

REVIEW

by Associate Professor Dr. Ekaterina Salkova,

appointed by Order No. RD-21-1982/14.11.2023 of the Rector of the University of Plovdiv “Paisii Hilendarski” as a member of the scientific jury for the public defense of a dissertation for the degree of Doctor of Education and Science

of

Veselina Yordanova Stavreva - PhD student in the Doctoral Programme “Criminal Procedure”, professional field 3.6. Law, scientific field “Social, Economic and Legal Sciences”, on the topic:

“JUDICIAL REVIEW IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF BULGARIA”

1. Biographical data about the PhD student

Veselina Stavreva graduated in Law from Plovdiv University “Paisii Hilendarski” in 2001, and in 2012 graduated with a Master's degree in Social and Legal Psychology. After completing the compulsory internship, she worked successively as a lawyer (01.04.2003 - 15.10.2003), legal advisor at the Basin Directorate “East-Belomorsky Region” (15.10.2003 - 05.03.2008) and senior expert assistant to the Committee on Internal Security and Public Order at the National Assembly (05.03.2008 - 25.11.2008). From 26.11.2008 to 25.03.2015 she was a judge at the Sofia District Court and then at the Sofia City Court.

2. Doctoral Data

Veselina Stavreva was enrolled in the PhD (independent study) in the Doctoral Programme “Criminal Procedure” by Order No. RD 21-1874 of 18 November 2022 of the Rector of Plovdiv University. By Order No. RD 21-1779 of 18 October 2023, she was dismissed as a PhD student with the right to defend. From the attached documents it is established that the *dissertation meets the minimum*

national requirements - a dissertation and a list of four publications on the topic of the dissertation published in university journals and conference proceedings (one of them is in print) was presented. No reports of plagiarism have been received in the procedure and I have not identified any.

3. General characteristics of the dissertation

The dissertation is *326 pages* and contains *624 footnotes*. The bibliographical reference includes *279 sources*, 16 of which are in Latin (English, German and French) and the rest in Cyrillic (Bulgarian and Russian). The dissertation contains a title page; a table of contents; a list of abbreviations used; an introduction; three chapters; a conclusion and a bibliography. The content of each chapter is structured by separating the chapters into paragraphs and items. A declaration of the originality of the research conducted is presented.

The topic of the dissertation chosen by the doctoral student represents a particular challenge for legal science not only because of the need to ensure effective protection of the rights of citizens involved in criminal proceedings, but also in view of the number of issues in the field of various scientific specialties. The breadth of the topic and its foundation on legal institutes that have their roots in the general theory of law, in constitutional and administrative law, presupposes the achievement of a high level of abstraction in the analyses and conclusions, which predetermines the considerable difficulty of the research. This, as well as the lack of a modern comprehensive monographic study, determines the **importance** and **relevance** of the topic of the dissertation. Not only the topic of the research, but also the final result can be defined as significant, given the conscientious research of legislation, theory and jurisprudence and the combination of the scientific approach with the practical experience of the dissertant.

In the **introduction**, the doctoral student motivates the choice of the topic, justifies its importance and introduces the reader to the topic of the research.

Chapter one of the dissertation is devoted to the nature of judicial review. The analysis of the theoretical views on the nature of judicial review logically follows the clarification of the concept of review as an activity in the first place. The origin and development of judicial review is historically traced, its essence is analysed, taking into account the correlation of the concept with other interrelated concepts - of the judiciary, of the administration of justice and of justice as an activity, and in particular the concept of criminal justice. The inclusion of the case-law of the European Court of Human Rights and the Court of Justice of the

European Union in the derivation of the main characteristics of the administration of justice as an activity is a contribution. In the dissertation's classification of the types of judicial review in the criminal process, its structure, participants and functions, the nature and types of acts in the criminal process and the deviations from the general procedure in the special rules are taken into account. The proposal *de lege ferenda* to provide for the possibility of a public hearing in the case of review under Chapter Twenty-two is well founded, as is the dissertation's conclusion on the type of act to be decided by the Court of Appeal when it returns a cassation protest or appeal. The dissertation strives not only for comprehensiveness in classifying the types of judicial review, but also for a comprehensive review and analysis of the relevant research and case law. Later in Chapter One, the dissertation justifies its view of judicial review as a legal principle of a complex and interdisciplinary nature and, after presenting the scholarly discussion on whether the principles of criminal procedure are comprehensively regulated in the CPC, argues its thesis for considering judicial review in the pre-trial phase as a fundamental principle. An attempt is made to differentiate the concepts of control and supervision, a question which could be the subject of a separate dissertation in itself, as evidenced by the scholarly discussion of it that the dissertator has traced.

Chapter Two is devoted to judicial review in pre-trial proceedings. After clarifying the general characteristics of judicial review in the pre-trial phase with regard to the idea for which it is established, the specific features of the exercise of judicial review over individual criminal procedural acts and acts for which it is provided are analysed. Logically, in view of the legal amendments adopted too recently, for the first time in the scientific literature an analysis is made of the court's power to control the prosecutor's decree for initiating pre-trial proceedings. In view of this, I find that the entire analysis of the regulated complex mechanism of judicial review of the said act is of contributory importance. The dissertator's opinion on the inadmissibility of the extension of the scope of judicial review over the bringing of a person as an accused in the hypothesis of Art. 219, para. 2 of the CPC is well argued. The discussion on the necessity of establishing judicial review over the decree on refusal to initiate pre-trial proceedings is traced, including in relation to the bill submitted in 2019. The little case law still available is also analysed. The dissertation's reflections on the emergence of a number of issues related to the introduction of judicial review of extra-procedural activity, which distinguishes this review from the review carried out in relation to the lawfulness of the decree to discontinue criminal proceedings, are entirely logical. The question of the lack of clarity in an appeal against a decision upholding a decision of the public prosecutor at first instance refusing

to institute pre-trial proceedings before the next-ranking public prosecutor's office instead of the court is a legitimate one. The criticism could also be supplemented here with regard to the precision of the terms used. Providing for the possibility of appealing to a “prosecutor's office” instead of a public prosecutor raises the issue of the inclusion of the prosecutor's office as an authority in criminal proceedings, which is not in line with the traditional understanding of the legislator and legal theory, which defines the authority, and always a single one, as the individual public prosecutor (this distinction is clearly visible when comparing Art. 46, para. and para. 5, Art. 47, para.4, Art. 200 and Art. 243, para. 10 with Art. 243 of the Criminal Procedure Code). The dissertation also rightly emphasizes the need to clarify the legal consequences of the judicial act confirming the prosecutor's refusal to initiate pre-trial proceedings. I find the dissertator's proposal to amend Art. 213, para. 6 of the CPC (p. 138) correct. Despite the fact that judicial review of other criminal procedural acts and actions in the pre-trial phase has been examined in a number of publications since its introduction in 1999, the remainder of chapter two of the dissertation also contains a number of contributions, such as the discussion of the possibility of parallel operation of some of the procedural coercive measures; the analysis of the measures of protection and the reasoned opinion on the scope of judicial review based on it; the comparison of the precautionary measures; the analysis of judicial review over detention by a prosecutor under Art. 64, para. 2 of the CPC; the derivation of standards when taking the measure of permanent detention in custody, etc.

Chapter Three is devoted to judicial review in the trial phase. After the analysis of the nature of this judicial review and the different opinions in the legal theory concerning it, the dissertation examines the peculiarities of the judicial review in the different control stages in the trial phase. The analyses of the control powers of the court in the first stage of the trial phase, including the amendments to the Criminal Procedure Code of 2023, are contributory. The same applies to the analysis, the summary of the general features and the comparison made of the control activity of the appellate and cassation instances. The rules of review of appellate court rulings and orders are analysed in detail, as well as the nature and scope of judicial review in the proceedings for reopening criminal cases.

The **conclusion** summarizes the main conclusions of the dissertation, made as a result of the analysis of the theory, legislation and jurisprudence. Suggestions *de lege ferenda* are made.

4. Evaluation of scientific and scientific-applied contributions

The presented dissertation shows the *profound theoretical knowledge* of the dissertant in the scientific specialty “Criminal Procedure” and undoubtedly reveals *abilities for independent scientific thinking and creative approach to the researched issues*. The relevant normative acts, including international and European Union acts, a considerable amount of scientific literature and case law, case law of the European Court of Human Rights and the Court of Justice of the European Union have been thoroughly and correctly analysed. The dissertation is a modern comprehensive study of the nature, types and scope of judicial review in criminal proceedings. Of a contributory nature are a number of analyses made in the individual parts of the work, which systematize the already expressed opinions and add new arguments, and of course the argued own opinions (some of which are mentioned above). A merit of the dissertation is the conscientious follow-up of the scientific discussion on the individual issues, not through a compilative approach, but as it should be done - through the application of an analytical approach, as well as the inclusion in the analysis of the relevant case law, which contributes to the clarification of the issues under consideration in full. The main contributions of the conducted research are correctly indicated in the abstract, among which there are both scientific and scientific-applied results (in the first group can be included the analyzes of the essence of judicial review, the follow-up and the inclusion with own opinions in the scientific discussion on a number of relevant issues, the distinctions of a number of concepts and legal institutes, the comparison of the scope of judicial review in the different procedural stages, etc., and in the second group – the systematization of judicial practice, the practice of the European Court of Human Rights and the Court of the European Union on the discussed issues, the critical analysis of the legislation, as well as the proposed *de lege ferenda*). Some of the *de lege ferenda* proposals are, I believe, thoroughly argued (e.g. on Art. 61 para. 3 and Art. 65 para 3, on the introduction of a requirement to state reasons for certain prosecutorial requests, on Art. 2, para. 1 of the Liability of the State and Municipalities for Damages Act, etc.), while others need further arguments (e.g. on supplementing Art. 68, para. 4 and Art. 69a, para. 3 of the CPC), but all of them constitute a good basis for the development of the scientific discussion and deserve the attention of the Bulgarian legislator. Important prerequisites for the high value of the research are the aspiration of the dissertant to analyze a huge number of scientific publications, normative acts - domestic, international and EU acts, practice of national, supranational and international jurisdictions, as well as serious practical experience as a judge and the ability of the dissertant to subject the issues under consideration to critical analysis. From my direct impressions during the PhD, I am convinced that Veselina Stavreva made a great effort and in a very short period

of time managed to master the scientific toolkit to a considerable extent, making significant progress thanks to her diligence.

5. Evaluation of the dissertation publications

The PhD student has four publications on the topic of the dissertation, one of which is in print. The publications are in academic publications - journals and conference proceedings and through them the opportunity is provided for the scientific community in Bulgaria to get acquainted with the main theses of the dissertation research and approbation of its results.

6. Evaluation of the abstract

The prepared abstract in structural terms contains four parts: (1) General description of the dissertation; (2) Contents of the dissertation; (3) Contributions of the dissertation; and (4) List of publications of the doctoral candidate on the topic of the dissertation. The first part justifies the relevance of the topic and the research, states the subject, aim, objectives and methods of the research, and presents general information on the scope and structure of the dissertation. In the second part of the abstract the content of the dissertation is briefly presented in its individual parts, and the *de lege ferenda* proposals made are indicated at the appropriate places. The abstract correctly reflects the content of the dissertation.

7. Critical comments, recommendations and questions

As with any work, some criticisms can be made of the work presented. Overall, the style is readable and the exposition is presented in an engaging manner, but there is a need for language editing in places. Some of the views expressed need further argument, for example on the definition of judicial review in the pre-trial phase as a criminal procedural principle. I also consider the opinion on the need to introduce judicial review of refusal orders to be correct but not sufficiently substantiated, for which further arguments could be presented.

The remarks made do not in the slightest way discourage the conclusion of the high scientific value and practical usefulness of the dissertation submitted for defense, and given the thorough and conscientious study of theory and practice, I would recommend its publication after editing.

8. Conclusion

In conclusion, a comprehensive, significant and thorough scientific study is presented for defence. The dissertation submitted for defense meets all the requirements of the Law on the Development of Academic Staff in the Republic of Bulgaria - it shows that the candidate has in-depth theoretical knowledge in the specialty "Criminal Procedure", reveals the candidate's abilities for independent scientific thinking and creative approach to the researched topics and contains scientific and scientifically applied results that represent an original contribution to science. Therefore, I express my positive opinion and propose the members of the scientific jury to vote positively for the acquisition of the educational and scientific degree "Doctor" by Veselina Yordanova Stavreva in the professional field 3.6. Law, doctoral programme "Criminal Procedure".

Member of the scientific jury:

Associate Professor Dr. Ekaterina Salkova

12.01.2024