To the Scientific Jury, appointed by the Rector of Sofia University "St. Clement of Ohrid", Order No. RD-38-573/03.10.2022.

S C I E N T I F I C O P I N I O N

by Assoc. Prof. Simeon Groysman, Sofia University Faculty of Law

regarding

"GUARANTEEING AND REALIZATION OF SUBJECTIVE RIGHTS"

dissertation for the acquisition of the scientific and educational degree "Doctor" (J.D.) by **Alexander Veselinov Dimitrov**, a full-time PhD student in the scientific field 3.6 Law (Theory of State and Law. Political and Legal Theories) at the Department of Theory and History of State and Law at the Sofia University Faculty of Law "St. Clement of Ohrid"

Dear members of the scientific jury,

I. Reasons for writing the Opinion

The PhD student Alexander Dimitrov presented for consideration a dissertation on the topic "Guaranteeing and realization of subjective rights" - result of a full-time PhD studies on the basis of the Department of Theory and History of State and Law of the Sofia University Faculty of Law with the scientific supervisor of the research Prof. Dr. Yanaki Stoilov. After the internal defense held in the Department and the issuance by the Rector of SU of the order № RD-38-573/03.10.2022 by the decision of the scientific jury at its meeting on October 7, 2022, I have been assigned to compose this opinion.

At the same meeting, the members of the scientific jury agreed that the PhD student fulfilled the applicable minimum national requirements for this type of scientific study. There is

no plagiarism as verified by the electronic review with the StrikePlagiarism system and as I can in my turn confirm. In the light of the above, the submitted dissertation has rightly been allowed to proceed to public defence and should receive substantive evaluation.

II. Biography of the PhD student

Alexander Veselinov Dimitrov was born in 1993 in the town of Rousse. He finished his secondary education with a major in natural sciences and intensive study of English at the Hristo Botev Secondary School in Devin. In 2017 he graduated in Law at the Faculty of Law of Sofia University "St. Clement of Ohrid". His professional experience as a student includes internship positions in different law firms, and from 2018 until now he has been working as a legal advisor in a financial consulting company. From 2019 to 2022, he was a full-time PhD student in the theory of law at the Theory and History of Law Department at the Faculty of Law of the same University.

I myself have known Alexander Dimitrov since his enrolment as a PhD student in the department where I work. I can state that Alexander has always treated the tasks assigned to him in the department with good faith, be it for conducting seminar classes or for helping in exams or scientific events organized by our department. The dissertation was written in a tight time frame, following the three-year study period, which is rather rare among Ph.D. students at Sofia University. It is noteworthy the effort made by the PhD student to conduct his research, refracting it both through his experience as a legal practitioner and in the prism of his personal theoretical preferences in legal scholarship. As a result, his work has its own style, which shows the active attitude of Al. Dimitrov specifically to his dissertation topic and more generally to legal studies.

III. Contents of the thesis

The dissertation under review has a classical **structure** of an introduction, three chapters and a conclusion. The first chapter introduces the concepts of the realization and the guarantee of subjective right, the second chapter deals with the issue of the motivation of behavior and, respectively, the role of law in the motivation towards rightful behavior, and the third chapter is entitled "Problems of the Institutional Mechanism" [of the realization of rights] and deals mainly with the dependence between the predictability of the content of the legal system and the possibility of effective realization of subjective right.

The topic of the dissertation is among the classical questions of legal theory and from this point of view its dissertationability is not questioned. The first main merit of Al. Dimitrov`s work, which should be analyzed here, is the presentation of this topic in an unconventional, if not antidogmatic, then certainly extra-dogmatic way of consideration. The general theoretical scheme of the guarantee and realization of subjective rights, which is in contact with the question of the factual, essential character of this "realization", is examined from a socio-legal perspective, criticizing the neglect of issues such as the timing of the realization, the impact of this time period on the subject's overall patrimony, the tension between the expectations created for realization by virtue of the legal promise of the realization of rights and the subsequent disappointments of the delay or complete lack of the factual realization of the subjective right.

In this sense, the title of the dissertation would sound more adequately as "A Critique of the Guaranteeing and Realisation of the Subjective Right". This, however, is not a problem of the dissertation's research, but of the relatively clumsy model of the Ph.D. regulation in Bulgaria, requiring the formulation of a topic − and, respectively, a title of the scientific work, at a very early stage of dealing with it. On the contrary, the normal development of the thought process, in my opinion, also implies the possibility that the title of a complete scientific text can only be determined upon its completion, at the same time through adding a subtitle − an unconventional practice within full-time and part-time doctoral studies in Bulgaria.

The overall text of the thesis is based on a constant comparison between the Sollen-model of the normatively established and the factual Sein-measurements of the "social" being of subjective rights on the way to their "real" realization through obtaining a concrete good for their holder. The criterion for the "legal realization" of a subjective right is explicitly stated to be "the actual act - the payment of the debtor by the creditor" (p. 48), and - as I will mention below - it is of interest to develop this basic idea more comprehensively for other, non-contractual forms of subjective right.

Al. Dimitrov starts from the premise that, at least in the Bulgarian legal system, and - without explicitly saying so − in positivist constructions of law in general, there is a potential or - in our contemporary times − a real and deeply problematic "disjuncture between the legal and factual realization" of subjective rights (p. 34). In this sense − having the necessary scientific modesty not to proclaim any methodological novelty, the PhD student in an interesting way shapes his "pro-sociological" (p. 19) theoretical model, looking for the impact of law with different social

regularities. I find it interesting in this sense that Al. Dimitrov does not "expand" his analysis too wide, searching in a comprehensive way for the relationship between law "and everything else", as our older (and not only) legal theory has tended to do. Dimitrov concentrates on the relationship between specific law-realization processes and the individual's "social world": his legal sphere, which receives no protection; his psyche, which suffers in anticipation of protection; and, ultimately, his life plans, which may in the future forgo the search for state protection of rights. Alternatively, various "economic" (see, for example, p. 47 and the monetary valuation of the time of the legal dispute) or "mediation" strategies are indicated to find the relevant/compensating good and/or overcome the dispute.

The actual development of relations in this "social world", analysed at its micro-level, lead to the idea that − despite legal declarations of the guarantee of rights, "it is possible that the subject [of a right] may find himself in a deadlock in the protection of his legal interest despite... the use of legally recognised means" (p. 39).

The main problem of the dissertation can be seen in the analysis of the time factor in the development of the legal relationship and the relation between time and the inefficiency judicial procedure for the imposition of a legal sanction (here I use the term "sanction" in the sense of the judicial process as a defense-sanction in the light of prof. Stalev`s theory and respectively in the context of the sanctioning of contractual non-performance, which is the main interest for Al. Dimitrov). The PhD student rightly poses the classic Juvenal question for any system of power: "Quis custodiet ipsos custodes?", "Who will keep (the) watchmen themselves?" Who should sanction the untimely performance of the debtor, for example, when the judges are not under a disciplinary power to sanctioned them if they give a late and ineffective decision. This is the case when they themselves are late to decide the case in which the creditor seeks protection (p. 16). The time delay in the defence does not merely postpone, but actually destroys, the possibility of achieving concrete justice in individual cases, because the delay itself has a negative impact on the legal sphere of the holder, without the delayed judgment in his favour being able to compensate for it (see p. 40). The dissertation justifies the conclusion that there are no mechanisms to take into account the "overall context" of the legal dispute if its judgment is delayed, and without this consideration, no fair social result is possible. In this sense − in the spirit of critical legal studies, it follows that any judicial decision is particularistic, it focuses on the past (i.e. on the dispute it

resolves) and cannot take into account the cumulative facts subsequent to the filing of the case. At the same time, it is these facts that form the current social reality of the individual, i.e., an object that the judgment "will not be familiar with" but on whom it impacts or, worse, is slow to do justice.

The impossibility of actually obtaining the formally protected goods raises the problem of the existence of many cases in which the rights holders prefer not to seek the realization of what they are owed through legal means. In this sense, Al. Dimitrov speaks of "socially inverse behaviour", i.e. "cases that didn`t have been resolved without the help of the court, but there was a need for such help" (p. 44), or else a de facto refusal to seek a good followed. There is no resolution of the conflict, the right has not been realized, but neither has a remedy been sought. The author's hesitation is noteworthy here, as he mentions in note 59 that he originally spoke in this sense of "social antimatter, [acknowledging and implying his abandonment of it because] a concept which is neither legal nor doctrinal". At the same time, throughout the text there are repeated references to the "social antimatter" in question, which is why it seems to me that Al. Dimitrov wanted to replace the phrase with "inverse behaviour", but did not finalize this step in the editing of the text. Despite these minor textual irregularities, the topic involves an attempt to conceptualize a mass phenomenon that, however, generally eludes dogmatic legal theory. The latter would probably respond that this is the fault of the naysayers, not the law. In the end, the dissertation points out, there would be a formally correct but belated, and therefore disregardful of its overall proprietary context, solution. It is possible that this context is fraught with lost opportunities and consequent economic losses due indirectly to pending litigation. The social outcome of such a judgment will be social injustice through lawful means (p. 137). In my view, the "pro-social" pathos proposed here is rather impotent because law provides a certain systematicity in relations without being able, by definition, to bring social justice. At the same time, while I do not entirely agree with this conclusion of the author, it is well written, elaborated and becomes, it seems to me, one of the main contributions of the work.

Seeking the means to overcome the growing distrust in the legal system, the author proposes the idea of remedial legislative action in the presence of contradictions and/or ineffective norms, speaking of "sanitary lawmaking" (pp. 76-78). To justify this idea, the following logic is used: in certain cases of imperfections of legislative acts, there is a failure to comply with the norms. The realization of their objectives is ineffective, which, according to the author, constitutes

an “informal deprivation of the legitimacy” of the relevant regulation (p. 77). This argument, indeed at the level of the quasi- or directly non-legal recommendation, should lead to legislative changes and to the recognition as lawful of actions violating such a flawed norm (p. 78). Although contrary to classical dogmatics, Al. Dimitrov thus proposes a way of judicially overcoming the de facto widespread mechanism of the coexistence of a half-dead norm, attempts to selectively enforce its sanction, creating mass strategies for its disregard and non-enforcement.

The topic of trust in the legal system as a consequence of the immediate attempt to solve problems through its remedies is of major interest to the PhD student.

The problem of securing justice within a reasonable time and the respective economic consequences of failure to do so are considered in the context of the time-defence relationship (p. 168). In my view at least, the principle of dealing with cases within a reasonable time is not dealt with as deep as suitable for a general theoretical study, but only through a general comment on the relevant ECtHR case law. Further − with a view to future elaboration of the topic, linking trust in the legal system, for example, with the issues of public law institutions, the rule of law and the separation of powers, I believe, will be useful for the research plan of the colleague.

The third chapter of the work is devoted to the effectiveness of the sanction mechanism of the legal system as the main instrument for ensuring the effective realization of subjective rights. This third chapter bears the greatest innovative potential, combining legal-dogmatic analysis with extensive application of statistically oriented sociological methods. Based on objectively measured results of the application of certain norms (number of cases filed, number of − respectively not prevented by stricter norms, offences) Al. Dimitrov presents in detail his views on the prerequisites for the effectiveness of the normative permissions introduced by the legislator. Mathematical methods with corresponding graphical presentation in tabular form are proposed to describe the dependencies commented by the author, which is probably a (positive) precedent in the field of general legal theses in Bulgaria.

The conclusion of the work retells and schematizes rather than summarizes and synthesizes, which is acknowledged by the author himself (p. 203). In this sense, the individual scholarly contributions should be sought in the individual parts of the text rather than “ready-made” in an orderly conclusion, as is the recommended tradition for a dissertation.

IV. Accompanying work materials.

The dissertation is accompanied by an **abstract**, which as a whole outlines the dissertation, though it summarizes the contributions modestly enough − I will add a few in the next section. The author also offers **three articles** in scientific proceedings, which are sufficient to meet the relevant minimum scientometric requirements, and as far as the dissertation research is concerned are incorporated as conclusions and will not be the subject of separate comment.

V. Scientific contributions.

Original for the contemporary Bulgarian legal theory is the author`s analysis individual experience of events related to the legal realization of rights, in particular that of individual experiences in court proceedings and their influence on the legal consciousness and planning of actions in the future. Individual experiences form a collective network of impressions in the context of "resonance among other actors" and by virtue of "shaping different factual situations"; they "form... preferences for social instruments of interaction" for the future (p. 47).

Emphasis on the motivation of right action is relatively rarely addressed in Bulgarian legal theory. Al. Dimitrov puts it in the typical context of the question of whether the risk of sanction is a sufficient incentive to act justly (pp. 86-88). At the same time, he contributes practically for the first time by introducing to Bulgarian legal theory the topic of the disincentive to use certain legal instruments debating precisely in a legal-dogmatic, and not only in a legal-sociological context.

Interesting is the authors's idea to talk about the 'influence of facts' (pp. 129 ff.), weaving radically legal realist elements into his analysis ('law as fact', 'facts instead of norms' in Alf Ross's classical texts of Scandinavian realism e.g.). Considering legal relations solely through the prism of the facts regulated by their framework provides an additional alternative view and, respectively, an added value to the usual legal-dogmatic view, especially as regards the idea that a series of factual developments form a correspondingly new attitude - for example, towards the remedies provided by the same unchanged norm.

Although sufficiently familiar in Western legal theory, the implicitly introduced by Al. Dimitrov's economic analysis of behaviour in the choice of remedies, deserves to be encouraged, subsequently developed by the author and more widely commented in our country. Through the mentioned methodology, the introduction of the ideas of economic rationality and the related assessment of risks, earned goods, freedom of action as a potential opportunity to gain a substitute

good is proposed (p. 133 ff.).

VI. Criticisms and Recommendations.

With a view to giving an overall assessment and at the same time recommendations with a view to improving the text for future publication, I cannot spare a few criticisms of the work under review:

The numerous linguistic omissions made by the PhD student, including despite repeated instructions to the contrary from his supervisor and the departmental board, cannot be accepted. I leave aside the typographical errors, to say the least[1]:

a) Vague, quasi- or overtly journalistic terms are used (“court battle”, “prefers“ as an artificial word with latin roots instead of the Bulgarian word for “prefers”, “such a case is difficult to digest”, “writing down” rules, remedies, etc.). As a result, the precision of the legal expression suffers, thereby losing the clarity of the scientific meaning imparted. For example, there is talk of 'legal formatting of phenomena' (p. 8), 'norm-making' in conjunction with 'norm-creation' (p. 25). repeatedly of 'quantifiability', 'quantification', etc., it seems to me without adding value. There is talk of “leakage” of NRA data, of “irrigatied justification” (jargonisms, p. 65, p. 67), and three uses of the word-variant of “subsequent” or its derivatives, which word seems to me to exist only in humorous everyday speech, not in our literary language. It speaks of subjects being “immune” to sanctions (p. 70) when referring to publicly known factually available corruption cases of failure to perform official duties sanctionable.

I understand (and often suffer myself) from Al. Dimitrov's desire for more eloquent scientific language and the introduction of his own concepts, but when they are not explicitly introduced, the meaning embedded in them cannot be intuitively understood by the reader.

b) The russisms used are too many and not always in place. In the original Bulgarian version of this opinion, I have detailed such examples, showing relevant Russian words which − in the context of a clear scientific text - should have been replaced by Bulgarian words.

c) I will only refer to the very negative practice of quoting an “anonymous comment” on

[1] **Translation note:** This paragraph deals with issues of the use of the Bulgarian language in the dissertation and cannot be fully accurately rendered in English.

an article from lex.bg without even commenting on the comment or explaining why it is necessary (note 93 on pp. 68-69). Again, an anonymous author is quoted in fn. 190 at p. 125.

The citation technique is itself undervalued in at least three ways:

a) There are passages quoted too extensively in quotation marks without the large volume of citation being justified by their importance. A number of examples can be cited in which a quotation`s idea is taken as given rather than interpreted the other's view and thus also analysed through the means of the his own scholarly apparatus, which in legal theory always bears a specific authorial point of view. One is left with the impression that the candidate uses the commenting on certain voluminous passages cited to construct his exposition (e.g. on pp. 22-23, 25-28, pp. 180-181).

b) At the risk of incurring the disapproval of my colleagues, perhaps following a personal taste, I consider it incorrect in our time of wide access to a vast amount of literature, to frequently quote texts through other texts, refering to the footnotes of other authors and their reinterpretations without working with the primary source. It is an incorrect practice, for example, to quote Holmes through another article rather than reading his canonical and widely available text ("The Path of the Law"); Agamben should not be quoted through a reading of M. Zheleva (without wishing to offend the latter, of course, I`d rather want Agamben to be interpreted on his merits, after all, when the question of the Emergency is being discussed), Machiavelli is only cited as a source of general inspiration in a footnote (No. 263) by the years of his life instead of the year of the writing of "The Prince" etc. In footnote No. 293 the author mentions some analysis on Fr. Engels, written by someone called Anti Düring. Apparently this confusion would have been resolved already by an acquaintance with the title of this Engels work: "Anti-Düring. Herr Eugen Dühring's Revolution in Science".

d) The bibliographical list, which follows the main text of the dissertation, is also open to serious criticism. There is no overall pattern of citation (e.g. city of publication is sometimes indicated but sometimes omitted; publisher is indicated somewhere and omitted elsewhere − cf. items 4, 5 and 8 on p. 220). The generally accepted way of citing dissertations is not followed (item 27 on p. 221). Articles in scientific collections are not referred to by the appropriate page numbers, as is usually done (see, for example, entry No. 16 on p. 221). Some footnote text has slipped into the bibliographical list − see No. 7 on p. 222. I was personally surprised to see that I

was cited with the entry "Groysman S., Rights as Powers. The Supremacy of Rights as Empowerment, Ciela, 2020" (No. 9 on p. 220, in footnote on p. 13). However, my work with this title is an article published in 2019 in the proceedings of the Conference "Human Rights − 70 years after the adoption of the Universal Declaration of Human Rights", Saint Clement of Ohrid University Press. I have published a monograph, i.e. a completely different work, in Ciela in 2020.

In several cases the author uses general theoretical concepts incorrectly.

(a) For example, "society" and "nation" are contrasted as successive stages in the development of human communities (p. 8), a view which is unfamiliar to me, without having been separately justified by the author or given by reference to another's opinion. **(b)** I also cannot agree that "[s]ubjective rights and duties exist in the minds of legal subjects", even though they are acknowledged to have an objective nature (p. 15). The unconsciousness of a subjective right does not affect its validity at all; the mass consciousness is often devoid of any clear idea of any "subjective right". We can say that subjective rights are notions based on facts (e.g., the right-conferring formal contract materialized in a relevant document) just as legal rules are notions based on facts (e.g., the implementation of the rule-making procedure culminating, for example, in the publication in the Official Gazette). **(c)** The cause of legal formalism has been pointed out as the "poor articulation" of rules (note 24 on p. 20). "Articulation" in Bulgarian literally means "pronunciation" and in each of its connotations is a concept related to pronunciation, speech. Even if we consider that we are talking about "vague articulation", vague articulation justifies the need for interpretation, and legal formalism is a different concept in need of a more expansive understanding (one I have argued for elsewhere; of course, I am not alone). **(d)** Mention is made of the term "infrastructure of subjective right" with the qualification that it "probably refers to multiple legal relations that form a common factual composition", etc. (p. 52), which for me remains a rather vague and artificial notion. **(e)** A similarly vague status is given to the view of "legal recognition" of existing objective rights (p. 53), where presumably valid (i.e. with an objectively available, proven factual basis) subjective rights are meant, but proposed reading risks moving away from the author's intention. **(f)** There is use of the term "absolute rights" in the sense of rights "for all subjects" (p. 67 − in the text and in note 91), but this is a third, unfamiliar sense of the concept of "absolute rights", which for our theory traditionally means "rights to be respected of all", and – as it is widely known, in the jurisprudence of the ECtHR, the term is used in the

sense of "rights not subject to limitation". Ownership of a particular item, for example, is my absolute right (everyone must respect it), but it is exclusively my right, without being "available to all"; the universal nature of rights can be further, but with additional distinctions, linked to the status of fundamental rights in the modern state. **(g)** The idea is expressed that upholding the claim "endows the claim with greater legal force" (p. 97), which seems to me to introduce some new and unfamiliar dimension to the notion of legal force, **(h)** similarly stands the idea of "peremptory actions" (p. 101).

My substantive criticism is essentially that the PhD student − by virtue of his professional interests, his personal scholarly orientations, concentrates to an excessive extent on the basic claim-based relationship between creditor and debtor, without sufficiently extending his examples and analysis to many, if not the more interesting topics of the realization of rights in family and labor law, of non-self-executing constitutional rights in general, or, for example, of the impact of the "time" factor on the punishment relationship between the state and the wrongdoer. Indeed, it is possible to make a case for the idea that the text focuses on a basic, contract law model, a nucleus of reasoning that may also have the potential for private sector application. Such justification is lacking, however, and rather I, alternating the roles of accuser and defender of the doctoral student, add it as a potential possibility.

In this regard, I will take advantage of an opportunity − no reason to hide it, too neglected in our public defences − to formulate in advance for the PhD student a question-task: **to give us an example of the application of his model to a family law, employment law or other legal relationship other than the basic "classical", contract law model he has considered.**

VII. General evaluation.

The formulated criticisms and remarks do not diminish the value of the proposed dissertation. I hope they will assist the author in its completion with a view to the publication of a book.

Guided by the above, **I can formulate a positive assessment of the dissertation of Alexander Dimitrov under the title "Guaranteeing and realization of subjective rights"**. As it meets the requirements of the applicable parliamentary and sub-legislative acts, the thesis justifies the obtaining by its author of the educational and scientific degree of Doctor of Law in

the professional field 3.6 Law (Theory of State and Law. Political and Legal Theories), for which I will vote positively in the forthcoming public defence.

Sofia,
1th of December 2022

Симеон Тройсман