To the Scientific Jury, appointed by order of the Rector of Sofia University No. RD-38-603/16.10.2024.

SCIENTIFIC OPINION

by Assoc. Prof. Dr. Simeon Groysman, Sofia University Faculty of Law

regarding

"LEGAL FACTS IN A VIRTUAL ENVIRONMENT"

dissertation for the acquisition of the scientific and educational degree of Doctor of LAws by **Lyuben Iliev Todev**,
part-time PhD student in the scientific field 3.6 Law (Theory of State and Law. Political and Legal Studies) at the Department of Theory and History of State and Law at the Sofia University Faculty of Law

Dear members of the scientific jury,

I. Reason for writing the opinion

The PhD student Lyuben Todev presents for consideration a dissertation entitled "Legal Facts in a Virtual Environment" – a result of a part-time PhD study on the basis of the Department of Theory and History of the State and Law of the Sofia University Faculty of Law. The research was conducted with scientific supervision by Prof. Dr. Yanaki Stoilov and Prof. DSc. Vihar Kiskinov. After the internal defense held in the Department and the issuance by the Rector of the SU of the order № RD-38-603/16.10.2024 by the decision of the scientific jury at its first meeting, I have been entrusted to draw up this opinion.

At the same meeting, the members of the scientific jury agreed that the PhD student fulfilled the applicable minimum national requirements for his proposed volume of scientific production. There is no plagiarism, as verified by the electronic review with the StrikePlagiarism

system and as I can in turn confirm. In view of the same, the submitted dissertation is rightly admitted to public defence and should receive its merit assessment.

II. Personality of the PhD student

The candidate for the degree Luben Todev was born in 1988. He graduated in Law at the Faculty of Law of Sofia University. He graduated in Law from the Faculty of Law of St. Kliment Ohridski University in 2012. Since his graduation he has been actively developing professionally in the field of law. He is the author of a series of scientific works, which preceded the stage of his immediate involvement in scientific work as a part-time PhD student in the period from 2020 to 2024. According to my personal impressions I can add that L. Todev has been an active participant in a series of conferences, and in the last two years a seminar teacher for law students at the Sofia University Faculty of Law, first in General Theory of Law, and now in Information Law.

III. Contents of the submitted dissertation

The dissertation under review has a classical **structure** of an introduction with a detailed methodological statement, three chapters with extended sub-paragraph divisions, a conclusion, a bibliography and a classification list of the public (international, European and national normative together with programmatic political) acts used. The bibliography consists of 130 titles, 65 in Cyrillic and 66 in Latin.

The first chapter introduces and then compares the concepts of legal fact and virtual environment. The second chapter examines the problems associated with the construction of the specifics of legal facts dictated by their realization in the virtual environment. The third chapter develops a type model of legal fact in a virtual environment.

The topic of the dissertation is based on the formulation of the actual problem for the legal cognition about the applicability of the concepts of the “pre-informational” legal theory to the conceptualization of the legal problems related to the idea of the realization of certain facts in a qualitatively different *virtual* environment, based on the information technologies, alternative to the material, namely. Classical philosophy struggles to make sense of the continuum of time and space (here and now, there and then) as a unified order of representations through which we become aware of something happening. With his “higher” concepts, Kant conceptualizes the

intuitive use of the senses, which we unconsciously and inexorably base on the concepts of place and space as the basic elements of thinking. It seems to me, without direct dialogue, that Todev employs a similar view, pointing out that the "material environment" – that of time and space thought through the senses-is the field whose interactions "each person largely understands intuitively." Legal facts with material existence, from this perspective, are "ordinary" facts (in a given place and time) viewed through the prism of legal norms. The use of digital technologies, however, implies the possibility of the realisation of facts (albeit through the actions of people with their place and time) still remotely, in a new, alternative space of "virtual reality". It poses with particular interest the problems of the "space" (obviously the quotation marks are imperative here) and the time (which cannot be relativised even by the most advanced technology) of realisation. The material space otherwise "given" to us and intuitively grasped, here becomes "constructed" (the distinction is recapitulated by the analyses of prof. Kolev and is used on page 72 of the dissertation).

The dissertation under review is distinguished by the clarity of the legal language, the systematic development of the subject matter and the overall structuring of a unified thought approach. Although the dissertation has its professional and scholarly orientation towards the practical problems of information law, I can conclude with satisfaction that he – unlike other PhD students in general legal theory – has "transcended" the narrowly sectoral issues and has actually *theorized* the matter under consideration. Moreover, before proceeding to the individual problems of the 'virtual factual', the main relevant disputes in legal theory and philosophy are structured (with their fluid boundary depending mainly on the conception of the respective author; in this sense, this distinction is rather mine here).

A separate positive feature of the dissertation is the actual (and not formal, as it is typical for Bulgarian PhD students in legal studies) development of the methodological part of the research (part II. of the Introduction). For the reasons listed above – even if there are certain objections to specific approaches and treatments, it should be emphasized here that Lyuben Todev has managed to write a conceptually oriented dissertation, united by a holistic approach and animated by disputes with different theories. These are all sought-after elements for a general theoretical dissertation. There is room left for argument in places, but making arguments one way or the other will not, I think, will not helpful on the merits of the dissertation debate.

For example, the PhD student is in solidarity with the idea of the "institutionalization" of

law as its distinguishing characteristic from other social normative systems (p. 20), but I think it is debatable whether it is precisely the written character of norms and their autopoietic reproduction (Todev's citation of Luhmann allows me to use this idiom) that the authors quoted below call “institutionalization”. In this sense, it is interesting whether there is not actually a debate to be had in our legal theory as to what exactly we put into the idea of “institutionalization.” Next, I formulate these remarks here because they are a critique in detail, not in concept: it is not correct to claim that a settlement with an “extremely short history” is less susceptible to historical interpretation. On the contrary, the possibility and clear linking of the current moment to the relevant legislative motive is, in principle, the basic prerequisite for historical interpretation. It becomes more difficult as one moves further back in time. The latter constitutes a certain paradox of the historical interpretation applied by legal dogmatics (closer in time means better, because the “will of the legislator” is more immediately accessible) and of the historical analysis given by legal history (further in time means better, because the consequences are clearer, and the important in the reasons separated from the unimportant)[1] . One hundred years later, the legal historian will point out causes, trends, and distinguish the significant from the transient. The dogmatist, however, will be hard pressed to find a judicial argument pertinent to a gap found in a centuries-old text.

In the sense concerning these two examples (the enumeration of similar ones could go on), the PhD student's individual reflections give rise to discussion in the sense of potential for new debate, not so much a desire to dismiss his theses. I cannot, for example, in any way accept that legal facts have a regulative function (be it even “limited and non-self-contained”); it is no coincidence that the rationale of the opinion is based on the authority of a 1970s Soviet dissertation, i.e. it suggests a sociological approach linking norms to social relations. The latter is more legitimate in studies on law that do not employ a non-legal method. In this sense, it is not the fact that “directs human behaviour indirectly, in relation to... the disposition or sanction”. It is putting the fact into the norm, binding it to legal consequences, that ultimately regulates *the perception of legal obligation* (the perceived binding norm). In the example presented by Todev – the petitioner does not (as he claims - see p. 80) tailor his application to the dimensions of the petition established in the hypothesis, but orients himself according to the consequences – (disposition directed to the enforcer =>) will be rejected, (hypothesis =>) if it does not meet one of its requirements; will be

[1] The opposition of legal-historical and legal-dogmatic analysis in their hermeneutical dimensions is made by Hans-Georg Gadamer in Truth and Method (Part II, Section II, pt. 2(c)).

satisfied if it meets them.

IV. Analysis of the main points.

Any scholarly endeavour such as the one under review faces the danger of taking a broad view of the latest technological (and consequently regulated or to be regulated) phenomena and, by viewing them through the prism of customary legal understandings, failing to reach the level of their problematisation. The doctoral candidate has not fallen victim to this risk.

The conceptual alternatives in defining legal facts are thoroughly commented by the PhD student. In the end, the author agrees with the view that "assumes that a legal fact is the circumstance of material and social reality in aggregate with its model in the legal norm". Todeff is consistent enough in justifying this choice. At the same time, the question can be raised whether the whole series of juxtapositions of life, normative and legal facts are not ultimately a series of embedding different linguistic contents in the individual terms in order to describe the relation between the due and the factual, the former projected in the model and the latter observed as model-implementing. Each definition ultimately needs to indicate this duality – for example, when restating his view, Todev writes that "a legal fact is defined as a *fact* predicated by a legal norm that contains characteristics of a *circumstance* that manifests itself in social reality..." (p. 68). To be precise, legal science cannot define a fact as such (this is a matter of philosophical ontology and epistemology), but only reflect on the related facticity of the description in the norm and (the description of) what happens in reality.

The chosen **notion of virtual environment** was – as far as it is allowed to present such "intra-departmental facts" in a public exhibition like the present one – among the most commented during the several years that Lyuben Todev has been associated with our department. The doctoral student used the definition imposed in our country by prof. B. Kiskinov that the same is "a virtual environment as a non-physical, ideal, artificial environment formed by man by means of information and communication technologies" (p. 90 of the dissertation). This definition is fundamental for the research, insofar as if legal facts have certain characteristics, they are studied in the context of ideas about the nature of the virtual environment in question and the regulations needed in its technological formation. For me, it is particularly important, however, also to stress the possibility of seeking analogies between legal thinking itself and virtuality, because traditional dogmatic "calculus in concepts" originally reasoned about law in a non-physical, ideal and

artificial way of an abstract-abstract emergence of legal consequences through logical operations in the “legal world”. Considering the virtual environment as an ideal phenomenon opens the way for multiple interpretations of the relevance of the traditional dimensions of the idealistic element in legal theory and contemporary regulations.

The overcoming of their coercive treatments on legal positivism through the development of the analysis on the coordinating function which it attributes to law and whose realization it supports makes a positive impression. In this connection, the reflections on legal realism, on which the author himself reflects in order to introduce alternative distinctions in relation to the coordination of social relations, are also interesting (pp. 34-35). Law may consist in “predictions what judges will do”, but how to predict on a day-to-day basis, seeking to behave properly in everyday life “outside the courtroom”, as Todev points out.

Ultimately, the outlined conceptual approach brings together the different features of legal facts, based on which the PhD student formulates his vision of the legal-theoretical aspects of designing virtual environments. The relationship between the designed environment and the modelling of the facts to be performed with it is outlined. The analysis focuses on the law-making dimensions of these complex issues and has the potential to serve positively in the development of information law contexts on the issue.

The research is richly supported with practical examples that question traditional understandings of legal thinking projected onto the material environment in order to distinguish the specificities of the virtual environment and the legal issues that arise with them.

Critical **language** notes should make a recommendation for further work on simplifying and clarifying the language – for example, referring to “consensual” rather than “consensualised” (p. 129); there are mistakes in articulation (p. 29, last paragraph) or “discrete” circumstances creeping in on p. 73. The general recommendation in this respect is for a careful subsequent revision of the text.

As an additional recommendation, one could point to the possibility of initially deriving and classifying the normative acts governing the legal-technological virtuality under consideration, as we have been given de lege lata.

The exposition in Ch. II, Part II, Section 3.1. would benefit if the linguistically inept (through no fault of the PhD student analyzing it) doctrine of “virtual sovereignty” were analyzed more through the notion of “autonomy” of virtual communities, further contrasted with state

sovereignty and ideas of “external,” “centralized” regulation by state and international institutions.

The presently introduced publicity regime, both of the doctoral defences and of the defended theses (in view of the free full-text access to them), in my opinion obliges the PhD student to continue the work on his project, presenting it to the scientific community in the form of a monograph fulfilling the formal requirements and reflecting on the criticisms and suggestions of the jury. This will give him the opportunity to present his opinions in the most complete and disseminatable form. My last recommendation to Lyuben Todev is along these lines.

V. Publications and additional activities.

The PhD student submitted six publications, which doubled the minimum scientific criteria, demonstrating a willingness to work and enterprise in his scientific endeavours during his PhD. The publications reflect various stages of the development of the thesis and in one form or another their results have contributed to the formation of its final form and conclusions. L. Todev has participated both in conferences of the Department and in scientific forums external to the same. His positively evaluated by the Department work in the General Legal Theory seminar classes and his ongoing activities with seminars on information law present him in a positive image of a hardworking and inquisitive researcher.

VI. Overall assessment.

The formulated criticisms and remarks do not diminish the value of the proposed dissertation and I hope they will assist the author in its completion with a view to publication in book form.

Guided by the above, I can formulate a positive assessment of Lyuben Todev's dissertation work entitled “Legal Facts in a Virtual Environment”. By complying with the requirements of the law and applying the subordinate normative acts for its implementation, the work is the basis for awarding the author to the educational and scientific degree "Doctor" in the professional direction 3.6 Law (Theory of the State and Law. Political and Legal Theories), for which I will give a positive vote in the future public defence procedure.

Sofia,
16 December 2024

Симеон Гройсман