

OPINION

by prof. Boyka Ivaylova Cherneva, PhD

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member of the scientific jury (Order of the Rector № RD-22-446/18.02.2025)

REGARDING: Competition for the academic position of 'Associate Professor' in: field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law (Theory of State and Law), announced in the State Gazette, issue 98/19.11.2024.

The competition for the academic position of 'associate professor' in the PF 3.6 Law (Theory of State and Law) is held in accordance with the requirements of the Act on the Development of the Academic Staff in the Republic of Bulgaria (ADASRB), the Regulations for the Implementation of ADASRB and the Regulations for the Development of the Academic Staff of the Plovdiv University 'Paisiy Hilendarski'. The only participant in the competition is senior asst. Dimitar Valkov Hanev, PhD who has submitted the necessary documents and publications in connection with the work of the scientific jury.

Candidate details

Senior assistant Dimitar Hanev, PhD, obtained a master's degree in law at the Plovdiv University 'Paisiy Hilendarski' in 2004. He successively held the academic positions of 'assistant' (2005), 'senior Assistant' (2007) and 'senior assistant' (2009) in the discipline 'General Theory of Law' in the Department of 'Theory and History of Law' at the Faculty of Law of the Plovdiv University 'Paisiy Hilendarski'. In 2015, the candidate in the competition successfully defended a dissertation on the topic 'Legal Freedom as a Form of Subjective Right' (*Hanev, D. Subjective Law and Legal Freedom. From Classical Foundations to Contemporary Problems through the Prism of Bulgarian Legal Theory. Plovdiv, University of Law 'Paisiy Hilendarski', 2021*) and acquired the educational and scientific degree of law in the field of higher education 3. Social, Economic and Legal Sciences, PF 3.6 Law, doctoral program 'Theory of State and Law. Political and Legal Studies'. The entire professional and creative path of senior assistant Dimitar Hanev, PhD, is dedicated to the general theory of law, in the field of which the competition for the academic position of 'associate professor' has been announced.

Within the framework of the competition procedure, Senior Assistant Dimitar Hanev, PhD submitted for evaluation by the members of the scientific jury a monographic work on the topic "Legal Substantiation. Concept and Theory." (*Hanev, D. Legal Reasoning. Concept and Theory. Plovdiv, Paisiy Hilendarski, 2025*), the study 'System of Forms of Subjective Law' (*Hanev, D. System of Forms of Subjective Rights. - In: Property Relations in Law. Development and Perspectives. Plovdiv, Paisiy Hilendarski, 2021, pp. 382-417*) and the article 'The Idea of Soft

Law and Modern Law' (Hanev, D. *The Idea of Soft Law and the Concept of Validity*. - In: *Soft Law and Contemporary Law*. S., Sibiu, 2017, pp. 36-65).

Evaluation of submitted scientific papers

The published monograph on the topic 'Legal reasoning. Concept and Theory' are presented as a habilitation thesis (178 pages). In terms of structure, the work includes introduction, part one, part two, appendix, conclusion and cited literature in Cyrillic and Latin. The introduction sets out the author's point of view on the concept of legal reasoning and on the place and role of the theory of legal reasoning within the framework of legal knowledge, legal science and the general theory of law. The starting point is his understanding that '*issues related to the concept of law can very difficultly be separated from issues related to thinking about it*' (p. 12). Thus, the author connects the concept of legal reasoning with thinking. Legal reasoning is viewed as a complex process - a view adopted as the basis for a general theory of legal reasoning. The author's approach is original. His research is aimed at clarifying the various manifestations of reasoning in law, and not at the strict boundaries of the system of scientific legal knowledge, which he of course considers. Moreover, already in the introduction, Dimitar Hanev very clearly outlines the content of the concept of legal thinking in a legal sense, and in the context of legal dogma and legal branches. He notes that "*legal thinking concerns the issue not only of factual (objective) truth, but also of legal (moral) truth*" (p. 13). The broad subject of the scientific search is very clearly defined, namely: the foundations of legal thinking. Methodologically, Dimitar Hanev bases his work on Kant's categorical imperative, using his views on the basic competencies of reason: theoretical and practical, and his understanding of the ability of reason to judge. On this basis and in the context of the subject of his research, he concludes that theoretically legal justification is built from the ideas about legal reality, and practically – the process of forming and pronouncing judicial decisions. In the introduction, the author has presented the main two parts of the monograph. Even here, the striving for clarity, precision of the text, given the legal philosophical and abstract-theoretical issues, is evident. The author writes with respect for legal science and the reader, which is also reflected in the value of the work, which contributes significantly to the development of the theory of law and in particular to the clarification of general theoretical issues of legal justification.

Part one, 'The Concept of Reasoning in Law', is devoted to the concept of reasoning in law, with valuable terminological notes. The author emphasizes the importance of the commonly used meaning of the words and expressions and terminology that law uses in order to achieve its rational legitimacy. On this basis, he poses various legal and philosophical questions of reasoning in law: legal reasoning and thinking; legal reasoning and argumentation; legal reasoning and interpretation/interpretation; legal reasoning and proof. According to the author, legal reasoning is a cognitive process (thinking) and the so-called cognitive sciences should be taken into account. It is based on the cognitive and argumentative function of human consciousness and its ability to assess right and wrong. Placed in an institutional environment, the idea of law is thinking legal (p. 24). The author notes: "*In fact, in its broad sense, legal justification refers to*

the very concept of law.” Law is presented as legal thinking, and legal reasoning is viewed in the broadest sense as a way of defining it.

Next, Dimitar Hanev compares legal reasoning and legal argumentation, distinguishing between justification in a broad sense and justification through argumentation. The relationship between justification and interpretation is also discussed, as is the relationship between legal justification and proof. The author calls justification “cognitive proof”, but distinguishes it from actual proof in law. Here he draws on the distinction between proof of facts and proof of law and accordingly introduces a distinction between justification of facts and justification of law (p. 32).

Placing the problem of legal justification from the point of view of the rational aspects of human consciousness and thinking as a cognitive process, Dimitar Hanev comes to conclusions about the legal method aimed at studying the knowledge of law. He introduces the concepts of theoretical rationality and practical rationality. He separates the conceptual in the knowledge of law (legal thinking), which is based primarily on metaphysical and contains elements of legal dogma, from practical knowledge, which answers primarily the question ‘How to act?’, i.e. what is correct within the framework of legal discourse. It should be emphasized that the author draws conclusions about legal justification, basing himself on broad knowledge of human nature and society: metaphysics (philosophy), social sciences, information sciences, psychology. The valuable thing about the theory of law is that the conclusions are in the field of knowledge of law. Thus, the author offers an explanatory model that combines multiple points of view external to law, but methodologically, i.e., through the prism of the legal method. This is a challenge for every author in the field of the theory of law and the conclusions of Dr. Hanev in this regard are a contribution to legal science.

The author continues by examining the problem of social practice to explain the models of reasoning. The center of the reflections are the subjects of reasoning, and human behavior. He discusses the institutional forms of manifestation of society and in this context comments on legal institutionalism as one of the theoretical directions in the general theory of law. The definition of legal justification as a complex cognitive process allows him to go beyond the “narrow” for legal knowledge limits of legal institutionalization and to search for the essential characteristics of the concept of law, without ignoring the practical, institutional and social. In fact, the knowledge of law has always sought to ‘liberate itself’ from the imperfections of the practical and social to achieve its purpose of guiding human behavior and social development. Dr. Hanev's reflections here are a definite contribution in this direction. This is especially clear in the author's reflections on legal reasoning, social reality and legal professions, as well as in the consideration of legal reasoning in relation to moral qualities and inner conviction.

Part Two, “Legal Reasoning and Legal Theory,” examines the development of the legal approach, noting the importance of Jus Commune in view of its new apolitical character. The author focuses on the development of the legal theory of Modernity, which marked contemporary legal science. He explores the intersection between the progressive and conservative beginnings

of the 20th century. He presents different points of view on law and their significance for the development of legal knowledge. The formalist view of law as self-justifying is seen as an opposition to the view of the influence of society on law, which is characteristic mainly of the sociology of law. This opposition is not self-evident. The author uses it to deduce essential characteristics of the legal approach and to search for connections. The author's approach is similar when presenting the discussion between Hans Kelsen and Carl Schmitt. It is used to examine various new directions in legal theory, presenting it in its modern form. The presentation touches upon topics such as formalism in law, the judge's inner conviction, and other issues that are crucial for legal reasoning in an institutionalized system. The question of legal meaning and legal thinking remains fundamental, but the question of justice is also noticeably present. Legal reasoning cannot be reduced to a logical syllogism.

Part two examines rational pragmatism in the second half of the 20th century and its significance for the development of legal knowledge: the return to hermeneutics (interpretation) and rhetoric (persuasion). Special attention is paid to hermeneutic jurisprudence in the Anglo-American world by presenting the discussion between Herbert Hart and Ronald Dworkin. Legal reasoning is also examined in the context of discourse rationalism in the theories of Jürgen Habermas and Robert Alexi, which the author defines as a cult of the rational and the beginning of postmodern theory at the end of the 20th century. Dimitar Hanev draws attention to the excessive rationalization of the understanding of human thinking, which he does not accept: 'Perhaps it is time to remember that man is not just a thinking being. He possesses other qualities, some of which are more significant even than reason'. The questions about truth are significant. The author traces how the ideas of postmodernism affect the development of legal theory and how they change the understanding of legal knowledge. Of course, these reflections are subordinate to an attempt to explain the complex and intricate nature of legal reasoning from its metaphysical explanation through its nature as a cognitive process to the ability of man (the lawyer) to understand, interpret and decide on the law.

In the next part, which the author entitles APPENDIX, basic issues of legal reasoning and judicial decision are examined: the prototypical role of the court and the essence of the jurisdictional function; jurisdictional reasoning and the normative requirements for judicial decision-making; legal syllogism and judicial discretion.

The publication 'System of Forms of Subjective Law' substantiates the thesis that subjective law is not a monistic category and discusses the possibility of building a unified and comprehensive system of its various manifestations (forms). Dr. Hanev further develops the distinction between form and content of rights. He introduces a distinction between a logical and doctrinal system of the forms of subjective law.

The article 'The Idea of Soft Law and Contemporary Law' examines the issue of the validity of legal justification through the prism of the 'soft law' doctrine, characteristic of international law.

Scientific results and contributions

The scientific contributions of the candidate in the competition for the academic position of "Associate Professor" in Theory of State and Law, Dr. Dimitar Hanev, can be presented in the following main groups:

- 1) Contributions related to the clarification of the concept of legal justification as a complex cognitive process – legal thinking. The author's reflections on legal justification as knowledge of law are of a contributing nature.
- 2) The derivation of possible different points of view towards clarifying the issues of legal justification and their use by the author in clarifying legal justification. The emphasis on the cognitive-realistic foundations of legal thinking as a type of human expands the understanding of legal justification, which should not be reduced to a formal-logical operation. Legal justification receives its specific legal meaning through Kant's views on practical reason and the categorical imperative.
- 3) The author's presented reflections on the development of legal knowledge from Antiquity, through Modernity to Postmodernity, show how legal knowledge develops as part of the development of human thinking and science. The discussion of opposing points of view, presented in the theory and philosophy of law, has enabled the author to highlight what is specific to legal knowledge.
- 4) An independent contribution is the consideration of the genealogy of legal reasoning and legal thinking as a comprehensive process (historical, cultural, social, political, etc.) of the development of legal knowledge from the perspective of individual and collective knowledge.
- 5) Contributing moments, including practical ones, are contained in the consideration of legal justification as a function of the ability to judge and "the role of the judge as a guardian of justice" (p. 156).
- 6) The monographic study also contains contributions regarding the genesis and development of legal theory.

Conclusion

The presented scientific works by Senior Asst. Prof. Dr. Dimitar Valkov Hanev contain scientific contributions in the field of theory of state and law. The requirements of Bulgarian legislation for holding the academic position of associate professor have been met. I confidently formulate a POSITIVE EVALUATION and propose to the distinguished members of the scientific jury to vote for Senior Asst. Dimitar Valkov Hanev, PhD to take up the academic position 'associate professor' in the field of higher education 3.6. Social, economic and legal sciences, 3.6. Law (Theory of State and Law).

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