

HIGHER SCHOOL OF INSURANCE AND FINANCE

Order No. 56/20.03.2020

SCIENTIFIC JURY

1. Prof Ali Veysel (VUZF) – chairman (opinion)
2. Prof Sasho Penov (Sofia University “St. Kl. Ohridski”) – peer review
3. Prof Ganeta Minkova (Institute for the State and the Law at the Bulgarian Academy of Sciences) – peer review
4. Prof Darina Zinovieva (Institute for the State and the Law at the Bulgarian Academy of Sciences) – peer review
5. Prof Dimitar Kostov (Sofia University “St. Kl. Ohridski”) – opinion
6. Prof Biser Slavkov (University of National and World Economy) – opinion
7. Assoc Prof Maria Kazandzhieva (Southwestern University “N. Rilski”) – opinion

A chairman was appointed and reviews and opinions were assigned at the first meeting held online on 22 June 2020.

Deadline for submission of peer reviews and opinions – 9 August 2020.

Closing meeting – 10 September 2020 (14:00 at VUZF).

OPINION

by **Prof Dr Dimitar Iliev Kostov**

Sofia University “St. Kl. Ohridski”

on the materials submitted for participation in the selection procedure
for holding the academic position of “**Professor**”
at the Higher School of Insurance and Finance
in scientific field “3.6. Law (Financial and Tax Law)”

Assoc Prof Dr Lyubka Mladenova Tsenova from the Higher School of Insurance and Finance participates as a candidate in the selection procedure for “Professor” for the needs of VUZF’s Academic Council announced in the “State Gazette”, issue 94 dated 29 November 2019, and on the Internet site of the Higher School of Insurance and Finance (VUZF).

I. Overview of the procedure and the candidate

By Order No. 56 of 20 March 2020 of the Rector of VUZF, I am appointed a member of the scientific jury for the selection procedure for holding the academic position of “**professor**” at VUZF in professional field: 3.6. Law (Financial and Tax Law), opened for the needs of the Academic Council of VUZF.

Documents for participation in the selection procedure were submitted by only **one candidate: Assoc Prof Dr Lyubka Tsenova from VUZF**.

The set of materials submitted by Assoc Prof Lyubka Tsenova **satisfies** the requirements laid down in the Rules on the Development of Academic Staff at VUZF.

To participate in the selection procedure for professor, the candidate has submitted a total of 14 single-author scholarly works. These include 3 (three) monographs, 7 (seven) articles, and 4 (four) scientific communications – all related to the selection procedure’s theme and authored after her habilitation as associate professor. The following were submitted separately: a declaration for participation in 3 (three) joint publications, documents for participation in scientific projects and research assignments – a total of 5 (five), a document for supervision of a doctoral student, reference from the National Centre for Information and Documentation (NACID) for 18 citations over the period 1997-2019.

Assoc Prof Lyubka Tsenova graduated from the Faculty of Law at Sofia University “St. Kl. Ohridski” in 1973. In 1998 she earned a “doctor of law” degree, and since 2012 she has been holding the position of associate professor of financial and tax law. Over the period 1991-1998 she was full-time assistant at the D.A. Tsenov Academy of Economics – Svishtov. From 2012 to 2018 she was full-time lecturer – “associate professor” at the International Business School (IBS) – Botevgrad, and at the same time, from 2007 to 2019, she was adjunct associate professor at VUZF – Sofia. Since 5 March 2019 she has been holding the academic position of “associate professor of law” as full-time lecturer at VUZF – Sofia. Over the years as lecturer, Assoc Prof Tsenova has held expert positions at various important state institutions, including at the National Assembly.

It is clear from the above that the candidate is associated with active teaching and professional and public work.

II. General characterisation of candidate’s work

As stated above, to participate in the selection procedure for professor the candidate has submitted 14 publications that follow her habilitation as associate professor, and her significant scientific contributions could be seen in the monographs “Taxation – Recent Trends” (Sofia, 2017), “European Tax Law” (Sofia, 2012), and above all – in her latest monograph, “The Complaint in the Tax Proceedings” (Sofia, 2020).

Her latest monograph “The Complaint in the Tax Proceedings”, which also contains candidate’s most significant scientific contributions, is the first separate scholarly study in Bulgaria, dedicated to the tax-law regime of the complaint as an institution that protects taxpayers from incorrect or inaccurate assessments of their tax liabilities. This *ipso facto* has its own significance as a theoretical contribution of the author.

I could identify several directions as more important scientific contributions of that work:

– Of legitimate interest is the tracing in historical terms of the sources of our legal system that contain the regulation of complaints, both in a general institutional sense – the Tarnovo Constitution and the subsequent constitutions – and in recent legislation, which is grouped by author in three periods: 1879–1944, 1944 until the early 1990s, and since the 1990s. In this regard, the influence and the achievements of administrative law regarding the legal regulation of the complaint in our procedural tax legislation are emphasized. It is stated that the right to appeal is provided for in the Tax Procedure Act of 1993, in the Tax Procedure Code of 1999, and in the current Tax and Social

Security Procedure Code (TSSPC) of 2006. The connection of the considered institution to EU law is also noted, in particular to Council Directive (EU) 2017/1852 of 10 October 2017.

– From a theoretical viewpoint, the development of the problem of “tax obligations” occurring in connection with public receivables is worthy of attention. An in-depth analysis of their substance has been carried out in the context of thorough knowledge of modern theoretical views, reflected both in the foreign legal literature (Germany, Austria, Italy, Russia, etc.) and in ours. The dual nature of tax obligations is outlined – both as a due power to demand monetary payment from the tax obligor, and as corresponding obligation on their part to perform the required monetary liability.

– The candidate’s attempt to outline the legal characteristics of the “complaint” in the appeal proceedings against tax audit acts, as laid down in the Tax and Social Security Procedure Code, constitutes a theoretical contribution – essentially, this a problem related to the main goal of the habilitation work. Important aspects of the complaint such as form, content, and mandatory particulars as preconditions for its legal effect are appropriately emphasised and analysed in order to organise the administration of the review proceedings. Various theoretical views concerning the substance of complaint, both domestic and foreign, are presented. The author explains that these are reduced to two groups and expresses her view that their unification actually best reveals the substance of complaint, i.e. that it is a combination of both “defined action” and “material world object”. On that basis, she notes that the complaint “can be considered a form in which the volition of the persons concerned materialises” (p. 85). Further on, the author pays special attention to the fact that in the TSSPC, and in the branches of our law in general, there is no legal definition of the term “complaint”. There are only requirements for its form and content, as well as for the appeal procedure. Identifying that as an omission of the legislator, particularly in TSSPC, which is material “for the purposes of administrative review proceedings of tax audit acts”, the author formulates and proposes a definition of the term “complaint” (p. 97), which undoubtedly has its own theoretical value.

– Another contribution is the study on the powers of the Director of the “Appeals and Tax and Social Security Practice” Directorate at the Head Office of the National Revenue Agency. In this regard, a proposal to improve the powers of the director as a tax authority within the meaning of Article 7 of the NRA Act has been put forward. An improvement of the legal regulation of the directorate as an administrative structure has also been proposed.

– The other two monographs of the candidate also contain theoretical contributions. “Taxation – Recent Trends” (2017) explores important problems

of taxation and tax policy, including the place and role of taxes at the current stage, as well as the goals and methods of tax policy at national and European level, and considers the modern views on public receivables and public obligations, etc. The monograph titled “European Tax Law” (2012) thoroughly analyses the legal significance of the proposed EU financial transaction tax, the forms of co-operation between tax administrations, etc.

The issues addressed in the remaining scientific publications also have their theoretical significance.

The approach and motivation of the theses and conclusions in the candidate’s publications unequivocally evince that her research is entirely her own achievement.

III. Critical notes and recommendations

It seems to me that there is a penchant for unwarranted broadening of the exposition in Chapter Seven, which reviews the legal regulation of the procedures for administrative review of tax assessments by the tax authorities in the EU and some other countries. The author’s efforts are hardly justified here, given that this is the longest chapter in the work – 64 pages, but is essentially a schematic presentation of the appeal proceedings in these countries.

The characterisation in Chapter Two of administrative proceedings under the TSSPC as “administrative justice” is not convincing. As the author notes, administrative control under the TSSPC differs from the other types of administrative control in the characteristics common of any control, namely: type, body that exercises it, subject of control, acts to be controlled, administration of the proceedings, and its concluding acts. Her thesis that the control is jurisdictional and not administrative is based, however, only on two of these characteristics – control objective and control administration. Ignoring the remaining characteristic leads to inconsistency and, to put it briefly, results in incomplete argumentation of the author’s thesis, which could be reconsidered.

Certain incompleteness is also noticeable in the analysis of the status of the complaint itself. Since it is the main element, the highlight of the habilitation work’s topic, rather than the proceedings themselves, a more thorough study of the required information, as well as the consequences of non-compliance resulting in complaint irregularity and inadmissibility, was to be expected.

Finally, I would recommend that the author, in view of her proven capacity, continue her efforts in clarifying the conceptual apparatus of the complaint not only in the proceedings under the TSSPC, but as a legal

institution in general, because, as she herself notes, a definition of the complaint is missing in the Administrative Procedure Code, the Civil Procedure Code, and the Penal Procedure Code, i.e. in all our procedural legislation.

These critical remarks and recommendations should be taken as a token of my constructive attitude towards the research work of Assoc Prof Tsenova. They do not affect her solid overall theoretical level.

CONCLUSION

Based on the findings set out above, I assess **positively** the candidate's overall teaching and research work. I believe she satisfies the requirements of ZRASRB, its implementing rules, and the relevant Rules of VUZF for holding the academic position of "professor", and I propose to the Scientific Jury to prepare a report-proposal to the Academic Council for selection of Assoc Prof Dr Lyubka Mladenova Tsenova for the academic position "PROFESSOR" at VUZF in professional field 3.6. Law (Financial and tax law).

31 July 2020

Member of the Scientific Jury:

/Prof Dr D. Kostov/