

REVIEW

by Prof. Gergana Marinova PhD,

Member of a Scientific Jury for the dissertation defense for awarding of the educational and scientific degree of “Doctor”

in the Doctoral Programme “Criminal Sciences“, professional field – 3.6. Law,

regarding the dissertation “Judicial Review in the Criminal Procedure of the Republic of Bulgaria” by Veselina Yordanova Stavreva - doctoral student in the Department of Criminal Law Sciences of the Faculty of Law of the “Paisii Hilendarski” University of Plovdiv.

I have been appointed as a member of the Scientific Jury by order No. RD-21-1982/14.11.2023 of the Rector of the “Paisii Hilendarski” University of Plovdiv. At the first meeting of the jury, it was decided to present a review of the dissertation “Judicial Review in the Criminal Procedure of the Republic of Bulgaria” by Vesselina Yordanova Stavreva.

Data about the dissertation student

Veselina Stavreva graduated in “Law” at the Faculty of Law of the “Paisii Hilendarski” University of Plovdiv in 2001. In 2012 she graduated with a Master's Degree in “Social and Legal Psychology” at the “St. Kliment Ohridski” University of Sofia. She started her professional career as a lawyer in 2003. After that, she was employed as a legal consultant in the Basin Directorate and as a senior expert at the

Committee on Internal Security and Public Order of the National Assembly. Since 2008 she has been a judge in the Sofia District Court, and since 2015 to the present - a judge in the Sofia City Court. During the period 1998-2000, as a scholarship holder of the Open Society Foundation for high academic achievements in the field of law, she prepared reports on the legal problems of refugees. In 2013 she visited the USA as a participant in the “Young Leaders in Justice” programme. Through the European Judicial Network, she conducted internships in Great Britain (2013) and in Italy (2019).

Data on the doctoral studies

Veselina Stavreva was enrolled as a doctoral student of independent training at the Department of Criminal Law Sciences of the Faculty of Law of the University of Plovdiv in 2022. The regulatory requirements were met during her doctoral studies. Her dissertation was discussed and aimed at an open session defense at a meeting of the Department held on 24.10.2023.

Apparently from the documents presented in the defense procedure, Veselina Stavreva has complied with the minimum national requirements - she has submitted a dissertation and 4 publications on the dissertation subject - 2 articles and 2 scientific conferences reports, one of which is in a process of being printed. There have been no reports of plagiarism in the Scientific Jury and I have not ascertained any.

Autoreferat and Dissertation Data

Veselina Stavreva's dissertation consists of 326 pages and includes an introduction, three chapters with separate sections, a conclusion and a bibliography, which lists 279 titles, of which 16 are in Latin, the rest are in Bulgarian and Russian languages.

In the introduction of the dissertation, the choice of the topic, its relevance and significance have been well justified. Chapter one is named “Essence of judicial review” and it is devoted to a wide range of issues, including the concept of control (meaning control in general), the concept of justice, the concept of judicial power, the concept of criminal justice. In addition, this Chapter also examines issues much more directly related to the topic of labour, namely - historical development of judicial review; prerequisites for its occurrence; limits, forms and types of judicial review in the Bulgarian criminal procedure. An attempt has been performed to justify the elevation of judicial review in the pre-trial proceedings as a basic principle of the criminal process, as well as to distinguish the control from the supervisory activity.

Chapter two is dedicated to the judicial review in pre-trial proceedings, and after its general characteristics, the judicial review at the initiation of pre-trial proceedings has been examined; in relation to procedural coercive measures; in relation to investigative actions; on the termination and suspension of pre-trial proceedings; in relation to the agreement, as well as in other cases, beyond the above, namely: the judicial review of fines; on the prosecutor's refusal to return the material evidence (Art. 111, Para. 3 of the Criminal Procedure Code), the judicial review over the timely development of criminal proceedings (Chapter 26 of the Criminal Procedure Code). Chapter two ends with proposals for improving the judicial review, the main of which is the introduction of a separate/appointed judge to implement it.

Chapter three examines judicial review in the trial phase, commencing with the control implemented by the court in the stage “Referral to court and preparatory actions for the examination of the case in a court hearing” and clarifying the nature and the features of the appeal/cassation proceedings (including under Chapter 22 of the Criminal Procedure Code) and the cassation judicial review, as well as that of the reopening of criminal cases.

The conclusions and suggestions are summarized in the conclusion.

The Autoreferat correctly reflects the structure and content of the dissertation, also containing a reference to contributions and a list of publications.

Evaluation of the dissertation

The topic of the dissertation is interesting and dissertable, but it represents an extremely great challenge even for established scientists. It is more suitable for the topic of the so-called “major doctorate” - for obtaining the scientific degree “Doctor of Legal Sciences” or for habilitation work, rather than for a dissertation for obtaining the educational and scientific degree “Doctor”. And this is because the full-fledged and contributing development of the topic requires a greater degree of theoretical generalizations, conceptualization of the problem, and these ones are more difficult to achieve in the initial stages of the scientific development. If such a topic is not approached correctly, the risk is either of shallow “sliding on the surface” of the problematic, expressed in the reproduction of legal positions, or of “getting bogged down” in the details, in which “only the individual tree is seen, but not the forest”. I believe that to a large extent the doctoral student has managed to escape from these two dangers and she has coped well enough with this difficult topic. Perhaps the many years of judicial experience has played a role. At no point has she “faltered” or gone into unnecessary details, on the contrary, her aspiration to clarify the essence and main characteristics of the institutes she researched is visible. Rather, it seems to me that there is a “faltering” in another direction - an overextension of the subject and the approach to it. For me, a significant part of the content of the first chapter of the dissertation remains largely unnecessary and without a significant contribution to the research topic, namely that part dealing with the concept of control in general; with the concepts of judicial power and body of judicial power, of administration of justice (justice). As I have already indicated, the subject is broad enough to be further expanded by questions that fall more in the realm of constitutional, administrative

law, or general legal theory than criminal procedure. Moreover, an independent dissertation can be written on each of them.

Among the contributions in Chapter one, I would highlight the proposed classifications of the types of judicial review, but it could be even better if their theoretical and especially their practical significance were more clearly outlined. In this Chapter the doctoral student theses are interesting concerning that judicial review should be considered as a new, independent procedural function and that the judicial review in pre-trial proceedings is a basic principle of the criminal proceedings, but it seems to me that they remain unconvincingly argued. I would allow myself to recommend that Ms. Stavreva should expand and deepen her arguments in the eventual publication of the dissertation. In order to convince the reader that pre-trial judicial review is a fundamental principle, I think it is necessary to clarify the essential features of the basic principles of the criminal proceedings and to demonstrate that pre-trial judicial review possesses all these features.

Further on in the dissertation, the judicial review is logically and correctly examined in two chapters - one dedicated to judicial review in pre-trial proceedings (Chapter 2), the other - to judicial review in trial proceedings. The reflections on judicial review over the initiation of pre-trial proceedings are of contributing importance in Chapter 2. Since this is a brand-new institution of the criminal proceedings, the doctoral student's certain caution is understandable, but it seems to me that she has the potential for bolder analysis. I agree and consider that the analysis of the prosecutor's detention and the discussed procedure for exercising judicial review over it has a contributing value. I believe that the so-called by the dissertation student, standards for taking the measure of Remand in Custody, represent a good systematization and summary of the practice of the European Court of Human Rights in this regard, and as such they can be easily and comfortably used by the theory and practice, and this determines their contribution value as well. At the same time,

however, I do not consider that the taking by the court of the measure of involuntary detention in custody, as indeed the taking of any measure of procedural coercion by the court, constitutes a form of judicial review. The doctoral student herself states that “the essence of control consists in checking and monitoring with the aim of analyzing existing discrepancies, revealing their causes, preparing proposals for their elimination” - p. 15. Thus, by definition, the review is aimed at (is subject to) foreign activity, i.e. activity, decision, etc. to an entity other than the one exercising control. Therefore, in my opinion, the court does not exercise control when it takes the measure of permanent detention in custody itself or another measure of procedural coercion. It is another matter that in this case it also acts as a guarantor of fundamental rights. At the same time, it is a guarantor with “enhanced” powers, because it personally and it solely can limit these rights, and it is not a guarantor who only controls, i.e. verifies the limitation of rights decreed or carried out by another authority.

Contributory moments are also to be found elsewhere in Chapter 2. I have found such, for example, in the analysis of Chapter 26 of the Criminal Procedure Code.

The third chapter has a contributing value with the comparisons and summaries made there of judicial review in the control stages of the judicial phase of the criminal process.

In general, for the entire dissertation, I would like to emphasize one more issue - the extremely thorough, conscientious and detailed research and reference to court decisions, especially those of the European Court of Human Rights, as well as the scientific publications in Bulgarian and Russian. The bibliography is impressive in volume, something not often discovered in dissertations. This search and reference to numerous judicial decisions and scholarly works I believe has its own contribution and would be useful to legal practitioners as well as to representatives of the doctrine.

In **conclusion** and based on my overall assessment of the dissertation, I believe that it has complied with the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria, the Regulations for the Implementation of the Law on the Development of the Academic Staff in the Republic of Bulgaria and the relevant Regulations of the University of Plovdiv.

I geant it a positive assessment and I suggest that the Scientific Jury shall award Veselina Yordanova Stavreva the educational and scientific degree “Doctor”.

Prof. Gergana Marinova PhD

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