To the Scientific Jury appointed by the Order of the Rector of Plovdiv University № RD-22-446/18.02.2025

SCIENTIFIC OPINION

by Assoc. Prof. Dr. Simeon Groysman, Faculty of Law, Sofia University "St. Kliment Ohridski"

regarding

contest

for the obtaining academic position of Associate Professor of 3.6. Law (Theory of the State and Law), announced in State Gazette, no. 98 of 19.11.2024 for the evaluation of the candidate - Assist. Prof. Dr. Dimitar Valkov Hanev

Dear members of the scientific jury,

1. Concerning the procedure.

By Order of the Rector of PU № 22-446/18.02.2025 I have been appointed as a member of the scientific jury to conduct the competition for the academic position of Associate Professor in 3.6. Law (Theory of State and Law). By a decision of the jury at its first meeting, I have been entrusted with the drafting of this opinion, which I am submitting to your attention within the time limit set for this purpose.

2. Meeting the requirements for the post.

The candidate Dimitar Hanev meets the requirements of Art. 65, par. 1 of the Regulations for the Development of the Academic Staff of the Paisii Hiledarski Plovdiv University. The same is proved by the documents submitted by the candidate, which show that:

(a) Dimitar Hanev holds a PhD in 3.6 Law (Theory of State and Law. Political and Legal Studies) with the dissertation "Legal Freedom as a Form of Subjective Law", defended in 2015;

(b) He has held all types of assistantship positions at the Law Faculty of Plovdiv University since 2005, thus fulfilling the requirement to have held the positions of "Assistant Professor" or "Chief Assistant Professor" for at least two years;

(c) The candidate has submitted a monographic work submitted for evaluation is entitled "Legal Justification. Concept and Theory", Plovdiv, University Publishing House "Paisii Hilendarski", 2025, 178 p., which is discussed in the next section of the statement.

(d) The applicant has submitted other original research works – 1 study and 1 article, evaluated in section 4 of this opinion.

(e) Compliance of the candidature with the minimum national requirements for the post was established by this Scientific Jury by a decision at its first meeting held on 28 February this year.

(f) My acquaintance with the submitted texts has confirmed my conviction that this is an original scientific production, the contributions of others have been carefully considered and there is no doubt of plagiarism.

3. Evaluation of the submitted habilitation thesis "Legal Justification. Concept and Theory".

The monograph "Legal Justification", as I will call for brevity the work evaluated here, consists of two parts structured in a series of sections, an "Appendix", a conclusion and a bibliography in Bulgarian, English and French. The work deals with a classical *analytical* theme, if I may be allowed to borrow some of the terminology of the exposition (see pp. 109 ff.). At the same time, the text is distinctively legal-philosophical and critical in its treatment of the techniques of legal dogmatics. It attempts to project general principles of orientation in epistemology, ethics, and history of scientific and social movements, and to achieve an understanding of legal phenomena on their basis. In this sense, the monograph "Legal Justification" puts the relation of

“law and justification” to the analysis in order to give a vision of the reasoning of jurists without accepting their formal-technical conclusions as the only possibility to consider legal decisions.

In the following exposition I will try to follow the development of the exposition in the book. I also set out my critical remarks in more detail, so that they may stimulate further enquiry and reflection in the way that the fading Bulgarian general theoretical debate has forgotten. At the same time, it can be said that the monograph under review promises to be a positive phenomenon in this field, posing questions for joint thinking – and, even in the absence of common agreement, for better (mutually improving) alternative understandings.

3.1. The first part of the monograph lays the terminological, methodological and classificatory foundations of the study in order to present the author's view on the nature and social role of legal justification, considered as one of the types of justification with its inherent specific rationality and instrumentality.

Already at the beginning of his presentation D. Hanev notes that the topic of legal justification is considered from different positions, including the simultaneous use of diverse approaches, i.e. in an “eclectic” way. This already justifies the chosen research task of conceptualizing and theorizing legal justification in such a way as to propose a systematized view of the same, correlating it with the usual for Bulgarian legal theory topics of legal interpretation and application of the law.

Hanev takes the position of the existence of a unified field of legal-moral argumentation, seeking the “legal (moral) truth” (sic!) he mentions, based on the view that “the justification of legal and moral conclusions is more than similar” (p. 13). By self-positioning his study as *“legal-philosophical”*, the author formulates an argument against the “technocratization” of discourse. He avoids focusing on the elements that distinguish the ways of arriving at some legal truth that we would consider outside the question of the moral. Legal justification would approach the moral if we use the author's proposed vision of the meaning of norms as reached through argumentation “a cognitive and psycho-emotional state,” a meaning that “coffirms in the mind of the subject” (p. 37). A certain critique can be made here with regard to the understanding that through general and branch theories, legal thinking in general, lawyers *share a* meaning that they derive on the basis of rules as something due, with which they may disagree from a moral point of view.

A positive impression is made by the (increasingly rare in general theoretical works)

conscious treatment of the question of the methodology of research, to the extent that an attempt is made to propose one from the ground up – on the basis of a return to the philosophical heritage of Descartes and Kant, by concentrating on the dimensions of the general philosophical concepts of thinking, reasoning and understanding. Hanev relates justification to thinking in general and to argumentation as a distinct part of it. Justification itself is defined as "the intellectual process of defending a thesis by offering arguments in its support of it" (p. 22). Legal reasoning in a broader sense is associated with legal thinking in general, and in a more specific sense is reduced to the legal argumentation of certain theses, without forgetting that all thinking – including legal thinking – is based on a certain premises, on fundamental and intuitively followed concepts. The legal-philosophical (rather than, for example, more strictly legal-theoretical) perspective of the work is determined by relating legal reasoning primarily to cognitivism rather than legal dogmatics.

What is valuable is Hanev's formulation of the relationship between the discovery and construction of legal meaning, the possibility of expanding the view in legal reasoning beyond the idea of the "coding" of an exact meaning of laws by the legislator and its derivation by the judge (pp. 30-31). It also necessitates further debate over whether the enforcer is "free to use all the resources of his mind" in the context of positive regulation of the legal process, underpinned by a web of doctrinal conventions about right and wrong approaches to interpretation. In my view, we should indeed (like Hanev) prefer the notion of the "construction" of statutory meaning, but we should not underestimate the many binding factors. A loosest construction of meaning will eventually become a creation of meaning that does not care about the given regulation. Thus legal reasoning will lose its traditional, professional, conventional dimensions and merge with political regulation when done by judges, and with political speech when exercised by scholars. For me, there is a balancing view in Hanev's own theory, which develops arguments about the limited and dependent character of legal justification connected to "the legal institutionalization existing in a given legal system" (p. 62).

The concluding section of this first part of the monograph arranges a system of concepts in the realm of the ethical, correlating morality and morals to justify the idea of the dependence of legal justification on the moral qualities of the lawyer. It is my personal view that even the immoral lawyer, as long as he is a *good lawyer*, will be able to arrive *at the legally correct* answer through legal reasoning, and it will depend on his integrity whether he will turn to the emotional resources of his immorality to exhibit unprincipledness (for example) and defend the *legally incorrect* point

of view in an argumentative way. According to Hanev, however – and this seems to me to be a previously unpresented solution in Bulgaria – the jurist will arrive at *the correct legal decision* if he has the appropriate personal moral qualities (see p. 77). The Dworkkian view of the communicability of legal justification is clearly evident here. However, we might ask a further question: if we are going to choose a judge according to his high moral qualities, and this will give us certainty that he will be a good judge, how do we control that we do not witness his personal moral, and as a result judicial, decline over time? The view in the monograph, I think, exacerbates this problem, because if legal justification is ultimately moral justification, this places more discretionary power on the law enforcement judge. Empowerment, it is more often argued, leads to moral trials rather than, with any certainty, gradual moral growth.

3.2. The second part of the work deals with legal justification, relating it to different general theoretical doctrines, i.e. looking for how different schools have conceptualized what the author defines as legal justification and what are its current dimensions, reached through the scientific path followed in the past. The analysis follows the historico-legal line of development from the application of Roman law to the codification and shaping of national legal systems, from the claims of de-ideologized and depoliticized judicial activity (p. 81) to the subsequent "politicization" of the legislative process and, with it, of thinking about law in the first liberal states of the modern period. This articulates the author's understanding of the transition to a more formalist application of the laws as a function of the transfer of the political weight of the institutional system to parliaments and the withdrawal of judges as main moral actors of the society. The contributions of the less commented upon founders of European legal scholarship, such as Geny, Ehrlich, and Kantorowicz, deserve positive evaluation. The presentation of the debate between Kelsen and Schmitt is used in an interesting way – as a debate on the concept of law rather than on legal justification, or – as it is traditionally presented – as a debate on checks and balances in the rule of law. In my view, the analysis here is a bit disjointed – Kelsen claims to de-ideologize the Pure Theory of Law, an issue relevant precisely to legal justification, but he has a plenty of other works that does not hide its ideological dimensions (cf. p. 94). Schmitt's aforementioned "political theology" is not equivalent to jurisprudence or legal science; in this thought Schmitt does not "present jurisprudence as political theology" (cf. p. 100). Political theology is a realm of analogies between modern legal thinking and theology. Schmitt is its

godfather; he introduced the name itself. At the same time, alongside Schmitt and independently of him, the same sphere of analogies between the legal and the religious was developed by Kelsen himself in the early 1920s.

Section VII. and p. VIII. of Part II of the study turn to theoretical debates on legal justification after World War II. In my view, it is not true that "the Kelsenian version of legal justification prevailed in the second half of the 20th century" (p. 103) – the author links the same to "logico-normative arguments in legal practice". However, these are most abundantly traced back to the 18th-19th centuries, for example the école de l' exégèse and the pandectists under consideration. On the contrary, this logico-normativist model never took hold in case law, and in post-World War II Europe "strong courts" developed teleological and moral-axeological (to use Prof. T. Kolev's terminology) interpretive strategies. Nevertheless, it is true that the logico-normative dimension of more formal interpretation remains enduring in Bulgarian legal scholarship, which makes the exposition interesting as its possible counterpoint. In such a perspective, reflections on Perelman's theory, deriving the validity of legal arguments as a matter of validation in the professional community, sound relevant and critical in themselves (pp. 105-106). The reflections are complemented by an effective juxtaposition with hermeneutic theories, whose features, listed on p. 108, might well be examined in more detail with a view to making the text a future lecture aide to its author. Further comments on the theories of Jürgen Habermas and Robert Alexy dialogue with Dworkin's theory, to which the author expresses a certain preference in the debate with legal positivists. The ideas of reasoning within a rational legal discourse that relies primarily on the soundness of its procedures for the correctness of the reasoning reached are presented (pp. 120-123). In this respect, the presentation of legal reasoning as a rational, technologized process is as much a feature of procedural theories (as the conclusion on p. 125 suggests) as it is of the exegetes and pandectists of the nineteenth century mentioned above. Legal thinking, especially its concrete law-application dimensions, it seems to me, has always had "*the overly technical, artificial and remote from the nature of the human relations which ... law is called upon to regulate*", so such criticism seems to be not so much against Alexy (ibid.) but against legal thinking in general.

The concluding section dealing with the "postmodern scientific/cultural situation" is intriguing, reaching from the general philosophical considerations of postmodernism to more specific observations on Critical Legal Studies – in my view, the latter movement does not claim,

does not claim, and cannot be seen as part of our understanding of legal justification. It does not make arguments *in* law, but critiques law "from the outside", relating it to social reality through its ideological prisms. Which prism, incidentally, is that of the "psychiatric condition" of contemporary Western society that the author introduces. The latter is a risky argument that I have commented on below, but its mention precisely in the concluding lines of the second part of the monograph (p. 131) gives a certain integrity to the chosen approach – if legal truth is a kind of moral truth, and legal justification requires moral qualities, then – it follows, according to Dr. Hanev, that legal justification is also *morally* influenced by the social situation. This is a complete conclusion that is in striking proximity to Critical Legal Studies itself, with the difference that the author of the monograph criticizes society from different positions. I remain convinced that the authentic dimensions of legal reasoning as a social practice will require constant recourse to formal arguments. Even the judge who wholeheartedly believes in the veracity of Critical Legal Studies in one of its many incarnations will have to look to old (i.e., previous) formal arguments to achieve a novel result in his or her judicial decision.

3.3 The Appendix, added to the main thesis, expresses an original approach to structuring the work, and offers a view of the role of legal reasoning in the administration of justice, insofar as it is more generally compared with *jurisdictional activity*, but especially in the administration of justice. This part of the exposition attempts to apply the conclusions of the preceding sections now in their practical outcome (see p. 16). On its merits, in a future second edition of the book - including for the benefit of its student readers, this part could be a separate third chapter of the work presented. Here, the presentation situates the features of legal *adjudication* in relation to the coordinates of justice and discretion. The author's views on the relationship between substantive and procedural fairness, correctness and reasonableness of the legal judgment are presented. Dr. Hanev points to the existence of the constitutionally projected requirement of justification on the truth (p. 142) of a well-reasoned and reflective of justice (p. 145) judicial act. Despite the author's modesty, the definition given of a correct (in the broad sense) judgment is in my view sufficiently encompassing and contains good explanatory potential. It makes an impression in the context of the overall reading of the text, which repeatedly emphasizes the notion *of truth*, including in moral and philosophical terms. My point here is that, without imputing this understanding to the author, his definition and use of words related to truth carry with them the interesting possibility of adding

to the *truth of facts* in the field of legal understanding the requirement/claim of the *moral truth of* the decision. This moral evaluation of the reasoning and/or the outcome will have a number of far-reaching and interesting conceptual implications for the proposed model of thinking.

3.4. Critical Notes.

3.4.1. *Terminologically*, the work contains places that – I believe – the author could clarify, because the analysis suggests that behind them are certain general theoretical statements that would not always be clear to the reader. If these remain unclarified, the reader is faced with a multiplication of terminological possibilities. For example, Dr. Hanev speaks of "general jurisprudence", borrowing from English-language legal theory, but does not specify his vision of the relation of general jurisprudence to general legal theory, for example. The note on p. 40 indicates that the synonym of general theory of law is not general jurisprudence but jurisprudence as a whole. On p. 72, jurisprudence is no longer a general theory of law, but simply a legal theory, i.e. a synonym for legal science (general or branch). All these approaches are possible, but they should be applied consistently.

A certain ambiguity, i.e. the question of whether there is an embedded particular view or not, is also left by the bifurcation in the statement between "sociological facts" (perhaps as a reflection of the English-language social facts) and the related notion of "social practice" (p. 17).

It is unclear why on p. 63 – in relation to the Constitutional Court's ruling on the modern "gender question", today's Bulgarian society is said to be "traditional". An ambivalence arises regarding the division of societies established in historical and social science into "traditional", "modern", possibly "postmodern" in some form – but all in theoretical constructs that contrast modern with traditional societies. I.e., if it is argued that our society is "traditional" (rather than, for example, "traditionalist"; whether this is also true is another matter), this would be a different idea, but it is not justified (it seems to me that in the main text Dr. Hanev prefers the conventional division of tradition and modernity – see pp. 84, 89).

The notion of "deformation of social relations" also seems to me controversial – the same introduces some form of social criticism, but remains unclear. Its relation to the idea of the growing role of the legal professional in turbulent times is also questionable (p. 57), since the latter are characterized in most places by a decline in trust in expertise, by appeals to extraordinary measures and the imposition of the political even at odds with the formal-legal. From this perspective, as

social trust declines, the moral problems facing lawyers cannot help but rise, but this relationship to legal justification remains contentious.

3.4.2 *In the field of broader social theory*, a certain ungroundedness is striking in terms of some broad social assumptions that lead to far-reaching conclusions rather than being carefully introduced. There is a rhetorical turn rather than a demonstrated chain of argument. Hanev adopts Emmanuel Todd's terminology that "Western society" is in an "elemental decline of morals" and its Christianity is in a "zombie state" (p. 73). The arguments of the quoted author have not been developed, therefore his very name must serve in their defense. The latter is controversial enough. Leaving that aside, the more significant point is that the view given is too general – it is certain, for example, that the level of violence in interpersonal relations in Western societies has declined markedly in the last hundred years. The history of manners (like practiced morality, Dr. Hanev's terminology is different) has always shown examples of immoral behavior, hence the inherent anxiety of moral decline in every age. What, however, enables us to say that the majority of people in any society were more moral a few decades ago? This is a complex question, the answer to which I will not trouble the reader with; it is not, however, a question to be used as an "additional" argument within a habilitation thesis, except with due justification. Furthermore, it is not clear what is meant when one speaks of "Christianity" being in crisis (which Christianity /Orthodoxy, Catholicism, Protestantism/ and by what we measure its crisis). Such assumptions about societies are intriguing, sometimes right and sometimes wrong – it remains to be seen here whether they add anything to the overall argumentative process of legal or even legal-philosophical inquiry.

3.4.3. *Last in order* in this part of the paper, I would like to point out that the interesting notion of the "image of law" (p. 85; also in the paper discussed below) should be further developed and applied in further research on the topic.

Formal but principled for me is to mention that the classical authors of the 19th and 20th centuries be studied more often through primary sources rather than through subsequent interpretations.

3.5. Evaluation of the habilitation thesis and relevant follow-up recommendations.

The proposed monographic text is written in an interesting, thoughtful and challenging manner. It is, although in high scientific language, readable and clear. It confirms the author's

earlier impression of himself as one of the thoughtful members of the legal academic community. The above objections and alternatives show that the text does not leave its reader (at least me) indifferent, but raises questions for further discussion, promising that Dimitar Hanev's further work will serve the development of Bulgarian legal scholarship after his habilitation.

3.6. Additional note (nota appendicula). In an appendix to the review of the habilitation thesis, counting myself – self-appointedly or not – among its "careful and critical readers", I will add my own answer to the question that Dr. Hanev poses about the relation between scientific expression in the first person plural and in the first person singular. Hanev writes that he combines the two forms, intuitively following a line which is given in advance in the mind of the writer without being capable of being strictly defined. I agree with his declared principle (p. 18) that the guiding principle here should be "a sense of communication with the reader", which implies different modalities of exposition of the text, which is always also *addressing* - besides the scientific problems - the people on the other side of the text. Further into this area of discussion, I think that for a long time writing in the plural has seemed to imitate the old models rather than preserving a higher standard of expression. However, I also use it – combining, like Hanev, the two forms, but only for one particular purpose – when we write in the plural it becomes possible to consider some common activity between ourselves and our readers. This means, for example, that if I used the plural in the preceding sentence, the purpose of doing so was to indicate that we, the composers of texts *together*, might (or might not) adopt a certain convention of expression. If in a scholarly text on legal theory I write down, "let us imagine so and so," I am urging the reader to conduct a certain reasoning together, to proceed from a certain acceptance, etc.

4. Evaluation of the other scientific works submitted by the candidate.

Dimitar Hanev submits for consideration by the scientific jury of the competition the study "System of Forms of Subjective Law" (2021) and the article "The Idea of Soft Law and the Concept of Validity in Legal Reasoning" (2017). In this regard, it should be mentioned as a favorable factor that his dealings with the topic of legal justification are demonstrated to be sufficiently enduring.

However, I cannot help but point out that the point-based scientometric justification of candidacy for "associate professor" primarily with the points from the published doctoral

dissertation, while fulfilling the law, results in a smaller body of work. Thus, there will always be a lack of earlier testing of the habilitation thesis to the scientific community – by way of the article-study genre. I cannot spare such a remark, although this negative practice is spreading in Bulgarian law faculties. However, in this case, the personality of the candidate gives me reason to believe that he will delight the scientific community with his future articles helping to activate the scientific debate in our country.

Overall assessment.

Guided by the above, I formulate a fully positive assessment of the candidature of Ch. Asst. Dr. Dimitar Valkov Hanev for the position of Associate Professor in 3.6 Law (Theory of State and Law) and recommend the members of the scientific jury to propose to the Faculty Council of the Plovdiv University to elect Dr. Hanev to the position of Associate Professor.

I will vote along the same lines at the final meeting of this procedure.

Sofia,
09 April 2025