

OPINION

of an Associate Professor Dr. Ivan Petrov Vidolov

On: Judicial Review in the Criminal Procedure of the Republic of Bulgaria

Area of higher education: 3. Social, economic and legal sciences

Professional field: 3.6. Law

Doctoral Programme: Criminal procedure

Doctoral student: Veselina Yordanova Stavreva

1. Relevance and Scientific Significance of the Dissertation

The PhD student Veselina Yordanova Stavreva submits for consideration before a scientific jury appointed by Order No. RD-21-1982/2023 of the Rector of Plovdiv University “Paisii Hilendarski” a dissertation on “Judicial Review in the Criminal Procedure of the Republic of Bulgaria” for the degree of Doctor of Education and Science.

The dissertation is a thorough scientific study of the nature of judicial review in criminal proceedings. The scientific interest in the topic is born from the understanding that the judicial review has all the characteristics of an independent legal institute and is a basic procedural guarantee of the rights of the participants in the criminal process, regulated in the Constitution of the Republic of Bulgaria and the Criminal Procedure Code. The topicality of the topic is undeniable in view of the contemporary state of procedural practice and challenges to criminal policy; therefore, it does not need to be further argued. However, it is necessary to emphasize its relevance from the scientific point of view, for the criminal procedure theory. The author has developed a scientific work that examines the nature of judicial review, analyzes the existing views in legal doctrine on its nature and content, reveals the historical development and makes proposals for improving criminal procedure legislation. These issues are for the first time addressed in our jurisprudence, in the volume of a monographic work, with the contribution of the analysis, based on a thorough study of case law and legal theory.

The PhD student reaches scientific contributions in the field of criminal procedure through an interdisciplinary approach, using and developing the modern achievements of criminal procedure theory, human rights doctrine and on the basis of a thorough comparative legal and historical analysis. The scientific novelty and research credibility of the results obtained and the conclusions drawn from them are secured by the methodological tools used, applied in accordance with research and ethical standards. Their methodologically sound selection, together with the thorough approach and research competence of the PhD student, have ensured the development of a dissertation research that complies with the Development of the Academic Staff in the Republic of Bulgaria Act.

2. General characteristics and structure of the dissertation

Structurally, the work consists of an introduction, three chapters and a conclusion. The volume of the presented dissertation is 326 pages, literature is used from 279 literary sources, of which 179 by Bulgarian authors, 90 by foreign authors. A total of 624 footnotes have been made. The chosen structure and the sequence of the exposition allow the problems under consideration to be perceived and analysed both independently and in their entirety, making the thesis of the doctoral candidate and the supporting arguments accessible and understandable.

In the introduction of the dissertation the relevance of the research is justified and the aims, objectives and methodology of the research are outlined. They are clearly and correctly formulated, which has undoubtedly contributed to the results of the dissertation research.

Chapter One, entitled “The Nature of Judicial Review”, is divided into eight paragraphs. The first paragraph deals with the question of the nature of control, starting from the etymological nature of this concept and discussing some doctrinal understandings, the doctoral student outlines its main characteristics, from the position of which he further develops his scholarly views. In the following paragraph, a chronological historical overview of the problem is made, thus tracing the trends in its historical development. The doctoral candidate has compared the issue of judicial review with the conceptual understanding of criminal procedure in different historical periods. He has revealed the existing relationship and interrelation between them. This approach has helped to present the historical facts, not as a sequential chronology, but systematically and interconnectedly, with the prevailing historical philosophy, illuminating the doctrinal understanding of the role and place of judicial review and the patterns in its development.

The author in his studies, referring to some philosophical understandings of the nature of the state, law and justice, reveals the preconditions for the emergence of judicial review as a modern legal institution. In this part, the PhD student also argues for the scientific conclusions drawn through a detailed analysis of the principles of criminal procedure, thus demonstrating a good knowledge of the basic general philosophical and legal understandings and the depth of his knowledge in the field of law.

The fourth paragraph provides a doctrinal definition of the concept of judicial review. The doctoral student has consistently and methodically argued his proposal, successfully using abstract forms to define the nature of judicial review. He has used a consistent methodological approach and supporting legal arguments to support this. In the following paragraph, a comparison is made with the concepts of “justice” and “judicial power”.

The sixth paragraph discusses the limits, forms and types of judicial review in the criminal procedure of the Republic of Bulgaria. In this part, an extensive qualification system of judicial review is presented, thus fully presenting its diversity and manifestation in criminal proceedings. On the basis of different but methodologically sound criteria, a comprehensive system is presented, revealing its structurally defining links and inherent characteristics.

In the seventh paragraph, scholarly generalizations are made through the prism of criminal procedure theory, arguing for the fundamental importance of judicial review as a principle of trial. The author's theses are well argued and they show not only a good knowledge of the problem under study, but also a thorough understanding of its relationship and place with the

general institutes of criminal procedure law. In the last paragraph a distinction is made between supervision and control as universal means of ensuring legality in the system of state governance. Although, and with correct conclusions, the structuring of this issue in the last paragraph may be reconsidered in a future printing of the work. The distinction between oversight and control may find a place after considering the concept of judicial review, which will highlight its nature by distinguishing it from similar categories. In doing so, it will support the conclusions drawn and offer a logical transition to the proposed classification and to the seventh paragraph justifying the fundamental importance of judicial review for the criminal process.

Chapter Two is entitled “Judicial Review in Pre-Trial Proceedings” and is structured in eight sections. On the basis of the scientific analysis and numerous conclusions, the author has proposed *De lege ferenda* proposals for the improvement of criminal procedure legislation.

The first paragraph is devoted to revealing the nature and purposes of judicial review in pre-trial proceedings. The doctoral candidate analyses the nature of pre-trial proceedings through the prism of national legislation and international legal acts, engaging in the scientific discussion of the problem and from this position revealing the specific meaning of judicial review. This gives him grounds to draw scientifically substantiated conclusions of contribution.

The second paragraph discusses the exercise of judicial control in the initiation of pre-trial proceedings. The issue of judicial review of the prosecutor's decision to initiate pre-trial proceedings is critically analysed. With regard to the hypothesis of Art. 212, para. 2 of the Criminal Procedure Code, the relevant case law of the ECtHR on the moment when a person is considered to be charged within the meaning of the ECHR is presented. The new hypothesis regarding the possibility to appeal against the refusal to initiate pre-trial proceedings is also examined. In the following paragraph, the specific features of judicial review of coercive measures are presented. On the basis of the case law and legal analysis, the doctoral student has elaborated their most significant features. The fourth paragraph, deals comprehensively and thoroughly with the court's control over the pre-trial detention measures.

In the fifth paragraph, the doctoral student examines judicial review of investigative actions. Examination, search and seizure, use of special intelligence means are discussed. Through comparative analysis, comparison with case law and the practice of the ECtHR, the PhD student reaches scientifically justified conclusions, presenting a systematic knowledge of the problem. Special attention is paid to the subsequent judicial review of investigative actions in the hypothesis of urgency and the peculiarities of judicial review in these cases.

The following paragraph discusses the specifics of judicial review in the pre-trial phase of the termination and suspension of criminal proceedings. It sets out the nature of this review, as well as the grounds for it from a legislative point of view on the prosecutor's acts of termination and suspension of criminal proceedings. On the basis of a thorough analysis, the view is defended that the appellate court's order under Art. 243, para. 8 of the Criminal Procedure Code to discontinue criminal proceedings or to amend the grounds for discontinuance has substantive force.

The sixth paragraph deals with judicial review of the settlement agreement in pre-trial proceedings and the next paragraph with some other cases of judicial review in pre-trial proceedings. The analysis made in this part has allowed the author to argue some original views

which are of a contributory nature and give the development an applied character. In the last paragraph some proposals for the improvement of judicial control in pre-trial proceedings are discussed.

Chapter three of the dissertation is “Judicial Review in the Trial Phase”. It contains seven sections. The focus of the scientific analysis is the judicial phase of the criminal process and the control exercised by the court.

The first paragraph, “The Nature of Judicial Review in the Trial Phase”, is devoted to revealing the nature of judicial review. The PhD student manages to argue that this control is a form of justice in the instance control and in the reopening of criminal cases, and when it is not related to the review of convictions or judgments, it constitutes an independent criminal procedural function for the protection of constitutionally regulated rights and freedoms of the participants in judicial proceedings.

Paragraph two deals with judicial review at the stage of “Referral to Court and Preparatory Actions for Trial”. In it, the author devotes substantial attention to the subject of judicial review under Article 248 para. 1, item. 3 of the Criminal Procedure Code, whether a substantial and irremediable violation of procedural rules was committed in the pre-trial proceedings. On that basis, it develops scientifically substantiated conclusions of a contributory nature.

The third paragraph, “General characteristics of judicial review in appeal and cassation proceedings” and the following paragraph deal with judicial review in appeal proceedings. The fifth paragraph is devoted to the specific features of judicial review in reviewing appellate decisions and orders. In this part of the work, scientific depth and knowledge of the issues is demonstrated, which helped the doctoral student to make well-reasoned comments and conclusions. It should be emphasized that they are not only due to the author's professional activities in his professional life as a judge, but also to his good knowledge of case law and legal theory.

The sixth paragraph focuses on the nature of cassation proceedings as a form of judicial review. A historical approach is used to reveal the development of the issue. The powers of the cassation court are examined in the light of the issues under consideration. Significant attention is paid to an examination of the issue of the substantive procedural irregularity.

Finally, the last paragraph discusses the nature and content of judicial review in criminal reopening proceedings. The functions that derive from the formal and substantive validity of a final judgment are argued. A comparative legal analysis is also used to draw out the common features of judicial review in criminal reopening proceedings and in cassation review.

In the conclusion of the dissertation, the results of the study are summarized and the conclusions of the study are systematized, as well as recommendations based on the results obtained.

3. Characteristics of the scientific and applied contributions in the dissertation work

The dissertation has scientific contributions in the field of criminal procedure, which is evident from the characterization of its content. In the abstract the doctoral candidate has indicated the scientific contributions that can be summarized in the following main points:

- The dissertation research for the first time deals in a monographic volume with the issue of judicial review in the criminal procedure of the Republic of Bulgaria.
- A thorough comparative historical legal analysis of the issue of judicial review is made.
- The nature and content of judicial review and the forms of its manifestation in the two phases of the trial are revealed.
- *De lege ferenda* proposals are made for the improvement of criminal procedure legislation.

4. Conclusion

The PhD student Veselina Yordanova Stavreva has a profound theoretical knowledge in the field of criminal procedure and proven ability for independent scientific research. The presented dissertation "Judicial Control in the Criminal Procedure of the Republic of Bulgaria" has the character of a thorough scientific research.

The presented and substantiated scientific views of the doctoral candidate leave no doubt that the dissertation is the result of serious work and personal contribution in the field of criminal procedure. The research contains thorough theoretical generalizations and scientific contributions. They meet the requirements of Art. 6 of the Development of Academic Staff in the Republic of Bulgaria Act and Art. 27 of the Regulations for its implementation.

Considering the positive evaluation of the presented dissertation and taking into account the serious professional experience of the PhD student, I strongly give my positive evaluation and recommendation to the scientific jury to vote for the acquisition by Veselina Yordanova Stavreva of the educational and scientific degree "Doctor" in the field of higher education 3. Economic, Social and Legal Sciences, professional field 3.6. Law, scientific major "Criminal Procedure".

Member of the scientific jury:

Assoc. Prof. Ivan Vidolov

city of Sofia

11.01.2024