SOFIA UNIVERSITY "ST. KLIMENT OHRIDSKI" FACULTY OF LAW

Alexander Veselinov Dimitrov

PhD student in full-time training at the
Department of Theory and History of
State and Law

GUARANTEE AND REALISATION OF SUBJECTIVE RIGHTS

ABSTRACT

of dissertation work

for obtaining the degree of Doctor of Education and Science in the professional field 3.6. "Law" (Theory of State and Law. Political and Legal Studies)

Scientific supervisor: Prof. Dr. Yanaki Stoilov

Sofia, 2022

I. GENERAL CHARACTERISTICS OF THE DISSERTATION

1. Relevance of the problem

The subject of the dissertation is the state of guarantee and realization of rights by describing and comparing hypotheses concerning their legal and factual realization. The theory needs more legal-sociological consideration of the effectiveness of legal phenomena in relation to social dimensions. This need is conditioned by the purpose of law to reflect and regulate existing relations in society, through its property of being continuously reproduced and modelled. This means being an attainable situation in which factual reality is successfully brought into conformity with a legal situation. However, it is possible to give numerous examples of a drastic divergence between the two moments, which makes it necessary to examine this process. The legal norm has the function of ensuring political equality, but this should not be confused with social, factual equality, which cannot usually be fully achieved.

In researching the topic, I recognize that a number of issues related to it remain on the sidelines or with unfinished discussion due to the vastness of the phenomenon.

The main aim of the thesis is to examine how timing, predictability and efficiency in the realisation of rights are crucial when legal actors make choices about how to participate in legal life. The adequate rhythm of relations in society cannot proceed without the foundation and exercise of rights, without judgments in the aspects mentioned. The present work is an attempt to prove that the subjective right is not realized until the legal subject achieves the realization of his right in the objective (factual) reality in the time, manner and place that most corresponds to his needs. About the concept of "social result" Yanaki Stoilov argues that, representing a stage of the realization of the subjective right, the same is "the least studied"[1]. The present conception is not focused on supporting or rejecting its staged place, but on the problematics of possible uncertainty or ambiguity in whether and when the fact of a protectable social result is present.

For example, which would be of greater practical value to the legal subject - the knowledge of the hypothetical possibility that his right could be protected by a state-guaranteed legal procedure, or that he could in fact avail himself of his right. For the holder of the subjective right, the parameters of interest are: the manner of enforcement and in a timeframe that satisfies his current needs in participating in economic life, including whether there is sufficient reason to trust in the predictability of the legal system. The situation of a dispute arising (not yet a procedural concept) between a landlord and a defaulting tenant under a relevant contract of

[1] *Stoilov Y.* Subjective Law - Essence, Action, Types, 1989, pp. 157 and p. 161.

continuous and intermittent prestation indicates that stage of the legal relationship at which the intensity of impact is reversed. The conduct of the non-defaulting party puts it in an advantageous position over the defaulting party. In the normal situation - if there is upright behaviour on both sides: the landlord presters continuously and continuously and the tenant presters periodically. Then both parties achieve their desired social consequence. If the landlord defaults, he does not perform his primary obligation, i.e. he prevents the tenant from enjoying undisturbed use. The latter may then reasonably stop making his main payment (or may seek termination if that is the better course). In such a situation, the landlord's interest is relatively quickly affected by the cessation of the counter-payment in case it dares to prejudice the tenant's interest in the use of the property. In the other hypothesis, the tenant's failure to pay deprives the landlord of its primary necessity under the relationship. But what can the landlord do from now on? The answer may extend to an offer to stop providing the property. The point is that he has already given the actual possession of it to another and this situation continues at the time of the dispute. The options are to ask his defaulting counterparty to perform again or to set the formalised procedures in motion[2]. Suppose that the landlord is patient with the lack of payment for one, second, possibly third period, etc. already, but the fruitless lapse of time forces the same to turn to the courts to force his debtor in a formal manner. Assuming that for the case to develop to its full realization, at least another 3 /three/ periods are needed (at best for the claim or summary proceedings - about 2 months, together with the enforcement proceedings - assume about 1 month). Optimistically, roughly about half a year will cost the landlord such realization. It also appears that in that amount of time, he cannot undertake a compensating mechanism - another transaction, as his property management is blocked. The latter leads entirely to a lack of benefit - firstly from the contractual counterparty, secondly from the lack of potential for a replacement transaction during all that time. Imagine the consequences if someone stops paying you royalties, say for half a year. How do you survive an entire year with the income for half? Often the optimistic option is not realistic, and there is a delay in resolving the case. Any continuance acts in inverse proportion to the interest of the holder of the infringed right. This is because, when it becomes a fact, resolution has become divorced from the intended social outcome. Let us return to intensity. In the example, the landlord is the party in possession and creditor of the rent payment. He suffers the tenant's default because the latter fails to perform his periodic obligation - the payment. Here is the diversification of this influence: 1/ *direct by relationship* - the creditor does not receive a specific expected payment; 2/ *indirect by*

[2] The possible actions are limited due to the criminal prosecution under the constitution of the act of arbitrariness - Article 323 of the Criminal Code.

relationship - he does not have a possible payment under a substitute transaction /he is prevented from giving the property to another due to his inability to manage the actual possession*/; 3/ indirectly by relationship* - payments to other counterparties of the lender-landlord are threatened/impaired; 4/ similar situation - the rightful party being dependent on the default of the wrongful party remains unresolved for a long period of time, preventing future formation and planning of other actions. The intensity of impact in a successfully regulated legal environment should support the opposite. The pattern of lawful behavior should be stronger[3] than unlawful behavior as weaker. The impact of compliance with legal norms should outweigh the impact of violating them.

Because of the above, it is not difficult to argue that the occurrence of the social result, i.e. the reshaping of reality in line with the legal[4], actually carries greater practical value for the subject. The theory in this paper attempts to justify the subsequent behavioral scenario motivated by judgments on the data about the levels of practical value of legal instruments. This purported practical utility in achieving the social outcome is directly related to, and in some cases can even be said to be determinative of, the subject's behavioural motivation in deciding to use the various legal tools. Not only. The prolonged asynchrony between legal and factual realization, that is, the phenomenon described above repeated many times in the concrete environment of relations, forms a cumulative effect in the social sense. The number of legal subjects informed about and/or affected (to one degree or another) by such inefficient distortions in the purpose of law is growing. Trends of change in general behaviour can therefore be observed. Typically, participants in legal life do so by seeking more socially effective actions. Further on in the text, a sample graph of a change in the choice of whether to use a certain procedural tool will be given in the relation between order proceedings and general litigation (and not only) under the CCP.

The accumulation of knowledge about certain facts in subjects brings as an effect their awareness of a general order. In the described environment of relations between actors, their awareness that something in the system does not qualitatively work as intended limits their choice of remedies. Awareness leads to mistrust. Hence, the knowledge that there is a state-guaranteed right to seek influence through the instrumentality of coercion against the defaulting party in an adequate manner and time directly facilitates the planning of current and future actions. For the holder of the right, there must be a genuinely effective procedure guaranteeing the realisation of his right, not merely the formation of such an expectation of a declaratory

[3] Defaulting party > non-defaulting party.
[4] After all, by holding in his hand a contract or a statement of claim substantiated by the creditor, the latter indirectly asserts his own standing.

nature. Assuring the success of such a guarantee should be practically cost-effective. Undoubtedly, the regulation of society by law should maintain predictability in relations. Continuing with the example above, one might even suggest that a transaction would not occur if the landlord had a previous bitter experience and in subsequent negotiations was faced with evaluating a potential future tenant. It is likely then that the risk assessment for those sample six months of uncertainty would have had a different weight in the prospective tenant counterparty screening.

Decision making on one or the other actions to address specific needs/interests or those that will even allow the release of assets for the acquisition of new rights should be a quantifiable process. As a rule, law-making should bring sustainability as well as flexibility. Based on the clear legal implications of one legal phenomenon or another in advance, the decision to act or not to act should be easier to make. Sometimes this process is considerably hindered as the reasons for the latter are also analysed.

It is not an exaggeration to say that in our legal reality we easily witness the discrepancy between legal and factual realization as non-equivalently objectified phenomena. It is just that subjects depend on their aggregate manifestation. Individual and group needs are materialized in the extra-normative reality, hence the aspiration of subjects is to similarly format the normative reality in order to generate the intended result.

From this perspective, it is worth noting that my aim is not to undermine the importance of existing opportunities to achieve de facto realisation of rights through established and authoritative institutional mechanisms. I will illustrate how bringing this realization into social reality is crucial for subjects. If the two moments of legal and factual realization diverge because of an obstacle - the eventual behavior of the dispute resolver - subjects will increasingly choose other courses of action over repeated trust in the resolver. This is the guiding force in the relationship between subjects, according to their objective needs, and in the form of an assertion - the element with greater weight for successful regulation with "sufficient" legal possibilities for the realization of rights against the situation of "nakedness" in the declarations that exist. Therefore, several phenomena are indicated in the fields of both social environment and institutional mechanisms.

2. Object and tasks of the study

I would not qualify the subject posed and the solution of the problems by the methods chosen as useful without being able to offer at least some general conclusions that would attest to the synthesis achieved. I accept that its achievement is subordinate to an acceptable delineation of the subject matter. The object of the inquiry is the realization, or its eventual

impossibility, and the guarantee of subjective rights as dynamically changing states of affairs, especially in situations of unjustifiable discrepancy between the legal realization of a particular right and the socially manifested result thereof. The relationship between the revealed qualities and properties of the normative system in its forms of binding patterns versus the actually induced social manifestation is explored. The view is justified that in the life regulated by law it is possible that the subject finds himself in an impasse, being unable to protect his legal interest despite the availability and use of legally recognized means. Opportunities for action must be provided just then. The reasoning focuses on the consequent and legitimate process of demotivation and diminishing confidence in the law. In the milieu of interactions, not only constraints from the subordinate dependence of interest impairment are likely to be found, but also *delimiting* mechanisms of action.

Having set as the object of the study the problem of the consequences of the significant time gap in the stage of realization[5] of rights and its accompanying premise of guarantee, let me also indicate the reasons for this. The first is to seek whether the legal system is committed to encompassing rules pertaining to the significant gap between legal and factual realization. The need for such a search grows once such disharmony is identified. The fact that many such situations exist played a decisive role. The second reason is the attempt to construct a relief picture of the properties of such a condition. Do the possible divergent extremes in the two characteristic impact activities, lawmaking and law enforcement, contribute to such a state, or might they be a conduit to it?

Establishing properties and discovering systematic relationships require formulating the *tasks, and* here the leading searches are directed in two directions. For legal thinking, it should matter what the different degrees of divergence between factual and legal realization lead to. The logical extension in such deliberations comes from the question whether a statutory course of action is available to remedy a situation identified as unbalanced. Therefore, if I were to provide more specific content in search of properties and systemic relationships, I would outline the following tasks through questions:

Task No. 1 - Does the behaviour of legal actors lend itself to scalable patterns in terms of access to social goods?;

Task No. 2 - Does the predictability of the due models created and provided by the state take a central place in the above patterns, or is the predictability of the legal system of questionable success and this in turn influences;

[5]Between the legal and the factual if such a distinction is acceptable at all... Both are fact /but only the former are legal/.

Task 3 - Are there opportunities to optimise the operation of the rules and if so, what are they? This is a problem often associated with the function of authorities. Here the problem of the legal nature of the exercise of state power is not discussed. In maintaining a basic model to provide guarantees for the realization of rights, not all social relations can be captured in visible statistics, and there are many unreported cases. The dynamics in this model can indicate the degree of confidence in guaranteeing opportunities for rights realisation. This invisible field may to some extent indicate a reaction of distrust or other consideration in the opportunities identified.

Outside the object of study remain the specifics of the power, as well as the figures presented as limits to the exercise of the subjective right.

3. Methods of study

In terms of the selection of *methods*, a few things should be said about the proposed viewpoint - the ways of interacting with the object and the mental rules in problem solving. A definition of socio-legal research on the matter sounds ambitious and may be the subject of a study in its own right, so I refrain from a categorical qualification. Instead, examples are presented with the significance of phenomena from practice, sufficiently distinct either on their own or in combination, or else in a systematic sequence, to serve for the construction of certain impressions and on the basis of them to draw relevant general theoretical conclusions.

A critique of the sociological method of law is possible. According to D. Valchev[6], such a method is based on the violation of the logical rule according to which *"...from the fact that something is, one cannot draw the logically justified conclusion that something ought to be, and vice versa - from the existence of something due, one cannot draw the logically justified conclusion that something existed."*[7] So put, the formulation sounds tenable. I'll add another statement. I concede that from the fact that something is, one cannot actually draw the logically reasonable conclusion that something ought to be, but I think one can draw the logically reasonable conclusion that something is not as it ought to be. Social facts can diverge significantly from and continue to diverge from normatively prescribed as due patterns of behavior. Such a perspective, and in view of the methods chosen, mark out its methodological place as moderately external to the legal situation. To achieve some interaction with the problematic object requires the selection of several methods, and the conceptualization of their combination, to give some completeness to the study. Focusing on pure legal method is, in my view, insufficient. This conclusion may raise some objections. I think it appropriate not to stick

[6] *Valchev D.* , Lectures on General Theory of Law Part 1, Ciela, 2016, p. 38.
[7] Ibid.

entirely to such a method, since the concepts in the present work are in some aspects based on extra-legal factors or claims.

The first observable relation is between a *case study* and the use of *sociological data.* Here I find justification because of some similarity as I apply inductive and deductive approaches. Both are indicated because in identifying a possible problem situation of discrepancy we start from general principled and abstract rules and stop our attention in the individual situation (deductively). When the nature and properties of the problem serve or justify a general theoretical view, the movement takes the opposite direction and we deduce the phenomenon from the individual case (inductive). How is a particular case able to undermine a principled position? Sometimes a (highly) eloquent example is the appropriate tool to illuminate and illustrate doubts about the quality of the normative array and the ensuing motivated behavior. The postulate that the rule in question is contained in a valid source, and is therefore binding, remains irrelevant once the social outcome is ultimately inconsistent with the threat of punishment for non-compliance. In the case of reliance on statistics, the context of situations has always been set in the sense of giving a legitimate model of the state of affairs at the time or the future one. To also draw conclusions from accumulated historical data against that information. In a so-called *case study*, the research is about finding the extremes, which, as I said, are possible in both legal fields, the rule-maker and the rule-enforcer. Two unpopular, but relatively distinct, types of examples are also presented: the flexibility of the legal system in qualifying as exceptional, unpredictable events (the so-called *black swans*) and the "getting stuck" in one-sided approaches to the regulation of certain legal relations of a broader nature - the notions of *categorical* and *non-categorical* matter (in Chapter Three, models based on the Laffer Curve).

Of course, a legal theory cannot be defended without linking it to a normative support. *Is there* a normative basis for the ideas put forward? Can it be considered such in the event that we base and validate subjective law from its intended purpose? The discovery of implicitly and/or explicitly laid down legal principles to this effect would be helpful. Some of the major thinkers in subjective rights theory (Dworkin, "Taking Rights Seriously"); (Bentham, "On Legal Rights") defend the position of the need for normative consistency in explaining law. However, it is predominantly the continuous relationship between facts and norms (factual situations/normative framework) that is at issue. Finally, in order to justify also the 'other factors' of influence on the exercise of rights, we need in some degree an interdisciplinary approach. The same provides knowledge of the intervention of the extra-legal premise. Example situations are considered in terms of the magnitude of any one or more of the facts

or their relevance to rights-choosing behaviour. Such a difference in behaviour is very often taken into account when considering economic and/or psychological regularities. Finally, the mental operations at play in the present study often rest on comparisons and exclusions of categories that cannot always be qualified as "interesting", i.e. as relevant by law. I therefore focus on what are the givens that can motivate human behavior. Interactions through the use of legal instruments are influenced by motivating incentives. In the definitional first chapter, I try to present relatively uncontroversial definitions that fit the logical rules of reasoning in legal thinking with respect to one or another legal situation.

5. Volume and structure of the dissertation

The dissertation is 225 pages long, including a table of contents and a list of references. It contains 297 footnotes and 23 figures. The bibliography comprises 70 titles, of which 35 in Bulgarian and 35 in English. Over 150 drafts and several note sheets constructed over a long periods of time.

Structurally, the dissertation consists of a table of contents; an introduction, which includes the relevance of the problem, theoretical justification, methodology and thesis; three chapters consisting of paragraphs subdivided into sub-paragraphs; sub-sub-paragraphs; letters; a conclusion and a bibliography.

II. CONTENT OF THE DISSERTATION

Chapter One. Concept of realization and guarantee of the subjective right

A conceptual system is always necessary, both to build a certain paradigm in a general theoretical orientation and to make clear the existence of a perimeter antimatter in the regulation of relations. In this module, I adopt the approach of writing briefs in a case - summarizing by concentrating the main perceived circumstances in the trial work.

In the first chapter, the aim is to posit an uncontroversial system of concepts usable within the framework and logic of the text. Each of the overarching concepts is justified in the following methodological sequence:

- Statement of the question;
- definition.

A definition of the realization of rights; the guarantee as well as the effectiveness of rules is proposed. The arguments used are in relation to the stage nature; behavioural pattern and the emergent facts of the realised legal situation.

The realization of a subjective right is the stage of its development at which it is finally exercised in accordance with its purpose (Purpose) for which it receives legal validity. To

objectify the behavior of the holder and/or of the third obliged persons by the appearance of facts of social reality, is the new legal situation/social result recognized by the right as the satisfaction of the interest.

The guarantee of the right is defined in relation to the realization itself:

The realization of the subjective right is ensured by legal guarantees, perceived as legal means, as well as by a system of measures of institutional and social nature. The enjoyment of a guaranteed right must essentially achieve a legal and social result, understood as the objectification of facts - one's own or others' conduct in satisfying or respecting the interest of the holder, including to influence a possible unjustified long pending situation.

The guarantee is successful when a positive normative framework of rules/law cannot take away or prevent the operation of a subjective right.

The problem of the effectiveness of rules is addressed in two related strands. One is the dependence (influence) on its specific institutionality and the other is based on the nature of law to regulate specific social conditions, forming directions of development in social relations. I started from the premise that the view that legal effectiveness may not be identical with social effectiveness is possible. A norm may work - it may be legally effective, but it may not lead to the desired social outcome. It is the occurrence of this effect that should be taken into account, as it is linked to the primary consequences. They show the objectification of rules - in actions. The achievement of an outcome does not yet reveal the content of the effectiveness of norms, but it is necessary to understand exactly which outcome is considered effective, under what conditions and criteria. In the first place, the assumption of a goal was made and the irrational juxtaposition between something subjective and ideal with the objective - the result - was to some extent avoided. It can be concluded that the correlation between the normatively set goals and the achieved results of the action of norms is one of the criteria of the effectiveness of norms.

Second, primary and/or secondary institutionalization is posited to illuminate the need to ground content in social conditions. The operation of the mechanism of legal regulation, or more generally, the two transitions between social conditions and norms and from them to reality, is linked to the fact that contradictions/conflicts naturally arise within a group. Therefore, I assume that the realization of the possibility to resolve such contradiction also constitutes a source of judgment about their effectiveness. Included is a more difficult premise to perceive objectively - interest, understood not so much as being specifically tied to a subject and a right. Whether concrete or objectively shared, when it is perceived, interest is directly related to and determines the objectives. In addition, I offer three more kinds of presuppositions

to consider: the systemic character of law as all-encompassing, the great volume and frequency of lawmaking, and a certain perimeter of overcoming (as a trump card to screw over..., per Dworkin) autonomous freedom over positively binding addressee contradictions.

Chapter Two. Motivation of behaviour

This chapter addresses seemingly disparate issues, but it is the common thread that emerges when tracing them logically. They are weighed down by the power of being complicit in reasoning, which is not a unipolar process in its own way, but subject to the receptivity of different mechanisms. Objections of insufficiency and of exhaustiveness are certainly possible. It cannot be denied, however, that exemplary formulations have been described that show inconsistencies with the primary goal of any legal system - to program justifiable and explainable patterns of behavior for its addressees. By necessity, law provokes behaviour through various combinations of permissions, obligations and prohibitions. Permissions postulate freedom to choose whether and how, insofar as the law sets limits on what actions may be performed. The requirement for conduct in the other two models is more stringent. Violation of these leads to sanction - i.e. another obligatory model. Positions are presented where the legal framework is not the sole motivator for a decision to exercise a particular right.

Some typical hypotheses derived from studies of volitional behavior on the basis of cognition and motivation are discussed using exemplary, previously known methodologies; methods. Two considerations are shared. First, from the abstract rule to the individual there is a divergence of facts. In principle, law governs human relations in the abstract and to one degree or another in a general way. On the other hand, when a court is called upon to consider and resolve a legal situation, its judgment focuses on a particular legal relationship, that is, on individualizing the rule. There is always an incomplete overlap between these two positions. The indivual reveals specifics. The second consideration concerns the sufficiency of the data. Thus, the following problem is formulated: there are difficulties in establishing causal relations on a socio-normative plane and the reason is the intractability of motivation and cognition.

Finding a solution is by way of pointing out the preconditions for how the law can change behaviour. The ability of chain validities in positive rules to obligate is sometimes in counterpoint to the category of *prosocial behavior* (from a behaviorist perspective). I examine these mechanisms of stimulation at the micro-level, on the individual, and at the macro-level, in social participation, along with some specific social phenomena that reveal problems. With respect to personality, some features of goal-directed behavior and the corresponding development of the normative system are revealed, without assuming a conflation of motivation and behavior. The former has a possible theoretical description - the incentives in operant

conditioning. Behavioral expression is a consequence of motivation. Regarding the subject's participation in society (macro level), examples were given with complex and complicated legal relationships in socially distributed activities with possible problems in law enforcement. I juxtapose this with a normative system to show inconsistencies. Here, Skinner's operant conditioning and his explanation of disincentives have a wider scope now. In law, it is most often the sanction, which is why I formulate the idea of responsibility in the perverse use of this disincentive, as well as go deeper into this setting with the developed anthropological example. From this we learn that the guarantor of rights is the achievement of a socially acceptable level of justice and how this is achieved, what can be learned about the purpose of the dispute, emotional resolution, the accumulation of traces in the mind and future decisions.

This gets to the more conceptual part of the work with a look at the value of information. Through an algorithmic approach some not so obvious dependencies in civil and criminal justice are shown. Here I conclude that procedural implementation is sometimes insufficient and may be a formal obstacle to the implementation of actual legal actions. Hence the use of the first part of the accepted definition to guarantee the subjective right.

Continuing the conceptualization, I posit propositions about the factual question of the complex existence of the right, or, if one prefers, the complex character of the subjective right, but in doing so I aim to show that realization as a category must lead to a broader effect. To present this picture in contrast, I adopt a model of stating limitations in a principled way. The chronological sequence in their revelation ran through several themes. The finite resource of time is not an abstract quantity but a quantifiable sunk resource. It is subject to the divergence of the moments of legal and factual realization, in anticipation of the new legal situation, being until then dependent on the influence of facts, which probably has an imperceptible intensity of impact, with accumulation. But what remains in the past may have been new when it was imminent as future, and this creates a backward inexhaustibility of the past in the judgment of the future. Is reversibility of the effect of impact then conceivable? The lesson of the anthropological example reveals to us previously unconsidered regularities about legal warfare - the court battle. At the end of this chapter, I conclude that motivating and modeling the behavior of legal actors would not be too difficult. We just need to achieve that synergy between a qualitative regulatory framework and enforcement. I use the accepted definition of the realization of a subjective right as definitive and in accordance with its purpose (Purpose), which *involves* providing an answer to the question of when its realization actually occurs.

Chapter Three. The Predictability of the System of Rules as a Condition for the Effective Realization of the Subjective Right - Problems of the Institutional Mechanism

The problems of the institutional mechanism I consider are presented in a relatively light structure. Generally, they are related to legislative amendments and adjudication. Their conceptual categorization is related to the efficiency and predictability of amendments and the degree of systemic judicial error. The analysis traces examples of statutory changes aimed at providing a more expeditious procedural order for the realization of rights. I trace in concrete terms the change in the behaviour of legal subjects in choosing whether and what procedural tool to use. It becomes clear that distrust is driven by legal changes directly affecting the relationship - the source of the different direction of motivation in aggregate. Another cause of demotivation is the tendentious neglect of the need for speedy resolution. This undermined the notion of systemic changes related (in)directly to the realization of substantive rights themselves. Reflections on effectiveness and predictability in the direct and indirect intervention of the legislator in substantive relations also occupy a systematic place.

To argue against the effectiveness and foreseeability of certain widely used statutory amendments, I provide several examples.

The first example shows dependencies in summary proceedings under Article 310 of the CCP, and the overview is accompanied by graphs for a 10-year period. The conclusion to be drawn from the phenomenon is that the expedited proceedings do not meet the subjects' expectations of real speed, do not reveal significant differences in the speed of dispute resolution compared to the general claim proceedings, and these reasons explain the persistent trend of decreasing interest in them.

The second example points to dependencies in order proceedings under Article 410/417 of the CCP, and the review is accompanied by graphs for a 10-year period. The conclusion to be drawn is that the risk of the transformation of order proceedings into action proceedings due to the more burdensome procedure towards the end of 2019 is a direct cause of the increase in the number of cases brought under the general action proceedings. There has been a persistent trend towards subjects withdrawing from some of the procedural tools available to them for the speedy realisation of their rights.

A further segment of this section concerns the expectation of realisability. An example is given concerning the dependencies in the lawmaking of sanction rules and their assessment of effectiveness, accompanied by graphs over a 10-year period. I describe it through a model, experimentally, using the Laffer curve, which reveals the intersection between categorical and non-categorical spheres of regulation, and their hypothetical modeling through the said curve.

To describe the quality of systematicity and the presence of degree in it, and thus to "attribute" to the judicial system the accumulation of just systematic error, I refer to the summary results presented in several graphs.

An example is presented with graphs of the reports of the district courts that acted as appellate - II instance in civil and criminal cases - II instance for 2019, as well as with graphs of the reports of the same courts for 2018 and for 2017. Is it random in nature, or is there a trend? The conclusion that emerges is that approximately 1/3 of the cases result in the reversal or modification of the first instance judgment or sentence on the grounds of incorrectness. In about 1/3 of the cases, the subjects only obtain a correct application of the substantive and procedural law before the second instance. The ineffective first instance in the proper adjudication of cases creates a lack of certainty and predictability as regards the application of the law and the realisation of subjective rights. Two preconditions operate together - procedural time limits (their possible length) and incorrect adjudication.

The "when" argument favours real interests in procedural protection, but often remains legally indefensible or determined to be irrelevant to a particular interest. I characterize the error in terms of the hypothetical Gaussian bell curve model. In search of the factors whose aggregations are not helpful, I posit the following premises: reasonable time and the understanding of the courts, including the ECHR, from whose case law I critically comment on the grounds for slowness (especially those related to the conduct of the subjects), and the assertion of limits on compensation and time. Hence, I conclude that the opposite approach should be taken, again with extreme limits, but in relation to the term, not the indemnity. Against economic uncertainty, the role of the court is sought to strike a balance between economic compliance and the 'currency' of uncertainty. This opposition leads me to the following conclusion: the choice lies in a more flexible resolution of the dispute with alternative instruments in view of the economic outcome even when the outcome is not directly advantageous for the right concerned, but it is preferable because it stops further deterioration. It achieves a definitiveness that brings an economically preferable result, rather than lingering in its statutory judicial procedure to protect a particular right in "full". This creates inverse behavior. From it set off various tendencies that I have ultimately described, as unrecorded by concrete statistics, as *social antimatter*. These are cases that cannot be counted, as was the example of the remission case, rather than referral to the formal institution.

The institutional problems do not stop there. The result of the scourge of ad hoc enforcement and ad hoc change is manifested in the severe undermining of confidence in the

legal system.

The first example is the gambling case of early 2019, where flawed enforcement and a negative effect on foreseeable expectations of legislative change both socially and through the omission of constitutional scrutiny of the gambling case are glaringly apparent. The efficacy of changing the specific rule of the Gambling Act is represented by the hypothetical Laffer Curve model presented previously. The conclusion that emerges is one of a case of failure to maintain an assurance standard. Hence the use of the second part of the accepted definition of warranting.

The second multi-layered example of change and implementation is the 2020 objective crisis. It was about the regulation of the epidemic emergency situation through binding/guiding/restricting/prohibiting/controlling models and *qualified reliability* in the legal system. The legal-sociological aspect, marked by predictability, trust and behaviour change, emerged. The functionality of the social mechanism is justified, evidenced by the emergence of multiple imbalanced situations in society. Therefore, I build a concept concerning the *more compulsory* "emergency" measures; the imbalance between the justified expectations towards the rules and the overcoming of the danger by complying with them; the unpredictability of the multitude of rules adopted and applied ad hoc. The conclusion this time is summarised by a quote:

"...making the ideal real is a complex task common to any legal system that binds its decision-makers through pre-formulated norms. Only if the legal system is able to transpose satisfactorily the abstract discourse of law into social reality is justice realized; only then does the legal mechanism fulfill its purpose."

Finally, I track the completion of the goal - the solving of the problems.

Rights realization is the *object of* the study, in its sense of a stage. Most disconcerting at times is law's lack of commitment to bridging the gap between legal and factual realization. Such disharmony rheoses the legal system and its credibility. I argue that possible divergent extremes in lawmaking and law enforcement are conduits to such a condition. I hope that the examples and analysis provided in this Part make more tangible the constraining effect on the realization or eventual guarantee of subjective rights of situations with an acute discrepancy between the legally realized right and the socially manifested outcome of that right, i.e., there is a synthesis between the object posed and the problem solved by the methods chosen.

III. STATEMENT OF CONTRIBUTIONS

1. The legally significant expression of will is subject to multiplicity and subordination in view of the complex and multilayered structure of social relations. All their characteristics

cannot be captured due to often one-sided measurement. To the extent that we have been able to know certain forms of social dependencies, to that extent we construct and order the world of interactions. We are inclined to claim that we have arrived at this achievement in a deterministic way. Like Newtonian physics, but we deterministically make one projection or another, with a view to a socially achievable consequence. We should therefore be able to at least describe social regularities in the reverse way of their causal development. If we cannot do so, it is not because society cannot be described by social physics, but because the presuppositions for presupposing the future do not contain something that escaped the then, in the past, accurate judgment of the future. Basing it entirely on past experience is an incomplete approach. Things we have seen before are insufficient because there is probably something we have not encountered before. Because of this, when future consequences become present facts and we look at the starting point of successive judgments, the void becomes visible. The blind spot arises from this uncertainty, which conditions an incompleteness in the cognitive picture. The same elemental premise emerges when we try to reflect on the disambiguating possibilities of unjustifiably limiting features that have acquired the status of parameters in the legal system. These are the ones that can and do place us in an unpromising dependence. Identifying it as such, the alternative ramifications begin. And hence, for subjective law to be a potent tool, it is left with no course but to seek at least some dual projection other than the *blocked one*. The scientific controversy as to what constitutes light has to do with the fact that it behaves neither merely as particles nor merely as waves. So it is with law; by argument from the contrary, we can look to logic to make it sufficiently capable of being independent of the confines of positive law and the behavior of third parties, while remaining within the orbit of its valid justification and, despite the overreaching, remaining consistent with the operation of the other elements of the legal system. Evaluating how to behave in such coordinates therefore requires considerable imagination. But is it so abstract as to be untestable by experience? Such multiplicity and subordination in the layers of legally significant volition cannot remain satisfactorily traceable if one-sided measurement is used. In case we dare to look at subjective law through the prism of at least the hitherto familiar quantum mechanism of cognition, we will incorporate certain principles of complementarity[8]. This is because a dual projection of law will require it in order to emphasize the energy of *complementarity*. How to make visible the reconciliation and reconciliation of its independent capacity to overcome the limits of positive law and the obstructive behavior of third parties, while not validating delegitimized actions (e.g., by

[8] Niels Henrik David Bohr (Danish: Niels Henrik David Bohr) was a Danish physicist who won the 1922 Nobel Prize in Physics.

attribute - excessive legal empowerment), but only legitimate ones. Like Bohr[9] , we need to find where the *epistemological cut* will be[10], as in research on the concepts of *wave* and *particle.* Inherent in all quantum systems is the limiting influence of the method of experimentation. By choosing a particular experiment, the consideration of the problems of the blocked part of the right or the problems of supremacy while respecting its natural characteristics, we introduce inevitable indeterminacy in the properties to be measured. It is an indeterminacy, but it is not introduced by the "clumsiness" of our measurements, but arises because our choice to investigate the first property forces the quantum system to reveal one type of its characteristics at the expense of manifesting the characteristics of the other.

2. I propose the construction of a conceptual scheme, operating within a particular logical paradigm, from which the existence of an antimatter perimeter in the regulation of relations becomes clear. I present the inversion in the general behavior of legal subjects in one sphere or another to illustrate cases in which no trace is left and thus do not fall into statistics. Such are, for example, the cases that were resolved without the help of the court, but there was a need for and an opportunity for such.

3. I question some of the features of adjudication and some of the negative consequences of legislative changes. Their conceptual categorization of work is related to the effectiveness and predictability of statutory amendments and the degree of systematic error in the administration of justice. I point out in concrete terms how legislative changes made to provide a more expeditious procedural order for the realization of rights may discourage legal actors from choosing whether/what procedural tool to use. The reason for the distrust lies in the legal amendments directly affecting the relationship - the source of the different direction of motivation collectively. Another reason is the neglect of the need to resolve the dispute in a timely manner.

[9] *Gazaniga M. S.,* op. cit., pp. 115. Bohr worked on this theory for six months and outlined it for the first time in 1927 in his Como lecture.
[10] Gazaniga M. S., op. cit., "*epistemic cut",* pp. 119.

IV. PUBLICATIONS ON THE DISSERTATION TOPIC

Dimitrov, A. "Predictable ad hoc legislation", January 2020, e-portal for scientific publications:

URL: https://news.lex.bg/pub/ ; Electronic edition ISSN 2682-9606;

Dimitrov, A. "Justification for Unpredictable Rules", Scientific Readings on "Predictability of Law", Reports collection, University of St. Kliment Ohridski", ISBN : 978-954-07-5478-9, 2022;

Dimitrov, A. "On a divergence in the Identity between Violation and Punishment", (submitted for printing - Scientific Readings on Law and Coercion, Sofia University Faculty of Law "St. Kliment Ohridski", July 2022).

V. PARTICIPATION IN CONFERENCES ON THE TOPIC OF THE DISSERTATION

Scientific Readings on "Predictability of Law", DTHSL and DCLS, Faculty of Law, Sofia University "St. Kliment Ohridski", May 2021, exposition of the topic of the publication.