a list of cited and used literature (272 titles in several languages).

The author himself defines the idea of this work as the formulation of a *"pro-Kelsenian" legal theory on the question of the relationship between law and power, placed on the border between the general theory of law and legal philosophy* (p. 11). The fact that the author takes into account the significance of the point of view and the contextual nature of the views on law, as well as those on power, makes a positive impression and tries to present his point of view correctly. On the basis of the possible and admissible approaches distinguished (although these limits are in places obliterated in the course of the research), he tends to outline three separate parts, devoted respectively to the methodology, the historical-sociological analysis and the actual general theoretical legal analysis. (p. 13).

In the methodological part of the monograph the author declares his starting positions, outlines the categorical apparatus and reflects on the admissible and necessary scientific methodology. Particularly impressive is the development of the categorical apparatus inherent in the work (a skill that Dr. Groysman has demonstrated in some of his articles - for example in *Legal Principles as Purposive Legal Prescriptions*, 2017), including the clear definition of *fact, is and ought, legal norms and legal principles, sources of law, legal subjects, subjective rights and legal obligations, individual prescriptions* (pp. 26-35). The author declares a preference for the juristic method of research, but accepts that even a rigorous legal analysis does not exclude the use of value positions (the question of whether I find any contradiction in this, will be discussed later). In this part, the reflections on the relationship between Philosophy of Law and General Theory of Law (p. 38 et seq.) Are also of interest, despite the fact that some of them could be challenged (in my opinion unjustifiably) from a certain point of view.

The author proceeds to a more general historical and sociological analysis of the topic, *using as a starting point Weber's definition of power*, enriching it with elements of the little-known theory of Vladik Nersesyants (which appears several times later in the study), with reflections on the characteristics and meaning of coercion, and with a historical trace of the various linguistic dimensions of the problem of power in Western thought (or at least in those forms of it that are influenced by the Latin words *potestas* and *auctoritas*).

The first important topic on which Dr. Groysman presents considerations that deserve special attention and at the same time create a basis for the development of scientific contributions is the topic of the *historical typology of the ideas of law*. This is the theme that outlines the meaning of the book's subtitle − modern law is rather an instrument of the unrestricted state, and postmodern law (an element of which are the rights defended by "strong courts") has the potential to be a state limiter.

To build the main structure of his theory, the author steps on two familiar theses. According to the first, understandings of law are either *axiological* (those that link it to a particular value or value order), or *instrumental* (which reduce it to an instrument of social control). According to the second thesis, a *significant difference can be found between modern and postmodern law*. The crossing of these two theses gives the author the opportunity to define his understandings of what are the axiological and what are the instrumental concepts of law. These understandings will serve him to use *the relationship between law and power as a key for distinguishing modern from postmodern law* (p. 140). According to Dr. Groysman, the axiological concept of law not only links it to a value (standing above the law law), but also (precisely because of it) presents it as a potential limiter of political power. The instrumental concept of law gives the opposite vision − it does not need external value support, but allows the political power to use the law as a mechanism for social control. It should be noted that the very reference to the distinction between *axiological* and *instrumental* understandings of law raises at least two questions. The first concerns whether the very division of notions of law in this way does not suggest a value choice. If the instrumental approach supports the state against the person, and the axiological approach supports the person against the state, then the necessary prestigious value choice is not particularly difficult. The answer that Dr. Groysman gives further in the monograph can be reduced to his shared understanding that legal science is a descriptive science − ie. he does not make value choices, but only describes what he finds.

The second question to some extent continues the first and can be formulated as follows: can we ignore the fact that the axiological notions of law, which at a certain level of analysis really support the man against the state, actually allow for a more refined but no less effective political control − by manipulating value interpretations, especially in acoustic (if we use the term used by Marshall McLuhan) societies, as well as by problematizing the sovereignty of the individual state and creating the possibility for legitimate supranational political interventions by contenders for regional or global hegemony? I will return to this question later in the review.

This part of the work is particularly important because it gives direction and justifies the thesis that the law today is no longer the same as it was a few decades ago (ie it is no longer modern law) as it was in Kelsen's and Hart`s time. It has become *postmodern*, its changed characteristics can be "seen", and it is this new postmodern state of law that requires *a new theory of the relationship between law and power* to describe this relationship and conceptualize it.

Thus we come to the second key element in the construction of the supporting structure of the study − *the thesis of the four features of postmodern law* (p. 177 et seq.). According to

the author, these four features are: *the changes in the hierarchical structure of law* (following mainly the open nature of modern domestic legal orders), *the more significant role of courts* (as a result of the changed balance between instrumental and axiological elements in judicial thinking), *the new role of the idea of rights* (as a possible limiter of political power) and *changes in views on the relationship between law and morality* (due to the absence of a dominant moral narrative in fragmented societies). The thesis about the four features of postmodern law deserves attention in itself, but also due to the fact that through it for the first time in the monograph the author presents the idea of rights as a key element in describing and conceptualizing postmodern law.

Section V, dedicated to the ideas of sovereignty, is a careful and in-depth study of this conceptualizing notion of the relationship between law and power. The author correctly presents the historical incarnations of the ideas of sovereignty, outlines their apogee in the traditional legal positivism of the late nineteenth and early twentieth century, and attempts to change the mathematical sign of this concept − from "subordinating" the law to "domesticated" by it, especially in Krabbe's theory of the sovereignty of law. The question of sovereignty in Kelsen's theory (p. 221 et seq.) Is not only very well presented, but also opens up a perspective for the author to ask the more interesting question (in itself a meta-legal one from the point of view of Kelsen's methodology) about *the content of the Basic Norm*. The author's view should be fully shared with regrad to the possibility from a certain point Kelsen`s Basic Norm to be seen as *the legal significance of a specific power situation* (this was also acknowledged by Kelsen himself), as well as the possibility to interpret Hart`s rule for recognition in a similar way.

Undoubtedly the most original and scientifically significant part of the monograph is Section VII. In it the author develops his views and formulates theses that must be recognised as scientific contributions. I will mention only the most important of them.

The author introduces and justifies the significance of *the delegating norms and distinguishes them from the empowering norms* (p. 336 et seq.). The latter are contained in the set of the former, but do not exhaust the whole set. The introduction of the subset of empowering norms is important for the author, as it opens the way for him to develop an original analysis of public powers.

The author argues for the view that the state (respectively its bodies) *have subjective rights*. Although this view is banal at first glance, it is not difficult to state (as the author does) that in our country subjective public rights are spoken of mainly taking into account the rights of citizens against the state. Dr. Groysman goes even further by introducing division of *powers*-

rights and *powers-obligations* (p. 344 et seq.), and then, based on Windscheid's theory of rights as powers, presents and defends the thesis of *power* and *non-power* forms of the subjective right, which are observed as in private law (p. 352 et seq.) and in public law (p. 358 et seq.).

The original thesis about the "*strong courts*" in the postmodern legal orders is also a scientific contribution. It is argued by following two strengthening (and in relation to the continental legal systems and relatively new) functions of some of the courts - to develop the legal order and to review the acts of various authorities, including the legislature. It is concluded that this strengthening is presupposed, and also justified, by the assignment of expectations to the court as a guardian of a common ideology, which can be defined as "supremacy of law".

Of interest is also the thesis of the legal order as "*order of empowerements*" and "*order of empowerement*". While the phrase "order of empowerement" essentially repeats Kelsen's idea of law as a dynamic normative order, the phrase "order of empowerement" comes to meet the power claims of law: once - as a "distributor of power" and on a next place - as a dominant normative regulator. On this basis, the author develops views on the existence of a common *mechanism of authorities, counter-authorities* (which control the former) *and anti-authorities* (outlining a certain inviolable autonomous sphere) in contemporary societies.

The conclusion in the monograph is logical, interestingly presented and containing a certain emotional charge. In it, the author emphasizes the dangers of increasing the opportunities, diversification and improvement of the state's techniques for social control. It also gives us reason to conclude that Dr. Groysman is not only an in-depth researcher in the field of legal theory and legal philosophy, but also has another important qualities of an authentic university lecturer and scientist - he is a person with respect and commitment to the social processes of which he is a contemporary.

It should be noted that in the presented monographic work, as well as in the other publications submitted for the competition, Dr. Groysman demonstrated a very good knowledge of the existing scientific literature and a visible ability to select and use it. This allows him not only to make appropriate references and to enrich the lines of argument, but also to fit his views into a broader picture of scientific thought, in which he rightly claims a place without suffering from the delusion that he is alone on the scientific field. It is worth paying special attention to its excellent general language culture, as well as its rich and precise legal language.

I would not allow myself to criticize the works of a colleague whom (although I am in the position of a reviewer) I consider to be completely equal in scientific terms. I have no hesitation about the fact that everything said or written can be problematic from a certain point of view. Nevertheless, I will allow myself to mention a few points in the monograph which,

from my point of view, raise questions.

As I have already pointed out, Dr. Groysman sets himself the task of proposing a "pro-Kelsenian" legal theory on the question of the relationship between law and power, placed on the border between the general theory of law and legal philosophy. Such a theory should, of course, be based on the use of a rigorous methodological approach (whether we call it a juridical method and no matter how we formulate it) and should be based on the understanding that legal science is descriptive, as was accepted by the author. He rightly acknowledges that in the field of the comparison between law and power, it is difficult to completely exclude value judgments, agreeing that the researcher working in the coordinate system of legal positivism also has the right of value preferences. The big question that remains open to me is to what extent contemporary legal systems can be described as value-neutral in terms of the relationship between law and power.

Two of the four alleged features of postmodern law − the existence of "strong courts" and the growing importance of rights - may indeed be a fact and they really show a new (if "new" means after the middle of the last century) power situation. However, I am not sure that this is a power situation in which the people (technically through the courts and ideologically through rights) have managed to limit political power. On the contrary, in my view, both the court and rights are constraints only on potential collectivist majorities, and constraints on which the liberal political constellations mainly rely. In other words, both the composition of the "strong court" and the dominant interpretations of rights are not at all the product of a spontaneous process of awakened civic energy, but of the purposeful political activity of liberal political elites in recent decades.

I am not entirely convinced that there is a clear relationship between axiological understandings of the law and the protection of the individual by the state, and vice versa. Many researchers emphasize that the idea of rights has long served to consolidate the nation and its corresponding nation-state, and it was only after World War II that it acquired the significance of a limiter on the power of that nation-state. This gives reason to ask whether the change of emphasis in the understanding of law (from axiological to instrumental and vice versa) does not depend on whether the law is a limiter of the state or its instrument, but on whether the relevant understandings of law come to legitimize political change or aim to protect the change already achieved. Thus, the question could be posed on the hierarchy-network plane − axiological notions are networked, while instrumental ones legitimize hierarchies. In this context, we can recall the instructive "power" practice of chimpanzees - the power of the elderly or sick Alpha male is taken away from the males, organized in a network, but then the network does not

manage, but a new hierarchy is established.

The topic of sovereignty, which is otherwise contextually necessary and well presented, seems to be without clear conclusions relevant to the study. It is true that such a connection is sought through Krabbe's theory, but from my point of view the originality of this theory is somewhat overestimated. The author himself aptly mentions its closeness to Rousseau's doctrine of popular sovereignty, and having in mind the key concept adopted by Krabbe and the sociological taste of some of his theses, I would add its closeness to the German historical school of law. The great significance of theories of sovereignty is not that they provide any explanation of power, but that the concept of sovereignty by definition includes a superior degree - sovereignty is a power that does not tolerate competition. Theories of sovereignty appear not only to establish the enormous power of the state, but their main task is to present it as legitimate. Depending on who is the alleged legitimate bearer of sovereignty (king, people, state, law, or something else), different theories of sovereignty can support both instrumental (Jean Bodin) and axiological (Jean-Jacques Rousseau) understandings of law.

These remarks do not in the least diminish the significance of the monograph *Law and Power. From the Unlimited State to the Postmodern Supremacy of Rights*, 2020 and the other works submitted by the candidate. They only show how difficult it is to propose theoretical constructions in the field of general theory of law and philosophy of law that cannot be questioned from a certain point of view. In addition, almost all of the above (with minor exceptions) relates to issues of methodology, which in the field of legal science and philosophy of law are primarily a matter of choice.

4. Conclusion

Although at an age which, according to traditional Bulgarian notions of scientific growth, does not presuppose such a statement, I would like to note that Dr. Simeon Groysman already has the authority of a significant and key researcher in the field of General Theory of Law and Philosophy of law. This authority was carefully built during the years of his scientific and teaching activity. With the monograph *Law and Power. From the Unlimited State to the Postmodern Supremacy of Rights*, as well as with the other scientific publications described above submitted for participation in the competition, he confirms his name as an established, ambitious and in-depth researcher. The choice of scientific problems, the formulated theses and the selection of the supporting arguments are the product of a strong intellect, of remarkable scientific curiosity, combined with discipline of thought and scientific talent, which (I am sure) will continue to bear fruit.

Due to all the above, I believe that *Dr. Simeon Groysman* meets the requirements for the academic position of associate professor, following the Act for the Development of Academic Staff in the Republic of Bulgaria, the Regulation for its implementation and the internal Regulation for the acquisition of scientific degrees and holding academic positions at Sofia University "St. Kliment Ohridski", and for me it is both an obligation and a pleasure to recommend to the scientific jury and to the Faculty Council of the Faculty of Law of Sofia University "St. Kliment Ohridski" to elect *Dr. Simeon Groysman* to the position of associate professor in the professional field 3.6 Law (General Theory of Law).

28.10.2020 г.

Prof. Daniel Valchev