R E V I E W

REGARDING: The materials submitted for participation in a competition for the academic position of "professor" at Sofia University "St. Kliment Ohridski" in the professional field: 3.6. Law (Civil Procedure), announced in the State Gazette, issue 5 of 17.01.2025.

by

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DEAR MEMBERS OF THE SCIENTIFIC JURY,

1. Competition information

This review has been prepared with a view to conducting a competition for the academic position of "professor" in the professional field 3.6. "Law" (Civil Procedure). The competition was announced in the State Gazette, No. 5 of 17.01.2025

I am included in the scientific jury for the aforementioned competition according to Order No. RD-38-88/19.02.2025 of the Rector of Sofia University "St. Kliment Ohridski".

2. Brief information about the participants in the competition

The only candidate participating in the announced competition was Associate Professor Dr. Kameliya Nikolaeva Tsolova – Associate Professor of Civil Procedure at Sofia University "St. Kliment Ohridski".

3. Fulfillment of the requirements for holding the academic position

3.1. The set of materials presented by Associate Professor Dr. Kameliya Nikolaeva Tsolova is in accordance with the requirements of the relevant texts of the ZRASRB, the PPZRADRB and the Regulations on the conditions and procedure for obtaining academic degrees and holding academic positions at Sofia University "St. Kliment Ohridski" (PURPNSZAD at Sofia University "St. Kliment Ohridski"), adopted by decision of the Academic Council on October 31, 2018, amended and supplemented several times - most recently by decision of the AC with minutes of October 30, 2024 - Art. 115 et seq.

3.2. The candidate graduated in law from Sofia University in 1994.

After the mandatory internship (judicial candidate), she successively worked as a financial auditor, legal advisor and chief legal advisor at the Main Directorate "State Financial Control" at the Ministry of Finance. In

the period 1997-1999, she was registered as an attorney at the Sofia Bar Association.

In 1999, after winning a competition, she was appointed as an assistant professor in civil procedural law, and subsequently held the academic positions of senior and chief assistant professor.

In 2009, he defended his doctoral dissertation on the topic "The Assisting Party in the Judicial Claim Process" (under the regime of independent preparation) and received the educational and scientific degree "Doctor" in professional field "Law" (Civil Procedure).

Since 2013, after winning a competition and being selected by the Faculty Council of the Faculty of Law at Sofia University "St. Kliment Ohridski", she has held the academic position of "Associate Professor" in the course "Civil Procedural Law" with a habilitation thesis on the topic "Partial Claim" -

Since the academic year 2013-2014 she has been teaching a lecture course on the subject "Civil Procedural Law" to the students of full-time study in the fifth year, second stream of the specialty 'Law', as well as part of the lecture course on the same subject to the students in the part-time form of study at the Faculty of Law of Sofia University "St. Kliment Ohridski".

Since 2015, she has been a member of the Faculty Council of the Faculty of Law of Sofia University "St. Kliment Ohridski".

In the period 2019 - 2023, she is the Deputy Dean for Scientific Activities, Academic Staff Development, and Accreditation Procedures.

In the period 2015-2023, she was a member of the General Assembly of Sofia University "St. Kliment Ohridski", and for two consecutive terms in the same period she was the Chairman of the Committee on Proposals for Management and Control Bodies.

From February 2024 to the present, she is a member of the editorial board of the official scientific journal of the Faculty of Law of the St. Cyril and Methodius University of Law "DE JURE".

Additionally, she works as: legal advisor at the Central Directorate of the Bulgarian Academy of Sciences (2007-2009); associate professor of "Civil Procedure" at the Angel Kanchev University (2017 - 2022); associate professor of "Civil Procedure" at the St. Cyril and Methodius University of Law (from 2017 to the present); arbitrator at the AC at the BCCI (from January 2010 to January 2025).

She has presented a published monographic work "Transfer of Disputed Law", SIBI, Sofia, 2024, ISBN:978-619-226-295-2, 8 studies and articles.

The procedure was initiated on the basis of the relevant texts of the above-mentioned regulatory acts (item 3.1., including the internal acts of Sofia University "St. Kliment Ohridski").

The submitted documents comply with the requirements of the ZRASRB, PPZRASRB and PURPNSZAD at Sofia University "St. Kliment Ohridski", including the minimum national requirements approved by the aforementioned law.

The procedure has been followed correctly.

4. General characteristics of the presented habilitation thesis

4.1. The presented scientific work "Transfer of the disputed right" has a total volume of 288 pages and includes an introduction, six chapters and a conclusion. The work is accompanied by a bibliography, including 85 titles, of which 72 are in Cyrillic and 13 in Latin. A list of frequently used abbreviations is also attached.

4.2. The work begins with a very brief Introduction. Noting the apparent utilitarianism of the existing solution in our legislation (and not only in it), the author states that she is moving towards an attempt to rethink the matter, using a more complicated and nuanced approach.

4.3. Chapter One is labeled "General Characteristics" (pp. 11 – 71).

4.3.1. The first paragraph deals with the roots of the institute (its origin and the purposes it serves).

Various models of legal regulation are examined. The model in which the transferee replaces the transferor and becomes a regular party to the process is successively examined, as well as the model in which the transferee remains a third party to the process, but is bound by the decision. The regulation in modern Russian law, the regulation in French law, etc. are examined. The development of the Bulgarian legal regulation and the opinions in the literature are traced.

The model of the regulation in the ZPO is examined in considerable detail, as well as theoretical opinions on the application of the institute.

Based on the above, the author draws conclusions regarding the purpose of the institute - highlighting the shortcomings of the individual models, she aims to find a solution that will not be aimed at avoiding damage to the interests of each of the plaintiff, defendant and acquirer individually, but "to provide an adequate opportunity for each of these persons to defend their interest in the proceedings that continued after the transfer of the disputed right" (p. 27).

4.3.2. The second paragraph is devoted to the subject-matter issues and the third to the right of action of the transferor and the transferee. The meaning of the concepts of “disputed subject matter” and the related “change in claim” is examined in the light of the transfer of the disputed right. As a result of the analysis, the author comes to the conclusion that the

transfer of the disputed right does not lead to a change in the subject matter of the claim.

4.3.3. The fourth paragraph is devoted to the applicability of Art. 235, para. 3 of the CCP, namely that "the court shall also take into account the facts that occurred after the filing of the claim, which are relevant to the disputed right". It is concluded that it is unacceptable for the transfer of the disputed right during the proceedings not to be respected.

4.4. Chapter Two is dedicated to the scope of the institute under consideration (pp. 72 – 109).

4.4.1. The first paragraph (Fifth in the numbering of the content of the work) explores the concept of pending litigation.

It is clarified that although this is a claim proceeding, the application of the institute is not observed in some special claim proceedings.

The requirement for process pendency is further examined.

Considering the transfer of the disputed right through assignment (the author discusses existing opinions) and agrees with that according to which the moment of notification of the assignment is important, which should have occurred in the course of an already pending process.

4.4.2. The following presentation analyzes in detail the "disputed right" (including specific hypotheses in some declaratory claims, as well as in negative claims, etc.; in the case of accession and substitution in debt, regarding rights introduced in the process with an objection). The hypothesis in a claim process for declaring a court decision null and void is interesting. The statement goes on to examine the transfer ground (in greatest detail); the type of succession and finally the requirement of the characteristics of the transferor and transferee.

5. Chapter Three is devoted to the judicial characteristics of the institute under study (pp. 110 – 164).

5.1. In the First Paragraph (Eighth in sequence for the entire work) the author deals with the limitation of the rights of the transferor. The specifics regarding the procedural status of the transferor are successively considered. The exposition then moves on to cases of atypical termination of the process (withdrawal, waiver of the claim and court settlement). It is concluded that waiver of the claim is inadmissible in cases where the claimant transfers the disputed right and vice versa – in the case of transfer by the defendant. Details related to the recognition of the claim and the inaction of the transferor in absentia proceedings are considered.

5.2. The following paragraph (Ninth) is devoted to the legal position of the transferee in various aspects and hypotheses: with regard to the consequences of filing the claim; regarding the possibilities of participation as a supporting party (it is argued that the interest in participation as such a party in this case is much more intense than in ordinary cases), main intervention and dispute between creditors. Proceeding from the opinion that the transferred and acquired right are different, the author comes to the conclusion that the consequences of filing the claim (in particular, the interruption and suspension of the limitation period) do not apply to the acquired right (p. 131).

5.3. The tenth paragraph deals with the various forms in which the transferor can be replaced by the transferee. The difference in the regulation under the repealed and current CCP is examined. The hypotheses of succession in the event of death after the transfer of the disputed right are of interest.

6. Chapter Four is entitled: "Res judicata as a defense and sanction in the transfer of a disputed right (pp. 165 – 214).

6.1. The eleventh paragraph is dedicated to the subjective limits of the res judicata.

In separate points, the dynamics in the claim defense and the sanction are tracked (the significance of when the right arose, when it was eventually extinguished, and also when it was transferred).

Of particular importance is the study of the problems related to the meaning of the registration of claims under Art. 114 of the CCP. The meaning and effects of the registration of the initial claim are examined in great detail. The paragraph ends with the formulation of conclusions from the second exception under Art. 226, para. 3 of the CCP.

6.2. The twelfth paragraph concerns the objective limits of res judicata.

In item 1, general considerations are presented, and then hypotheses of the disputed right, which is the subject of the case, are examined. The author's reasoning proceeds from the position adopted by her that the right, the subject of the process, and the right acquired as a result of the transfer transaction are different. With regard to the transfer of a disputed right, which is not the subject of the case, various interesting hypotheses are examined.

7. The Fifth Chapter examines the specifics of the claim defense and sanction in the hypothesis of the institute under consideration in relation to condemnatory and constitutive claims (pp. 215 – 247).

7.1. The thirteenth paragraph (the first for this chapter) is devoted to the peculiarities of transfer of the disputed right in a condemnation proceeding (transfer of the disputed right by the plaintiff and also transfer of the disputed right (obligation) by the defendant.

With regard to the plaintiff, only the hypothesis of transfer of a disputed claim was considered, and with regard to the defendant – both the transfer of a disputed real right and the transfer of an obligation, the subject of the trial.

7.2. The following paragraph deals with the problems of transfer of a right to alter a legal relationship. The presentation begins with a discussion

of controversial issues (including the retroactive effect of the decision by which the legal change is decreed). As a result of an extensive analysis, a conclusion is reached (which coincides with the opinion expressed by Prof. Mingova) that the transforming decision also includes binding findings regarding the legal consequences resulting from the establishment of the existence of the right to alter a legal relationship.

Attention is then drawn to the transfer of rights to alter a legal relationship by the claimant or the defendant. In the latter case, the above-mentioned position that the constitutive decision also has binding effect with respect to the rights and obligations arising as a result of its issuance is relevant to answering the questions.

7.3. The chapter concludes with an analysis of the possibility of transferring material rights, the subject of the division, by a co-owner in the course of proceedings for judicial division. It is concluded that the division should be carried out in relation to the transferee.

8. The last chapter (Six) is devoted to an analysis of the possibility of applying the institute in some other proceedings (pp. 248 – 279).

8.1. The situation in the claim proceedings regulated in Part Five (enforcement proceedings) is consistently examined, namely: in the proceedings under Art. 422 of the CCP. Here, a critical interpretative decision No. 4/2013 of the General Assembly of the Civil Chambers of the Supreme Court of Cassation is commented on, especially in connection with the fictitious filing of the claim under Art. 422 of the CCP at the time of submitting an application for issuing an enforcement order.

8.2. The author then turns to the question of whether it is possible to apply the rules of Art. 429, para. 1 of the CCP in the claim proceedings provided for in the matter of the enforcement process – in the claims under Art. 439, in the proceedings for issuing a duplicate of a lost or destroyed writ of execution and in the proceedings under Art. 464, 524 and 440 of the CCP.

8.3. The last two paragraphs deal with the applicability of the institute under consideration in proceedings on disputed judicial administration and in arbitration proceedings. It should be noted that the final answer is beyond doubt (in the first proceedings the court acts according to expediency, there is no res judicata, i.e. there is nothing to apply). The situation is similar in arbitration proceedings, in respect of which there is no doubt that the provisions of the CCP do not apply, and there is no provision similar to that considered in the law.

However, thoughts on the importance of assignment for arbitration proceedings are valuable.

9. The work ends with a very brief Conclusion, which summarizes the main points adopted by the author.

10. Positive aspects of the work under discussion

10.1. We are faced with monographic work rich in content and depth, dedicated to one of the institutes of civil procedural law, causing numerous problems - transfer of the disputed right during the course of the claim process. In addition to the undoubted theoretical complexity of the issue, no less intricate are the questions that arise in practice. It should also be borne in mind that the pitfalls that this institute poses make it a frequently used tool for property fraud.

10.2. The author has bravely ventured into the heavy issues. The result has been a thorough, comprehensive and all-encompassing illumination of the existing framework.

10.3. It should be noted that the aforementioned regulation (Art. 226 of the current, Art. 121 of the repealed CCP) is not at all new and, when the CCP was created in 2007, it remained almost untouched by the legislator, and the existing opinions are fragmented. In contrast, the considered work by Assoc. Prof. Dr. Kameliya Tsolova offers a clearly formulated starting position, which is advanced throughout the entire study.

10.4. The presentation demonstrates that the author is a fully developed serious scholar in the field of civil procedural law, who handles the subject with ease and skill, distinguishing herself with originality and serious justification of the scientific conclusions.

10.5. In the course of the scientific analysis, the author's serious and, in the overwhelming majority of cases, acceptable positions on a number of issues that are not the direct subject of the study, but the use of which gives it a particularly high value, are revealed. Her very high professional level - as a lawyer and a scientist - is revealed.

10.6. The scientific apparatus is impressive; of particular interest is the critical presentation of the regulation on the issues under consideration in other legislations, as well as the tracking of the development of the various opinions of foreign authors and of Bulgarian literature on the issues.

10.7. For the needs of the study, Assoc. Prof. Dr. Tsolova has made maximum use of existing case law – not only binding, but also incidental practice of the Supreme Court, as well as the practice of lower courts. This practice has been seriously and thoroughly discussed, and if necessary – strictly critically.

10.8. Contributing moments

10.8.1. The work as a whole represents a significant contribution to Bulgarian procedural law literature – both due to the approach to this remarkably complex issue and the final result, which should be characterized as highly positive.

10.8.2. What is new is the clearly formulated opinion that the transfer of a disputed right does not cause ex lege or by way of amending the petition of the claim a change in the subject matter of the initiated proceedings, as the case continues to be conducted regarding the right of the transferor, and not regarding that of the transferee.

10.8.3. It is of a beneficial nature to state in the work that the provisions of Art. 226 of the CCP do not exclude the application of Art. 235, para. 3 of the CCP (the need for the court to take into account all facts that are relevant to the disputed right and occurred before the decision was rendered), when the conditions for this are met.

10.8.3. The opinion regarding the content of the concept of "disputed right" within the meaning of Art. 226, para. 1 of the CCP is of a beneficial nature, as it is accepted that it is not limited to the right that is the subject of the case.

10.8.4. What is interesting is what the author expressed regarding res judicata, namely that the transferee is bound by the res judicata of the decision for the period preceding the conclusion of the transfer transaction, and for the period following its conclusion, he is bound only if it is favorable to him.

10.8.5. What is new is the opinion that the law allows a judgment to be rendered upon transfer of the disputed claim in the pending process, but under the conditions of Art. 226 of the CCP - not as an enforceable title in favor of the plaintiff (the claimant), but as an enforcement ground in favor of his private legal successor.

10.8.6. The statement regarding the applicability of the institute in a process of a constitutive claim is entirely helpful.

10.8.7 The considerations regarding claims in enforcement proceedings, etc., are helpful.

Other significant contributions could be pointed out, but the format of this review does not allow for this.

11. Notes on the presentation as a whole and on some of the opinions:

11.1. I am confused by the separation of the concepts of right, subject of the process (that of the transferor) and right of the acquirer. The confusion

also comes from the fact that the adopted position predetermines the answers to a significant number of questions.

11.2. In a remarkably detailed and in-depth analysis of the concept of "registration", I found that the author deals only with the meaning of the registration of the claim that gave rise to the process in question. She does not deal with the meaning of this registration in relation to successive subsequent transfers of the disputed right and the meaning of the lack of transfer of the effect of registration in relation to subsequent transfers. In hypotheses (especially in the case of fraudulent actions) the initial registration could not be opposed to second-in-line and subsequent acquirers. This is precisely the situation used in property fraud (a series of transfers, as in relation to successive acquirers the registration cannot be opposed and they become bona fide acquirers, against whom a short statute of limitations runs.

11.3. I have other comments, but the work as a whole deserves a very high positive rating.

12. In addition to the main work with which Assoc. Prof. Dr. Tsolova participates in this competition, the other submitted publications should also be taken into account:

12.1. The article "Procedural Significance of the Registration of Claims under Art. 114 of Ownership Act ", IUS ROMANUM, issue: 1, 2024, pp.: 482-502, ISSN (online): 2367-7007, (CEEOL) concerns the procedural consequences of registration and deserves a positive assessment.

12.2. The article "Compulsory or optional necessary comrades are the parties to a contract following a third party's claim for its nullity ", Commercial Law, issue: 1, 2022, pp.: 25-35, ISSN (print): 0861-6892

The article examines the important procedural question of whether in cases where the procedural law does not explicitly mandate mandatory companionship, such can exist. Similar to the case under consideration is the

case of filing a claim under Art. 135 of the Obligations and Contracts Act (the law does not state that the claim must necessarily be filed against the debtor and the relevant third party, but this permission necessarily follows from the purpose of the claim.

12.4. The study " On the Types of Necessary Companionship and Interpretative Decision No 3/2016 of the General Assembly of the Civil Chambers of the Supreme Court of Cassation ", Commercial Law, issue: 1-2, 2020, pp.: 5-25, ISSN (print): 0861-6892 contains a critical review of the comradeship adopted in Interpretative Decision No. 3/2016 of the Supreme Court of Cassation.

12.5. Of interest is the study " On the Reasons of the Negative Declaratory Claim for Ownership ", Commercial Law, issue: 3, 2020, pp.: 25-47, ISSN (print): ISSN 0861-6892, which advocates the opinion that even in the case of a negative declaratory claim for ownership there is a ground and it should be formulated in the claim.

12. 6. The article " On the question whether the power of attorney for the conclusion of the substantive contract empowers the proxy to conclude the arbitration clause in the contract ", Conference Proceedings: Scientific Research in Memory of Assoc. Professor Kristian Takov, touches on the highly debatable issue of whether an explicit power of attorney is necessary to include an arbitration clause.

In fact, the problems on this issue arose from the initial misunderstanding on the part of the Supreme Court of Cassation of the circumstance that the arbitration clause is not an independent contract (although separable), but has an auxiliary, accessory nature.

12.7. Interesting problems are raised by the study " Some Questions Regarding the Recognition of Joinder Claims ", Yearbook of Sofia University "St. Kliment Ohridski", Faculty of Law, issue: 86

12.8. The article " Admissibility of Reversal of Effective Rulings, rendered in Action Procedure ", Ius romanum, issue: 2, 2015, pp.: 884-898, ISSN (online): 2367-7007, is also valuable.

A similar question was raised a long time ago by the late Professor Yanovski, with remarkably serious reasoning (in connection with the admissibility of a review under the supervision procedure regarding the determined, and even unappealed, actions of bailiffs).

13. Other circumstances

13.1. The overall scientific and teaching activity of Assoc. Prof. Dr. Kameliya Tsolova in the specialty of civil procedural law over many years is highly significant.

13.2. The submitted report establishes that the candidate also meets the minimum national requirements, according to Art. 26 of the ZRASRB - the total number of points collected by her is 590 , with 450 required.

13.3. With such a complex and relatively undeveloped subject, there could be no question of plagiarism.

14. CONCLUSION

The above leads to the only conclusion that the overall characteristics of the candidate for the academic position of professor of civil procedure fully meet all the requirements of the ZRASRB, PPZRASRB and the special requirements of the PURPNSZAD at Sofia University "St. Kliment Ohridski".

The work submitted for participation in the competition deserves a very high evaluation (which was made above during its discussion) and undoubtedly demonstrates that Assoc. Prof. Dr. Kameliya Nikolaeva Tsolova is a fully developed scientist, a lecturer, who deserves an extremely high evaluation.

All this gives me reason to give a very high positive assessment of the candidate's qualities in general and to propose to the esteemed Scientific Jury to make a decision, recommending to the competent scientific body to make a decision on the appointment of Assoc. Prof. Dr. Kameliya Nikolaeva Tsolova to the academic position of "professor" at Sofia University "St. Kliment Ohridski" in the professional field: 3.6. Law, scientific specialty "Civil Procedure" at the Faculty of Law of Sofia University "St. Kliment Ohridski".

04/21/2025 **Reviewer:**

Prof. Dr. Silvi Chernev