

OPINION

ON: defence of the dissertation thesis "SPECIFICITIES OF THE PROCEDURAL LAW" for the degree of "Doctor" of Law by LYUBOMIR PETROV STOYANOV - full-time PhD student at the Department of Theory and History of State and Law at the Faculty of Law of Sofia University "St. Климент Охридски"

From

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DISTINGUISHED MEMBERS OF THE SCIENTIFIC JURY,

This opinion has been prepared in view of the defence of a dissertation for the degree of “Doctor” in a professional direction 3.6. "Law" (Theory of State and Law. Political and Legal Doctrines/General Theory of Law) by Lyubomir Petrov Stoyanov, full-time PhD student at the Department of Theory and History of Law, admitted to public defence by the decision 70-10-23/16.01.24 of the Faculty of Law of Sofia University "St. Kliment Ohridski".

The procedure was initiated on the basis of the relevant texts of the Academic Staff Development Act in the Republic of Bulgaria(ASDARB), the Regulations for the Implementation of the ASDA (RIASDARB) and the Regulations for the Conditions and Procedures for the Acquisition of Scientific Degrees and the Occupation of Academic Positions at Sofia University "St. Kliment Ohridski" (RCPASOAP at SU "St. Kliment Ohridski"), adopted by the decision of the Academic Council on 31 October 2018, amended and supplemented several times - the last one by the decision of the AC with the minutes of 28.06.2023.

The submitted documents comply with the requirements of the ASDARB, the RIASDARB and the RCPASOAP at “St. Kliment Ohridski”.

The procedure has been correctly followed.

I. CHARACTERISTICS OF THE SUBMITTED WORK

1. General characteristics

The presented scientific work "Specificities of the Procedural Law" (in the form in which it is presented) is 254 pages long, but when applying the standard requirements the volume increases to 347 pages.¹ The author puts and discusses the topic in a highly theoretical aspect, but the results of the analysis and the scientific conclusions in the overwhelming number of cases are valid for a very wide range of legal phenomena in different areas of procedural law. They constitute a fit basis for further research both in general theoretical terms and in the field of private science.

1.1. The work begins with an Introduction (pages 7 - 21). The Introduction sets the framework and the focus of the research, namely procedural law and its issues from the perspective of the general theory of law. The author comments on the existing characteristics of the division into substantive and procedural law, drawing attention to the high level of abstraction in deriving a distinguishing criterion. As a consequence of such a high level of abstraction, substantially different content is introduced into the concepts denoted by the same terms. Secondly, the submission addresses the fact that the opinions in the general theory of law are mainly based on generalizations from relevant research in private fields (the individual branches of procedural science).

What follows are reflections on the specificity of legal research compared to research in other scientific fields. As a result, it is concluded that there is no principled difference between them in terms of scientific

¹ To avoid misunderstandings, if I resort to page references, I will refer to the format presented by the dissertator.

research, which, according to the author, makes it possible to create a paradigm and move beyond the state of legal science in the field under consideration at the present stage, which he has characterized as "pre-paradigmatic".

1.2. Chapter One is entitled "Procedural Law as Object of Research of the General Theory of Law" (pp. 22-78).

The peculiarity (unlike other dissertations), which should be explained by the general theoretical character of the study, is that the problems of methodology are not presented in the Introduction, but are dealt with in Paragraph One of this chapter.

The author points to model-dependent realism as the ontological framework of the study, explaining what this scientific approach consists of (accepting both the existence of reality outside human perception, but also the fact that all human perceptions are mediated and subjective in nature)². According to him, this approach creates conditions for successful research. The following is a formulation of the tasks of scientific research. As the main task, the author points out the identification of all the specificities that characterize procedural norms (according to legal characteristics common to all procedural norms), which is why it is expected to arrive at general theoretical knowledge.

In the course of specification of the methods, the so-called "weak version" of the legal approach is pointed out, after which the author introduces the concept of legal phenomenon of Venelin Ganey and relates its elements to the problems under consideration. The paragraph ends with an attempt to construct the procedural phenomenon as an object of study and with a summary of the application of the methodology and its results.

²The PhD student refers to research methodologists in the field of physics and quantum mechanics, assuming that their conclusions have relevance in other fields of science.

The second paragraph is devoted to the historical origin and development of the views on the division of substantive and procedural law (with a detailed analysis of different groups of opinions) - pp. 43 ff.

The third paragraph is devoted to the derivation of a working hypothesis of the notion of "procedural norm" - p. 58. The author is again concerned with the choice of approach, and then presents existing classifications of legal norms (in particular, a detailed analysis of existing classifications of primary and secondary norms is made, and the rationale and implications of advocating different views are discussed).

As a result of the extensive analysis, the author comes to formulate a working concept of procedural norm: procedural norm is secondary, public norm with a law-implementing nature. As a consequence of the adoption of this working concept (and naturally based on the preceding research), a number of additional conclusions of a methodological nature are formulated (detailed on p. 78), among which is the fact that there are norms of a procedural nature that can be qualified as neither substantive nor procedural (ibid.).

1.3. Chapter Two is entitled "Procedural Law in the System of the Juridical Procedures" (pp. 79-198).

In this chapter, the PhD student takes the position that the division into substantive and procedural law does not cover all types of legal norms, constructing his reasoning using a clearly formulated methodological point of view. The paragraph ends by tracing the development of ideas about procedural law in Russian legal theory and very brief conclusions.

The second paragraph (pp. 119 ff.) is devoted to revealing the content of the notion of "legal procedures" and "generic concept for all norms that reveal a procedural nature" respectively; it also contains methodological remarks.

The last paragraph outlines the place of procedural law in the system of juridical procedures (pp. 163-198).

This paragraph also begins with methodological remarks, after which the exposition turns to an outline of the forms of realization of law and to a classification of legal procedures. The last two points of this paragraph contain the essential elements of the author's conception, namely which of the legal procedures should be designated as procedural law. On the basis of the foregoing, a definitive definition of 'procedural law' is provided.

1.4. The latter (Third) is entitled "Specificities of the Procedural Legal Phenomenon" (pp. 199-237).

The first paragraph outlines the concept of procedural phenomenon. The statement begins with methodological remarks, after which the author turns to the study of sanction as an essential and necessary element of the legal phenomenon in both substantive and procedural law.

The second paragraph is devoted to the characterization of the procedural phenomenon by examining its specificities - those related to the typical juridical facts; the procedural legal consequences (in particular the sanction); the object of procedural right and finally the procedural legal norm.

1.5 The thesis concludes with a lengthy conclusion (pp. 238-247) summarising the results of the research and highlighting the contributions.

1.6. The work is accompanied by a reference to the literature used and a declaration of originality.

2. Positive characteristics of the presented work

2.1. There is no doubt that the presented dissertation reveals the characteristics of a typical monographic study with a clear theoretical orientation. With the choice of the topic the author has embarked on a very serious problematic, which few theorists have studied in depth, and the

specialists of the private sciences in our national legal literature (civil procedure, criminal procedure, etc.) have studied the characteristics of procedural regulation mainly at the textbook level³ and in the light of the concreteness of the relevant disciplines.

Unlike many other recent dissertations (which are largely a re-telling with elements of characterization of the existing legal framework), the present one is built on a particularly sound methodological framework and formulation of the issues and justification of the theses with a high level of scientific argumentation.

2.2. From the point of view of the formal characteristics, it should be noted the fully appropriate structure and balance of the exposition; the remarkable scientific apparatus (both in Bulgarian and in foreign languages). The clarity and precision of the language are pointless to point out for the level of the work presented. What is impressive is the logical sequence of the research - from the formation of a working concept and subsequent passage through various scientific tests and substantive analysis - to the finalization of an enriched, based on the results of this research, concept of procedural norm.

2.3. Although the dissertation is a general theoretical study, in the course of its work the author has made appropriate use of significant case law for this type of work.

2.4. Contributory moments:

2.4.1. The whole work represents a serious scientific contribution, undoubtedly enriching the general theory of law and at the same time constituting a solid basis for deepening research in special fields.

2.4.2. As specific points of contribution (some of which also have the characteristic of scientific and applied contribution) can be pointed out the

³An exception is the remarkable study of prof. Stalev "Proceedings as a dynamic factual composition"

in-depth research on the distinction between procedural and substantive norms, as a result of which the author comes to the conclusion that the above two concepts do not cover all norms, and the concept of procedural norm is a variety of a broader category - generic concept for all norms that reveal a procedural nature (at the same time he makes the serious reservation that the territory beyond procedural norms does not necessarily cover only substantive norms). Along the way, the content of the notions of primary and secondary legal norm is explored in a useful way for further discussion, resulting in a significant enrichment and at the same time refinement of the notions concerning these concepts. The author's proposed final characteristics of the juridical procedural (including their internal classification)⁴, as well as of procedural norms and of procedural phenomenon in general, are undoubtedly of a contributory nature of high value.

2.4.3. Undoubtedly, the results of the study of the individual elements of the procedural phenomenon and their characteristics, contained in the third chapter of the dissertation, are also of a contributory (both theoretical and theoretical-applied) nature.

2.4.4. Naturally, de lege ferenda proposals cannot be expected from a general theoretical study.

3. Some recommendations for the work

3.1. While I fully agree with the author's view⁵ that there are procedural rules beyond procedural law, I would suggest that he explore the more persuasive example of procedures under the Public Procurement Act, as objections can be raised to the characterisation of the conclusion of an ordinary private law contract as a dynamic factual composition.

⁴law implementing and juridical procedures outside law implementation.

⁵In the course of teaching civil procedure law, I also make this distinction.

3.2. What would necessarily have to be added to the characterization of the procedural phenomenon (not to mention that the wording of the topic is "Specificities of the Procedural Law") in finalizing the dissertation with a view to its eventual publication, is the importance of the problem of bringing information about what has happened in substantive law, within the legal procedure itself - or the question of evidence and evidentiary means. This is a matter which is in practice almost entirely typical in the field of procedural law. At the same time, its issues are so important that classifications of types of procedures could be made on the basis of the relevant legal framework.⁶⁷ Attention could also be paid to the specifics of evidence in the various branches of procedural law.⁸

4. Other circumstances

4.1. According to the submitted professional curriculum vitae Lyubomir Petrov Stoyanov has professional experience as a lecturer in two higher education institutions, junior expert in the Ministry of Labour and Social Policy; lawyer.

4.2. The PhD student has publications and participations in scientific forums, of which four publications are directly related to the topic of the dissertation.

5. CONCLUSION

⁶Competitive-inquisitorial; one based on the study of causal relationships and formal, or even irrational process.

⁷I am abstracting from the general scientific problem of whether reality exists at all and whether it is as perceived by the senses of biological individuals of the species homo sapiens.

⁸While in civil law the factual elements are predominantly lawful and for their eventual establishment in court, mostly written evidence and very often deliberately drafted ones are used, in criminal law the activity subject to the knowledge of the court is by definition unlawful and prohibited, which motivates the subjects to seek the deletion of any information. This in turn leads to a very different picture of the permissible and available sources of information in this area.

The foregoing leads to the conclusion that the submitted dissertation meets all the requirements of the ASDA, the RIASDA and the RCPASOAP at “St. Kliment Ohridski”.

The dissertation deserves high praise: it contains scientific contributions of high value for the general theory of law, as well as for the deepening of research in the field of private procedural law. The thesis undoubtedly demonstrates that Lyubomir Petrov Stoyanov possesses in-depth knowledge in the field of general theory of law, but also serious knowledge in the field of individual branches of both procedural and other branches of law. There is no doubt that the doctoral candidate possesses a remarkable capacity for independent scientific analysis.

All this gives me grounds to give a high positive assessment of the qualities of the reviewed work and of the PhD student, and to propose to the esteemed Scientific Jury to award the educational and scientific degree "Doctor" in the professional field 3.6 "Law" (Theory of State and Law. Political and Legal Doctrines/General Theory of Law) to Lyubomir Petrov Stoyanov - full-time PhD student at the Department of Theory and History of State and Law at the Faculty of Law of Sofia University "St. Kliment Ohridski”.

28.02. 2024

Prepared the opinion:

Prof. Silvi Chernev, PhD