

To
Members of the Scientific Jury, established
under Order No. MA-09-23 of January 11, 2023
of the Director of the Institute of Philosophy and
Sociology-Bulgarian Academy of Sciences
(IPS-BAS) on the conducting of a competition
for the occupation of the academic position
“professor” in area of higher education 2.
“Humanitarian Sciences”, professional field 2.3.
“Philosophy”, scientific specialty “Ethics
(Ethics and Regulations)” at the IPS–BAS

REVIEW

of Prof. DSc. Georgi Petrov Penchev
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concerning: the materials submitted for participation in a competition for the holding of the academic position “professor” at the IFS-BAS in area of higher education 2. “Humanitarian Sciences”, professional field 2.3. “Philosophy”, scientific specialty “Ethics (Ethics and Regulations)” for the need of the Section “Ethical Studies” of the IPS–BAS

Dear Members of the Scientific Jury,

By Order No. MA-09-23 of January 11, 2023 of the Director of the IPS-BAS, I am designated as a member of a scientific jury regarding of a competition for occupation of the academic position “professor” in area of higher education 2. “Humanitarian Sciences”, professional field 2.3. “Philosophy”, scientific specialty “Ethics (Ethics and Regulations)” for the need of the Section “Ethical Studies” of the IPS–BAS, promulgated in State Gazette (SG), No. 92 of 18.11.2022. I present to your attention my review, prepared on the ground of Art. 29a of the Development of the Academic Staff of the Republic of Bulgaria Act (DASRBA – State Gazette (SG), No. 38 of 2010, as amended), Art. 61, par. 1 of the Regulation for Implementation of the DARSBA, adopted by Decree of the Council of Ministers No. 202 of September 10, 2010 (RIDARSBA – SG, No. 75 of 2010, as amended) and Art. 6, § 1 and Art. 45 of Regulation of the IPS-BAS for Conditions and Order of Obtaining of Scientific Degrees and of Holding of Academic Positions (RIPSBASCOOSDHAP – In: Институт по философия и социология [online]. [viewed 26.12.2022]. Available from: <https://ips-bas.org/%d0%bd%d0%be%d1%80%d0%bc%d0%b0%d1%82%d0%b8%d0%b2%d0%bd%d0%b8->

1. Brief description of the presented materials in the competition

Only one candidate has submitted documents for participation in the competition – Assoc. Prof. DSc Stoyan Andreas Stavru from IPS-BAS. The set of materials and documents presented by him on paper and electronic media is in accordance with Art. 61, § 1 items 3 and 4 and § 3 of RIDARSBA and Art. 43, § 1 of RIPSBASCOOSDHAP. He has submitted 23 publications for participation in the competition, among them: one monograph with the value of habilitation work - “Compensation for non-economic (moral) injury in Bulgaria in the context of obligatory insurance “Civil Liability” for motorists”, Sofia, Ciela, 2020, 448 pp.; one monograph which is published defended dissertation work for obtaining of a scientific degree “Doctor of Sciences” – “Moral dimensions of property in ecological context (Towards a justification of a “proprietary” ecology)”, Sofia, BAS-IPS, 2021, 487 pp. and which I divert for review since it was the subject of review during the defense of the dissertation work; one monograph in English, published in the Netherlands in co-authorship with Velina Todorova and Dimitar Topuzov – “International Encyclopaedia of Laws. Family and Succession Law: Republic of Bulgaria”. Alphen aan den Rijn (NL), Kluwer International BV, 2019, 326 p., with authorship of Part I, pp. 33-78 and Part IV, pp. 219-239 and 290-318; one teaching aid in co-authorship with Rumén Nekov – “Challenge: Judicial practice!”. Interpreter: 2019. Civil and Commercial Division of the Supreme Cassation Court.” Sofia, Ciela, 2020, 224 pp. with author’s summary of the court acts No. 1-5, 7, 10, 11 and 14; 19 articles and studies, of which 10 studies and 9 articles, one of them in English in Russia. As can be seen from the presented materials Assoc. Prof. DSc S. Stavru satisfies the minimum national requirements, as well as the requirements of BAS in order to be allowed to participate in the competition.

2. General characteristic of the scientific activity of the candidate

Assoc. Prof. DSc Stoyan Stavru has completed his higher legal education at the Faculty of Law of the Sofia University “St. Kliment Ohridski” (SU) in 2003. In 2010 he has completed a master’s degree in social and legal psychology at the Faculty of Philosophy of SU. After successfully defending of dissertations in the field of law in 2009, and of philosophy in 2015 ha obtained 2 educational and scientific degrees “Doctor” in Civil and Family Law, from one hand, and in Contemporary Philosophy, from other hand. He has participated in a number of scientific conferences and specializations. Since 2014 and currently he works at the IPS-BAS where successfully holds the scientific positions “assistant”, “main assistant” and “associate professor” (the last in 2018) and in 2021 he obtained a scientific degree “Doctor of Sciences”. He is an author of more than 200 scientific publications.

3. General characteristic of the educational activity of the candidate

Assoc. Prof. DSc Stoyan Stavru has taught various legal disciplines in SU and New Bulgarian University, with which he actively participated in the development of the legal education in our country.

4. Analysis of the scientific achievements of the candidate in the competition

4.1. Relevance, significance and scientific contributions of the habilitation work of the candidate in the competition

The monograph (i.e. habilitation work) “Compensation for non-economic (moral) injury in Bulgaria in the context of obligatory insurance “Civil Liability” for motorists” of Assoc. Prof. DSc Stoyan Stavru is dedicated to an important and insufficiently researched issue in our country. Its relevance and importance is related to the great importance of the compensation for non-economic injury under Art. 52 of the Obligations and Contracts Act (OCA – SG, No. 275 of 1950, as amended and supplemented) for the satisfaction of the victims of traffic accidents and their relatives and friends. He used a large number of literary and normative sources, as well as a large amount of case law, and this is an indicator of his very good literary awareness.

In the habilitation work, which is 448 pages long, the comparative legal and historical legal methods of scientific research were used above all. Structurally, it consists of: four chapters respectively dedicated to compensation of non-economic injury (Chapter I, pp. 13-179), the review of the practice of the Supreme Cassation Court (SCC) for the period 2015-2019 in the area of consideration (Chapter II, pp. 180-379), the review of judgments of the Court of Justice of the European Union in the area under consideration (Chapter III, pp. 380-394), the conclusions and recommendations related to the considered legal regulation (Chapter IV (actually having the meaning of a conclusion – n.b.,G.P.), pp. 395-436); list of used literature (pp. 437-441); and a list of decisions of the SCC in the area under consideration (pp. 442-447).

The scientific contributions of the study are of the category of “enrichment of the existing knowledge” and are based not only on investigation of the legal literature, legislation and case law, but also on the personal views of the author on investigated issues, accompanied by a number of own and original conclusions and considerations.

The following specific scientific, scientific-applied and practical contributions in the habilitation work could be highlighted:

1. original author’s opinion on the difference between the estimation of the court in equity and in the inner conviction of the non-economic injury suffered (pp. 17-20);

2. successful author’s periodization in 4 periods of the application of the OCA, 1892 in relation to the compensation of the non-economic injury (pp. 20-46) and in 2 periods, but of the application of the OCA, 1950 in this area (pp. 49-66);

3. very good analysis of the judicial practice under Art. 52 of the OCA, 1950 (pp. 50-66) and of the Bulgarian legal doctrine in this direction (pp. 66-179);

4. original author's proposal that the obligatory insurance "Civil liability" of motorists cover all vehicles and any new participants in the road traffic in connection with new transport technologies (p. 68);

5. successful author's opinion that the state cannot suffer non-economic (moral) injury (p. 99);

6. original author's opinion on monetary compensation as a "suitable" tool for recovering of non-economic injury (p. 101) which must be "actually suffered" and "exceed a certain degree" in order to justice (pp. 123-124);

7. successful author's opinion that the justice should be the "leading criterion" in relation to: a) the determination of the amount of compensation for non-economic injury; b) the moment of this determination; c) the circle of persons who claim such compensation (p. 147);

8. very good author's analysis of the practice of the SCC (pp. 180-379) and of the Court of Justice of the European Union (pp. 385-394) in the investigated field;

9. in Chapter IV which has a character of a conclusion, valuable and useful conclusions from investigated legal regulation and proposals for its improvement are made (pp. 395-436).

4.2. General assessment of other publications of the candidate in the competition

The other publications of the candidate in the competition contain a number of original analyzes and opinions on the legal and ethical issues investigated in them which have contributory meaning.

4.2.1. The co-authored monograph and the co-authored teaching aid of the candidate in the competition

The above mentioned co-authored monograph, published in the Netherlands in English, is dedicated to the Bulgarian family and succession law. In it, S. Stavru has successfully analyzed the legal problems, related to citizenship, name, residence, succession and acquisition of real estate.

The above mentioned co-authored teaching aid has a contributing practical-applied meaning. In it, S. Stavru has very well analyzed certain court decisions of the SCC with a focus on property law.

4.2.2. The studies of the candidate in the competition

For participation in the competition, the candidate has submitted 10 studies, as follows: "Formation of will and declaration of will for the legal persons". – Trade law. Sofia, 2006, No. 6, pp. 81-103; "Is there an alternative to guardianship as a legislative approach to the incapacity to act of individuals?" – Legal thought. Sofia, 2017, No. 2, pp. 28-50; "The 'beginning' of the human body and pregnancy". – In: The body: variations, speculations, doctrines. Sofia, University publishing house "St. Kliment Ohridski", 2018, pp. 333-357; "Gender variations in the Bulgarian jurisprudence". – Sociological problems.

Sofia, 2018, No. 2, pp. 566-588; “An ethical testament – new dimensions of will in the event of death”. – Ethical research. Sofia, 2018, No. 3, Iss. II, pp. 158-179; “The promise 2020: laws for those leaving Omelas”. – Sociological problems. Sofia, 2019, No. 1, pp. 115-139; “Wild” viruses and people without end”. – Heterodoxy. Sofia, 2020, No. 1-2, pp. 421-446; “Cosmic values and law: moral-religious dimensions of the encounter with extraterrestrial life”. – In: Scientific readings on the topic “Law and religion”. Sofia, University publishing house “St. Kliment Ohridski”, 2021, pp. 222-244; “Carbon” ethics: is the dreaded climate judgment coming?” – In: The new challenges facing the European Union and Bulgaria. Sofia, Balkan Institute for strategic forecasts and risk management, 2022, pp. 75-95; and “The last judgment over the text in law (two “literary” vectors to the good judge and the successful prosecutor)”. – In: Being and Presence. Collection in memory of Associate Professor PhD Stoyan Asenov. Sofia, University publishing house “St. Kliment Ohridski”, 2022, pp. 134-157.

In the study “Formation of will and declaration of will for the legal persons” as a scientific contribution can be shown the analysis of the legal essence of the legal person (pp. 81-85) and of the formation of the will of the legal persons (pp. 85-103).

In the study “Is there an alternative to guardianship as a legislative approach to the incapacity to act of individuals?” of scientific and practical contribution is the analysis of the relationship between incapacity and identity (pp. 31-40) and the proposed possible alternative (pp. 41-50).

In the study “The ‘beginning’ of the human body and pregnancy” as a scientific contribution can be shown the analysis of two cases in which the human body is alive, but not recognized as a legal entity, namely the human embryo and the living human body after established brain death of a pregnant woman (pp. 339-355).

In the study “Gender variations in the Bulgarian jurisprudence” of scientific and practical contribution is the analysis of the Bulgarian jurisprudence regarding gender reassignment (pp. 572-582).

In the study “An ethical testament – new dimensions of will in the event of death” as a scientific contribution can be shown the analysis of the relationship between property and ethical bequest (pp. 167-176).

In the study “The promise 2020: laws for those leaving Omelas” of scientific and practical contribution is the analysis of the low, according to the author, effectiveness of the current Bulgarian legislation for the protection of people with disabilities (pp. 116-135).

In the study “Wild” viruses and people without end” as a scientific contribution can be shown the author’s criticism of the notion “wild” (pp. 422-424) and the analysis of the virus as a form of parasite (pp. 426-428), as well as of the biological safety (pp. 431-442).

In the study “Cosmic values and law: moral-religious dimensions of the encounter with extraterrestrial life” of scientific and practical contribution is the

analysis of the so-called “The Space Treaty” of 1967 and “The Moon Treaty” of 1979 (pp. 226-229), as well as of the relationship “Space Law – Meta Law” (pp. 241-244).

In the study “Carbon” ethics: is the dreaded climate judgment coming?” as a scientific contribution can be shown the author’s idea of carbon neutrality as a “union between economics and ethics” (pp. 83-89).

In the study “The last judgment over the text in law (two “literary” vectors to the good judge and the successful prosecutor)” of scientific and practical contribution is the analysis of the interpretive decision of the SCC and the role of the “good judge” (pp. 139-143) and the role of the “good prosecutor” in the criminal trial (pp. 155-157).

4.2.3. The articles of the candidate in the competition

For participation in the competition, the candidate has submitted 9 articles, as follows: “Electronic persons – new “uses” of legal personality”. – In: Scientific readings on the topic “Legal norms and legal principles”. Sofia, University publishing house “St. Kliment Ohridski”, 2017, pp. 494-510; “Our memory is our fortress: biological and digital memory in a battle for the subject”. – Ethical studies. Sofia, 2019, No. 1, pp. 51-61; “Administrative law, the problem of “will” and do we get the rights wrong”. – Noosphere studies. Ivanovo (Russia), 2020, No. 2, pp. 12-28; “The robot – the new “Other” in the interstices of law”. – In: Otherness as a moral challenge (the Bulgarian context). Veliko Tarnovo, Faber, 2020, pp. 249-267; “To train a cloud, or how “the white cloud” became hurricane “Katrina”. – Ethical research. Sofia, 2020, No. 5, Iss. 3, pp. 178-195; “The property law and the standing tree: eco-resuscitation of “An institute in the field of the property law (right to plantations on foreign land)” by Nikola Hristov Popov – a student in 1901”. – In: Challenge the Law! [online]. Sofia, 13.06.2021, <<https://www.challengingthelaw.com/veshtno-pravo/veshtnoto-pravo-i-stoiashtata-na-koren-darvesina/>>, (access: 03.02.2023); “Environmental dimensions of the negative claim under Art. 109 of the Property Act”. – Ownership and Law. Sofia, 2021, No. 3, pp. 5-22; “To own an entity! Time and property”. – Nail. Sofia, 2021, No. 21, pp. 1-17; and “The new headquarters of governance: care and its routine”. – In: Dimensions of care: between personal experience, social regulations and health activism. Sofia, Foundation “Media democracy”, 2021, pp. 9-14.

In the article “Electronic persons – new “uses” of legal personality” as a scientific contribution can be shown the analysis of the characteristics of the intelligent robots (pp. 495-499) and of the compensation for damages, caused by intelligent robots (pp. 499-504), incl. at the level of the European Union law (pp. 508-510).

In the article “Our memory is our fortress: biological and digital memory in a battle for the subject” of scientific and practical contribution is the analysis of the biological memory (pp. 52-54) and of the digital memory (pp. 54-57).

In the article “Administrative law, the problem of “will” and do we get the rights wrong”, published in English in Russia, as a scientific contribution can

be shown the analysis of the will, interest, tacit refusal and tacit consent in administrative law (pp. 92-94).

In the article “The robot – the new “Other” in the interstices of law” of scientific and practical contribution is the analysis of robots as a dangerous objects (pp. 250-253) and setting for scientific discussion of a problem of the legal personification of the robots (pp. 261-262).

In the article “To train a cloud, or how “the white cloud” became hurricane “Katrina” as a scientific contribution can be shown the analysis of the hurricane as a climatic phenomenon and the compensation of damage from the hurricane through an insurance fund (pp. 180-182).

In the article “The property law and the standing tree: eco-resuscitation of “An institute in the field of the property law (right to plantations on foreign land)” by Nikola Hristov Popov – a student in 1901” of scientific and practical contribution is the analysis of the modern property law regime of the plantations in foreign real estate in comparison with the old Bulgarian property law in this direction, discussed in the article published in 1901.

In the article “Environmental dimensions of the negative claim under Art. 109 of the Property Act” of scientific and practical contribution is the analysis of the judicial practice on the application of Art. 109 of the Property Act (Jour., No. 92 of 1951, as amended) in a landscaping and environmental context (pp. 7-22).

In the article “To own an entity! Time and property” as a scientific contribution can be shown the analysis of the ethical dimensions of property, in particular on forests (pp. 13-17).

In the article “The new headquarters of governance: care and its routine” as a scientific contribution can be shown the analysis of the ethical and legal dimensions of care for people with disabilities (pp. 9-12).

5. Reflection of the scientific publications of the author of the underdissertation in the Bulgarian and foreign literature

There is a very good level of reflection of the scientific publications of Assoc. Prof. DSc S. Stavru in the Bulgarian literature. A number of his scientific publications have been quoted in legal journals, and his monograph “Things in the Natural State: Property and Liability for Damages in the context of Art. 50 COA”, Sofia, Ciela, 2020, 318 pp. is subject of review in two authoritative scientific journals in the field of the legal and philosophical science, respectively “Legal Thought” (No. 2 of 2020) and “Ethical Research” (No. 5, Iss. II of 2020).

6. Critical remarks and recommendations

Some critical remarks and recommendations can be addressed to the habilitation work “Compensation for non-economic (moral) injury in Bulgaria in the context of obligatory insurance “Civil Liability” for motorists”.

6.1. Critical remarks

1. There is an introduction missing.
2. Some inaccuracies were admitted, e.g.: a) on p. 27, footnote 34, it is about the II civil department of the SCC, not the I penal department of the SCC;

b) on p. 153, line 5, it is about the “second” and not the “first” understanding of the scope of the illegality.

3. Chapter IV should have been formed as a conclusion and should bear that name, and not as a independent chapter of the content.

6.2. Recommendations

1. On p. 16, line 7, instead of the word “scheduled”, it was better to use the word “determined”.

2. On p. 20, line 10, it is appropriate to indicate the number and year of the SG where the OCA, 1892 was promulgated; analogously to p. 49, line 8 in relation to the OCA, 1950, to p. 69, line 5 in relation to the Insurance Code of 2015 and to p. 152, line 6 in relation to the Road Traffic Act of 1999.

3. On p. 62, lines 30-32 and p. 63, lines 7-11, it is appropriate to indicate the number and date of the “Official Journal of the European Union”, series “L” where are published respectively Directive 2009/103/EC and Directive 2012/29/EU.

6.3. Assessment of the impact of the critical remarks and recommendations on the scientific meaning of the dissertation work

The pointed out weaknesses, however, do not diminish the significance and usefulness for the theory and practice of the proposed habilitation work. It is written clearly, understandably, logically and is read with interest. It fills a gap in our legal literature in investigated field. These critical notes are intended only to help the author in case he decides to continue his creative efforts on this issue and to publish a second edition of the above-mentioned monograph.

7. Personal impressions from the author of the dissertation

My personal impressions from the Assoc. Prof. DSc Stoyan Stavru Assoc. Prof. DSc Stoyan Stavru are very good. He has the necessary business (professional and organizational) and moral qualities both to exercise of his scientific research activity in IPS-BAS and for teaching activity in the law faculties in the country. He strives to be polite, attentive and correct to his colleagues scientists and practitioners. At the same time he demonstrates remarkable creative activity with a large number of publications in the field of the law and philosophy, and also created and maintains his own website “Challenge the Law!” (<https://www.challengingthelaw.com/>) where there are published interesting and useful materials for legal science and practice. In addition, I think that outstanding contributions of the dissertation and the results achieved are a personal merit of Stoyan Stavru. He correctly quoted the relevant sources in footnotes – a circumstance that excludes the presence of plagiarism.

8. Conclusion

Finally, based on the above:

1. In conclusion I declare that Assoc. Prof. Stoyan Andreas Stavru meets the requirements of Art. 29, par. 1 of DASRBA, Art. 60, par. 1 of RIDASRBA, and Art. 5, par. 4 and Art. 43, par. 1 of RIPSBASCOOSDHAP.

2. I give, on the ground of Art. 29b, par. 2 of DASRBA, Art. 61, par. 1 of RIDASRBA and Art. 46, par. 2, point 9 of RIPSBASCOOSDHAP, a positive

assessment of the scientific and teaching activities of Assoc. Prof. DSc Stoyan Stavru which motivates me to a positive conclusion about his holding of the academic position “professor”.

3. I suggest to the Scientific Jury, on the ground of Art. 29b, par. 2 of DASRBA, Art. 61, par. 1 of RIDASRBA and Art. 46, par. 2, point 9 of RIPSBASCOOSDHAP, to prepare a report with a proposal to the Scientific Council of the IPS-BAS to elect Assoc. Prof. DSc Stoyan Andreas Stavru in the academic position “professor” in area of higher education 2. “Humanitarian Sciences”, professional field 2.3. “Philosophy”, scientific specialty “Ethics (Ethics and Regulations)” for the need of the Section “Ethical Studies” of the IPS–BAS.

Sofia, 06.02.2023

With respect: (s)

(Prof. DSc. Georgi Penchev)