

"Burgas Free University", Burgas

STATEMENT

by Associate Professor Dr. Krasimir Stoyanov Koev for the dissertation thesis of Dessislava Burianova Kuzmanova on "Execution of monetary claims on shares and stocks in commercial companies and on a commercial enterprise".
for obtaining the degree of Doctor of Law in Civil Procedure (scientific field 3.6 Law)

The dissertation was discussed and admitted to public defense at a meeting of the Program Council on Private Law at the Center for Legal Studies at Burgas Free University, held on 17.02.2023.

The PhD student is enrolled in the Centre for Legal Studies at Burgas Free University.

The dissertation research was carried out independently and at Burgas Free University.

The dissertation shall be accompanied by a declaration of originality and authenticity signed by the doctoral candidate.

DISTINGUISHED MEMBERS OF THE SCIENTIFIC JURY,

This opinion has been prepared in view of the defense of the dissertation thesis for the degree of Doctor of Law in the professional field 3.6. "Law" (Civil Procedure) of Dessislava Burianova Kuzmanova, PhD student at the Centre of Legal Studies at Burgas Free University.

The procedure was initiated on the basis of the relevant texts of the Law for the Development of the Academic Staff in the Republic of Bulgaria (LADRB), the Regulations for the Implementation of the Law for the Development of the Academic Staff in the Republic of Bulgaria (LADRB) and the Regulations for the Development of the Academic Staff at BFU, as well as according to the decision of the Program Council of the BFU CUN (Minutes 17.02.2023).

The submitted documents comply with the requirements of the Academic Staff Development Act, the REGULATIONS FOR THE IMPLEMENTATION OF THE LAW ON THE DEVELOPMENT OF ACADEMIC STAFF IN THE REPUBLIC OF BULGARIA and the BFU REGULATIONS FOR THE DEVELOPMENT OF ACADEMIC STAFF.

The procedure is carried out under the terms of par. 40 of the Transitional and Final Provisions to the Law on Amendment and Supplementation of the REGULATIONS FOR THE IMPLEMENTATION OF THE LAW ON THE DEVELOPMENT OF ACADEMIC STAFF IN THE REPUBLIC OF BULGARIA (SG 30/2018) and has been correctly observed.

I. Dissertation Information.

The dissertant Dessislava Burianova Kuzmanova was an independent PhD student in Civil Procedure at the Centre of Legal Studies of the Burgas Free University under the supervision of Prof. Dr. Silvi Chernev. She was graduated with the right to defend.

Ms. Dessislava Burianova Kuzmanova has completed her higher legal education at New Bulgarian University, Sofia, Bulgaria. Prior to that she obtained a Bachelor's degree in Psychology. She is currently a manager of a limited liability company in the Legal Consulting and Analysis Department and previously held managerial positions in various companies. PhD student Kuzmanova has experience in the field of company law, as well as the necessary

practical knowledge, which determines a good scientific development. Doctoral student Kuzmanova has publications in various legal publications on the topic of the dissertation. For the purpose of this opinion only the dissertation and the articles related to it will be analysed.

It is evident from the above reference that the dissertant has considerable practical experience in law enforcement. This experience has been reflected in the dissertation. There is a match between her area of research and the field in which she practices.

Doctoral student Dessislava Kuzmanova meets the minimum national requirements for obtaining the educational and scientific degree "Doctor", which is evident from the attached reference.

II. General characteristics of the presented dissertation.

The submitted dissertation has a total length of 307 (three hundred and seven) pages. There are 290 (two hundred and ninety) footnotes. The bibliography includes 60 titles in Bulgarian, English and German as well as 9 sources available on the Internet. The dissertation is organized in an Introduction; three chapters and a Conclusion, it also contains a detailed bibliography, a list of abbreviations used as well as a set of *de lege ferenda* proposals, in the latter the main results of the research and the dissertator's proposals for the improvement of the Bulgarian legislation are highlighted and systematized for the sake of clarity. Finally, the literature used is listed. The abstract reflects the main scientific and applied contributions. The author has 6 publications on the topic of the dissertation.

The dissertation is a detailed analysis of the enforcement of monetary claims on shares in commercial companies and on a commercial enterprise. This is a topic that has traditionally been presented in part in Civil Procedure and Commercial Law courses, but under the current CCP is the first detailed monographic scientific study in Bulgarian law. It can be characterized as up-to-date and timely, as the research has also benefited from a considerable amount and content of case law.

The subject of the research in the submitted dissertation is clearly outlined by the dissertator already in the introduction - execution of monetary claims on shares and stocks in commercial companies and on a commercial enterprise. The research itself is thorough and distinguished by the richness of the hypotheses considered. The exposition as a whole is properly organized in terms of structure and the individual parts are relatively well balanced. The language is understandable and readable, especially in view of the specific procedural subject matter, while demonstrating that the dissertator has a high level of command of the same. The theses he supports are logically and thoroughly argued. All available SC/HCC case law related to the issues studied by the dissertation is analysed. The legal analysis is used skillfully by the dissertant to highlight the shortcomings of the Bulgarian legal framework and accordingly to support his proposals for improvement of the legislation.

Chapter 1 deals with the theoretical clarification of the concept and the legal nature of the execution on shares in commercial companies and commercial enterprise. Extensive historical and comparative analysis is used. A number of foreign legislations are examined. In this sense, the analysis of the large number of foreign legislations already constitutes a scientific contribution and will undoubtedly be of interest to specialists in this field.

Chapter Two deals extensively with the objects of enforcement of monetary claims. The study in this part is also relatively well structured and balanced. The particularities of enforcement over shares and stocks in different types of companies are examined in detail, systematically and argumentatively. The polemic with other authors is correct, even when a particular thesis is not supported by the author.

Chapter 3 deals with the issue of the admissibility of the enforcement process and the right to enforce monetary claims on shares in commercial companies and on a commercial enterprise. It is this part of the study that is of particular interest and value and where a number of scholarly contributions are identified. A significant part of the author's theses in the chapter are logically and normatively justified.

The final section essentially summarizes the author's main conclusions and theses. It is also a systematization of the scientific and applied results (conclusions).

In an independent part of the reviewed work the proposals for improvement of the relevant legal framework are outlined and summarized.

III. Positive characteristics of the presented work

1. The choice of the topic is successful primarily due to the wide use and significance of the issue in relation to the enforcement of monetary claims on shares in commercial companies and on a commercial enterprise. It should be borne in mind that the problems of the application of the regulation are relatively new, not always quite detailed, and may even include controversial or at least unclear points.

2. The dissertation reveals the dissertant's in-depth knowledge in the field of commercial and civil procedural law, as well as tangential topics in the field of civil law in general - for example, inheritance law.

3. The dissertation has thoroughly and in detail studied all aspects of this legal institution, which raises many problems and is often controversially covered by theory.

4. The work makes extensive use of all available case law.

5. The language is clear and precise. The scientific apparatus includes a large number of works in Bulgarian (39), as well as foreign titles (20 - in German and English), and 9 sources available on the Internet.

6. Overall, the work is well structured and balanced (with some exceptions), a wide range of issues are covered, and the presentation is coherent and logical.

7. The dissertation work reveals a number of scientific and scientifically applied results that can be defined as contributions to the development of legal science in Bulgaria. The most important in my opinion are:

7.1. An in-depth analysis of the correlation between Art. 517, para. 1 of the Code of Civil Procedure and Art. 96, para. 1 of the Commercial Code concerning unlimitedly liable partners and the conclusion that it is irrelevant whether the unsuccessful execution on the movable property of the debtor-partner was carried out before or after the attachment. Pointing out the problems concerning the relationship between these two texts since the current CCP also preserves the problems that existed already under Art. 398b para. 1 of the old CCP;

7.2. In-depth consideration of a number of specific hypotheses of enforcement of monetary claims on shares: a/. in a general partnership of more than one partner by the same and different creditors; b/. in a limited partnership with one or more general partners and one or more limited partners, as well as the specific legal consequences of each of them;

7.3 Interesting, although not uncontroversial, is the author's thesis that the proceedings under Article 517 of the Civil Procedure Code should be terminated if in the court phase it is undisputed that the company has a negative balance sheet and, accordingly, the debtor partner will not receive a liquidation share;

7.4. The author's thesis that as a result of the court proceedings under Article 517 of the Civil Procedure Code, relations are created between, on the one hand, the procedure for liquidation of the commercial company and, on the other hand, the pending enforcement

proceedings, as a result of which relations are also created between the court-appointed liquidator and the enforcement authority, as well as her criticism that this interaction is not regulated by legislation either in the Civil Procedure Code or in the Civil Code;

7.5 The author's argument that the phrase "before the conclusion of the first hearing of the case" should be dropped from Article 517(4)(2) of the CCP if the claimant's claim is still paid by the time of the oral proceedings, either by the company or by the partners, should be credited;

7.6. The author's criticism of the right of the claimant to cancel the debtor's shares by means of the protective proceedings, which may, however, be revoked by an action of any interested person under Article 537(2) of the CCP, is also noteworthy. In that connection, it is necessary to support her view that the nature of those proceedings should not be protective, but should be a declaratory action, similar to the proceedings for the establishment of facts under Article 124(4) and (5) of the Civil Procedure Code, on the ground that in protective proceedings the judgment does not have the force of *res judicata*, whereas in the present case the intended effect is that the annulment of the shares obtained by judicial proceedings should have the force of *res judicata* as regards the parties to the dispute and be capable of being opposed by any person.

7.7 It is an interesting, though not uncontroversial, point of the author's that not only execution on separate parts of the commercial enterprise, but also on the entire commercial enterprise, should be expressly provided for as a means of enforcement. It is the factual relationship as an element of the commercial enterprise that is the delicate point - whether or not enforceable means can be applied to it. On the other hand, in a number of cases of sale of a commercial enterprise under Article 15 of the Commercial Code, it is the factual relations that can and do constitute the element that is essential in pricing the sale price of the entire undertaking. Under the current wording of the law, these relations and their "price" are completely excluded from the enforcement proceedings, which may prejudice both the debtor and the creditor-claimant.

IV. Some remarks can be made to the work submitted for review, which should be perceived not as a weakness but as recommendations:

1. In Chapter 1 it is more appropriate to start with the historical and comparative legal analysis of the various legislations on the matter in question and, based on the conclusions of this, to examine the author's concepts and proposals for their scientific content at the end of the chapter;

2. In the various hypotheses examined, it is uncritically accepted that, when a debt is discharged under the general rule of section 74 of the Law on Obligations and Contracts, this leads by default in each case to subrogation of the person discharging the debt. Indeed, the rule of Article 74 of the Law on Obligations and Contracts provides for such a possibility, but there is no legal definition of a legal interest in the performance of another's debt. The legislator approaches us casuistically as he indicates in specific hypotheses when, in his opinion, such an interest exists - for example, in the case of joint and several debtors, in the case of suretyship, etc. Subrogation must therefore be argued in each case, if that is the author's conclusion.

3. The present work would be enriched if the author would include in it an examination of the works of Prof. Dr. Angel Kalaidjiev on the individual elements of the topic in relation to commercial companies. Moreover, some of these works are contemporary and include the latest developments in legal thought and doctrine.

V. CONCLUSION

In view of the above, the conclusion is that the submitted dissertation meets the requirements of the Law on the Development of Academic Staff in the Republic of Bulgaria, the Regulations for the Implementation of this Law and the special requirements of the Regulations for the Development of Academic Staff of BFU.

The dissertation contains a number of scientific contributions with usefulness for practice and for possible improvement of legislation and also demonstrates that Dessislava Burianova Kuzmanova possesses theoretical knowledge in the field of civil procedure and commercial law and the ability for independent scientific research.

All this gives me grounds to give a **positive assessment of the** qualities of the reviewed work and of the doctoral student, and **to propose to the esteemed Scientific Jury to award the degree of Doctor of Law in the professional field 3.6. "Law" (Civil Procedure)** to Dessislava Burianova Kuzmanova - doctoral student in independent training at the Center for Legal Studies of the BFU.

05.05.2023

Prepared by:

Assoc. Prof. Dr. Krasimir Koev