"PAISII HILENDARSKI" UNIVERSITY OF PLOVDIV

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VESELINA YORDANOVA STAVREVA

Judicial Review in the Criminal Procedure of the Republic of Bulgaria

AUTOREFERAT

OF DISSERTATION

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I. GENERAL CHARACTERISTICS OF THE DISSERTATION

1. Relevance of the study

The large-scale socio-economic and political changes in our country after 1989 could not but affect the sphere of law. Historical experience shows that reforms at such a level inevitably influence the criminal procedure policy of the state and have an impact on the foundations of the criminal procedure.

With the adoption of the Constitution of the Republic of Bulgaria and the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, basic principles concerning the protection of the individual were incorporated in the Republic of Bulgaria, which are a prerequisite, on the one hand, for the revival of part of the content of basic institutes in the criminal procedure from before the totalitarian regime and, on the other hand, for the emergence of new legal remedies. Judicial review thus comes to the fore as a fundamental procedural guarantee of the rights of the participants in the criminal procedure, regulated by the Constitution of the Republic of Bulgaria and the Criminal Procedure Code. Despite the fact that it has been the subject of numerous scientific studies, the contemporary challenges facing society, as well as the continuous amendments to the Criminal Procedure Code, require a new modern view not only on the concept of judicial review in the criminal procedure, but also on its relationship with other legal institutes. The dissertation provides both a retrospective view of the emergence and development of judicial review and builds a picture of the contemporary vision of the institute in our criminal procedure. The research is therefore timely, topical and multifaceted. The long experience of the author of the present work on the application of judicial review in criminal proceedings enables the practical orientation of the conclusions in the form of de lege ferenda proposals and for subsequent scientific discussions on the issues addressed in the topic. This also gives a practical significance to the research.

2. Subject, aim and objectives of the research

The main subject of the research is the general theoretical presentation of judicial review as well as its manifestations in the two phases of our criminal procedure. In the dissertation a detailed analysis of the concept of control in the semantic and scientific sense is made, as well as a comparison with other similar institutes. The historical emergence and development of the judicial criminal procedure in terms of the establishment of the system of judicial review functions by the court in the international and domestic context are covered. The

main prerequisites, according to the doctoral candidate, for the existence of judicial review as a modern legal institute - the separation of powers and the right to judicial protection - are outlined. In-depth attention is paid to the nature of judicial review in the pre-trial and trial proceedings. The main achievements of the science in the country and abroad are presented and own conclusions on its content are drawn. The issue of the relationship of the judiciary and justice (criminal justice in particular) with judicial review in the criminal procedure is addressed. An attempt is made to compare them not only through scientific methods, but also by extracting the essence from the acts of a number of national and supranational courts - ECtHR, SCC, CC. In a separate paragraph the topics of the limits, forms and types of judicial review in the criminal procedure of the Republic of Bulgaria are presented. On the basis of various subject, functional, structural and other criteria, the varieties of judicial review in the pre-trial and trial phases are presented. Emphasis is laid on the importance of publicity in the criminal procedure and the possibility of its extension in the pre-trial phase in some judicial control proceedings. Based on the conclusions on the importance of judicial review in pre-trial proceedings, a proposal is made to include it among the guiding principles of the criminal procedure by creating a new legal provision - Article 17a in Chapter Two of the Criminal Procedure Code with the title "Judicial review in the pre-trial proceedings", which explicitly proclaims that the court exercises control over acts, actions and omissions of the prosecutor and investigative authorities in pre-trial proceedings in the cases and according to the procedure provided for in this Code. The subject of the conducted research also includes tracking the differences between judicial review and prosecutorial supervision. The manifestation of the judicial review in the most essential for the pre-trial phase proceedings is examined - in the appeal against the refusal to initiate pre-trial proceedings, in relation to procedural coercion measures and measures of remand, in the methods of proof, in the termination and suspension of criminal proceedings by the prosecutor, etc. On the basis of their analysis a separate section with proposals for improvement of the judicial review in the pre-trial phase is presented. After justifying the essence of control in court proceedings, the main problematic issues in the stage "Preparatory actions for hearing the case in a court session" are set out, which continue to find a heterogeneous answer, especially in case law. The dissertation also focuses on bringing out the common features and differences in the control proceedings (appeal and cassation). Peculiarities of judicial review in the reviews of decisions and orders by the appellate instance, where the legislator allowed for deviations from the action of certain principles, despite its

controlling and decisive nature, have not been overlooked. The last substantive section of the dissertation also focuses on cases in which the legal grounds for reconsideration are so substantial that they outweigh the principle of legal certainty (according to the terminology of the ECtHR) and necessitate reopening the criminal case as a means of extraordinary judicial review.

The aim of the dissertation is the complex scientific study of judicial review in the two phases of our criminal procedure, objectification of its more significant features in individual stages, as well as accentuation of the shortcomings in its legal framework at present, for which a number of proposals de lege ferenda for their elimination are given.

The main task of the research is to provide a complex picture of judicial review in criminal procedure, and to emphasize that its importance is not only theoretical, but mostly practical, as it has a number of manifestations in law enforcement in criminal cases. From the aggregate analysis of the scientific literature, as well as the case-law on specific issues of judicial review in the criminal procedure, a number of proposals for improvement of the legislation have been derived, including some of them in a separate section in the dissertation. The research also aims to fill the lack in our legal literature of a comprehensive study of judicial review in the criminal procedure in both phases of the procedure, but also as a concept, its distinction with other legal categories, differentiation of its types and ultimately its derivation as a legal principle in the CCP.

3. Methods of study

In order to achieve the tasks of the study, multiple and diverse methods were used, both legal - historical, comparative, normative, and the basic methods of formal logic (analysis, synthesis, induction and deduction). In many places in the dissertation, the methods of linguistic, logical, systematic and comparative interpretation are also applied, as well as the achievements of empirical research methods, among which especially the generalization of information.

Through a historical overview of the emergence of the evolution of judicial review, a better understanding of the reasons for its current state is achieved. The comparative law method has been used to compare the achievements, mainly of the ECtHR, in terms of judicial review with the level of development in the country and the need to reciprocate solutions that will broaden its applicability. The normative method is necessarily applied in the analysis of the legislative framework relevant to the subject of the dissertation. By means of the

deductive and inductive method, and especially critical analysis, the main procedural problems in the implementation of some forms of judicial review are distinguished, especially when the subject of review are acts of a non-judicial body (prosecutor). By extracting the achievements of the case law and its analysis, the information obtained is synthesized under various proposals de lege ferenda.

4. Volume and Structure of the Dissertation

The dissertation is prepared in accordance with the regulatory requirements and consists of a title page, a list of abbreviations used, a table of contents, an introduction, three chapters, a conclusion, a declaration of originality, and a bibliography. The dissertation has a total volume of 296 pages without the bibliographical reference, respectively 326 pages with the bibliography. Each of the chapters is divided into paragraphs, and in order to structure the presentation more clearly, some of the paragraphs have items and some of the items have their own subdivisions indicated by letters and numbers. The literature used comprises 279 sources, of which 179 are of Bulgarian authors, 78 of Russian authors and 22 of other authors (English, German, French, etc.). Footnotes total 624.

II. CONTENT OF THE DISSERTATION

Introduction

In the introduction of the dissertation the relevance of the topic of judicial review in the criminal procedure is clarified. The key role of control is emphasized, without which the other functions of governance could not be fully realized. Judicial review is seen as a fundamental procedural guarantee, regulated in the CRB and the CCP, which ensures the full realisation of the rights of participants in the criminal procedure. The necessity of conducting an in-depth modern scientific study of the concept of judicial review in the two phases of the criminal procedure, highlighting its historical roots, comparing it with other legal institutes, pointing out the types of judicial review, as well as highlighting the shortcomings in its current legal framework is expressed.

CHAPTER ONE

Nature of Judicial Review

§1. The concept of Control

In accordance with the aims of the argument, § 1 of Chapter One discusses the concept of control in semantic and doctrinal terms. Control is perceived as a particular type of review and observation activity aimed at analysing existing non-conformities, uncovering their causes, and making proposals for their elimination. This activity has been considered to be carried out in a certain legal and organizational form and appears as a special function of the governance impact on the object of governance.

§2. Historical development of judicial review

Elucidating the nature of judicial review requires its research in development. Therefore, in this paragraph, attention is directed to the history of the formation of the court, the criminal procedure and the system of control functions by the court. The achievements of Roman law, the Middle Ages, and the serious influence of canon law on criminal justice in Europe are presented. The process of the emergence and prevalence of one historical type of criminal procedure over another is traced. Emphasis in the study is placed on the influence of France on criminal procedure law, especially after the adoption of the French Code d'instruction criminelle in 1808. The development of judicial review in our country, conditioned by the prolonged period of Ottoman rule, the serious Russian influence on the country's criminal procedure policy after the Liberation, and the strict party ideology after 1944 is also traced. The post-1989 global reforms in the Eastern Bloc countries have seen a rethinking of a number of democratic institutes in our criminal procedure, including judicial review. This phenomenon has developed with significant progress after the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, which appears to be a prerequisite for the revival of part of the judicial review from before the totalitarian regime and, on the other hand, for the emergence of new legal remedies.

§3. Preconditions for the emergence of judicial control

This paragraph of Chapter One is devoted to the preconditions for the emergence of judicial review as a modern legal institute. The theory of the separation of powers and the judicial protection function of the judiciary have been cited as being of primary importance. The manifestation of Montesquieu's theory in the Tarnovo Constitution and the Constitutions of 1947, 1971, as well as in the current CRB is traced. The constitutional anchoring of the norms that realize and guarantee the fundamental rights and freedoms of the individual,

including in the field of criminal proceedings, are reflected. Insofar as in criminal proceedings the procedural coercion and the interference with the rights of the individual is the most significant, it is concluded that the mechanisms of the rule of law provide for the creation of guarantees for the rights of citizens, proclaimed in the CRB through judicial protection. Part of these guarantees are embodied in the institute of judicial review for actions and decisions of the bodies of the pre-trial proceedings (the prosecutor) and various review proceedings (including stages) against acts rendered in the course of the trial. It is also accepted that the implementation of judicial review ensures the operation of the basic principles of statehood and the criminal procedure - competition, equality of the citizens, revealing the objective truth, guaranteeing the inviolability of the person, etc.

§4. Concept and Nature of Judicial Review in the Criminal Procedure

In this section, which is essential for the subject of the study, an attempt is made to derive a scientifically grounded concept of judicial review in the criminal procedure. For this purpose, the views of prominent Bulgarian and foreign scholars who have dealt with the topic are presented. On the basis of their analysis, a definition is derived according to which judicial review is a specific multifunctional activity of the court, which is carried out in procedural forms defined by law, including justice, and represents a branch of the implementation of the complex institute of judicial protection (the human rights function of the judiciary) in criminal proceedings. This criminal procedure function in the pre-trial proceedings and in the judicial phase in cases not related to the review of verdicts/decisions, includes a set of actions regulated by law, which do not relate to the resolution of the issue of guilt and liability, is aimed at ensuring the observation of the constitutional rights and freedoms of the participants in the criminal procedure, preventing their violation, restoring unlawful and (or) unjustified violation thereof, ultimately contributes to the development of justice and the achievement of the goals of the criminal proceedings. This function is ancillary and collateral to the main function of the court in the criminal procedure - the administration of justice in criminal cases. The undisputed opinion of the author is substantiated, that in the review of the judgments/decisions of lower courts and in the reopening of criminal cases, judicial review takes place.

The features of judicial review similar to justice - legal dispute, strict procedural form, adjudication of acts of state power, observance of some of the guiding legal principles of the procedure, ensuring the protection of

constitutionally regulated rights and freedoms of individuals, mandatory referral, motivation of judicial acts, etc. are represented. The peculiarities of the manifestation of judicial review in pre-trial proceedings are reflected, which exclude its judicial nature - limitation of the oral beginning (Article 19 of the CCP), immediacy (Article 18 of the CCP), publicity (Article 20 of the CCP), adversarial nature (Article 12 of the CCP), the existence of only formal legal force (subsequent non-appealability) of these acts. The understanding is also advocated, that combining the activity of resolving criminal cases on the merits (justice) with judicial review helps to solve one of the main tasks in the criminal procedure - the protection of the rights and freedoms of citizens.

§5. Judicial power and justice - the relationship of the two concepts to judicial review

5.1. The concept of judicial power

In order to properly understand the nature of judicial review in this dissertation, it has been assumed that the starting point should be a clarification of the concept of 'judicial power'. Various scholarly theses on the content of the definition over the years are traced through comparative legal and historical analysis. It is accepted that the two approaches to the clarification of "judicial power" (organizational and functional) could not provide a sufficiently clear answer about the nature of the concept, since neither powers outside the authority to which they belong nor a state authority without inherent powers can exist. Therefore, it has been held that the concept of separation of powers should be invoked to clarify the nature of judicial power. The inclusion of the prosecutor's office in the judicial system and the investigative bodies in the judicial power (in accordance with Article 128 of the CRB) is accepted as a specificity that makes it difficult to clarify the concept of judicial power. On the basis of a regulatory analysis and synthesis of the conclusions of the decisions of the Constitutional Court, the study concludes that the judicial power in the country can be defined as an autonomous and independent state authority, acting through a system of state bodies, which, using different methods of legal protection and in accordance with the functions and specific means assigned to them by the Constitution and the laws, implement the human rights function of the state in order to ensure the rule of law and justice where the rights, freedoms or legitimate interests of anyone to whom the right of defence has been recognized are threatened or infringed.

5.2. Justice as a concept

The actual form of the implementation of judicial power is justice, which is carried out by the court. An attempt is therefore made here to derive its main characteristics. For this purpose, the main achievements of legal science and European law on the subject are presented by drawing out the essence of a number of substantive decisions of the ECtHR and the ECJ over the years. According to the doctoral candidate, justice can be considered as an activity carried out by independent state bodies (courts) purposely established by law to resolve legal disputes on matters within their competence by means of referrals from legal subjects whose rights or legitimate interests are affected, or are presumed to be affected, in which the court acts as an active arbitrator between the parties by subsuming the established facts of life under the relevant legal rule, in compliance with a specific procedural order and form regulated in detail in advance in the law, culminating in the issuance of legal acts - sentences/decisions of general binding force, which, if necessary, are enforced.

5.3. Nature of Criminal Justice

Clarification of the narrower concept of criminal justice is also under analysis, and has been held to include each of the elements justified as essential in the definition above. It is summarized that only an independent tribunal appointed in accordance with Article 9 of the Code of Criminal Procedure and Section I of Chapter 9 of the Judiciary Act, which is validly seised, is called upon under the CRB to hear disputes of a criminal nature in the manner and form provided for in the Criminal Procedure Code. The objectives of criminal justice are taken into account - finality of the dispute, issuance of a specific judicial act specified in the Code of Criminal Procedure (verdict), which enjoys substantive legal force and prevents further adjudication on the same matter (ne bis in idem).

§6. Limits, Forms and Types of Judicial Review in the Criminal Procedure of the Republic of Bulgaria

6.1. Limits of Judicial Review

The boundaries of judicial review are essential for distinguishing it from other forms of control activity, which is why the dissertation devotes appropriate attention to them. It is considered that the limits of judicial review are determined by the powers of the court. Therefore, the main powers of the court in the pre-trial and trial phase of the criminal procedure are reflected - judicial

review, decision on the merits of the issue of guilt and criminal liability, review of the legality (reasonableness during the appellate review) and fairness of the judicial acts of the lower courts, organizational and procedural powers.

6.2. Types and Forms of Judicial Review in the Criminal Procedure of the Republic of Bulgaria

In this part of the dissertation an attempt is made to identify by different criteria the types and forms of judicial review in the criminal procedure of the Republic of Bulgaria. Among the criteria should be mentioned those with regard to the phases and stages of the criminal procedure, the constitutional right, the legitimate restriction of which is reviewed by the court, according to the type of the body whose activity is subject to judicial review or the type of the reviewed act, according to the number of the instances verifying the judicial review or the holder of the affected/impaired/restricted rights and/or legitimate interests, etc.

Significant attention is paid to the preliminary, ongoing and subsequent judicial review. It is summarized that the first type of control is of a preventive nature in pre-trial proceedings and is always considered as a rule, and the subsequent - as an exception, in the presence of cumulative prerequisites - "urgent cases" and "the only possibility to collect and preserve the evidence" ("to carry out the investigation"). The view of the authors is shared, who assume that judicial review can be divided into dispositive (optional) and mandatory. The general features and peculiarities of the revision and injunctive judicial review as well as of the single and periodic judicial review are also discussed. Extensive arguments have been put forward for the de lege ferenda necessity to amend the norms in the CCP, which refer to "open" hearings, replacing the term with "public" – Art. 64, para. 3 and para. 7, Art. 65, para. 3 and 8, Art. 67, para. 3, Art. 70, para. 2, Art. 270, para. 2, Art. 424, para. 4 of the CCP, etc. The division of judicial review into direct and indirect, criticized by a part of the theory, is supported with arguments and the practical application of indirect control over the evidence, especially in the pre-trial phase of the procedure, is highlighted.

§7. Judicial review as a legal principle

This paragraph presents the author's view that judicial review in pre-trial proceedings, given its characteristics, can and should be considered as a fundamental principle in criminal proceedings. The conclusion of some scholars that not all the basic legal principles of the criminal procedure are exhaustively listed by the legislator in Chapter Two of the CCP is shared. The creation of a

new legal norm was proposed de lege ferenda - Article 17a in Chapter Two of the Code of Criminal Procedure with the title "Judicial review in pre-trial proceedings" and with the content "The court shall exercise control over acts, actions and omissions of the prosecutor and investigative authorities in pre-trial proceedings in the cases and according to the procedure provided for in this Code". It has been accepted that such a provision would cover the control exercised in practice by the court in pre-trial proceedings, both over the acts of the investigating authorities and the prosecutor and possibly unlawful omissions. This would, in the author's view, ignore the independent severed existence of Article 27, para. 2 of the CPC.

§8. Distinction between control and supervisory activities.

8.1. Distinction between control and supervisory activities

This paragraph is divided into two subsections, the first of which presents the main similarities and differences between supervision and control as universal means of ensuring legality in the system of state governance. Scientifically sound opinions on the nature of supervision are set out. After their analysis, it is summarized that supervision can be considered as a law enforcement governance activity aimed at ensuring compliance with the law, discontinuation and suppression of established offences (through state coercive measures) by influencing offenders who are not always in a relationship of subordination with the supervisory authority, aiming to guarantee the rights and freedoms of citizens, society and the state. Attention is also paid to the types of supervision.

8.2. Differences between Judicial Review and Prosecutorial Supervision in the Criminal Procedure of the Republic of Bulgaria

Of particular interest to the study is prosecutorial supervision, especially with a view to identifying differences with judicial review. The historical origins of prosecutorial supervision as a legal institute are traced from revolutionary France in the 14th century to its contemporary dimensions in Europe and in the country. The main functions of the Public Prosecutor's Office under the CRB and the CCP at present and under the previous Constitutions of the country are examined. Attention is paid to the diversity of manifestations of prosecutorial supervision in different spheres of public and social life. Similarities have been noted between the purpose of judicial review and prosecutorial supervision "outside the criminal justice system". The opinion of the doctoral candidate is reflected that the prosecutorial supervision can be considered as a specific type

of state activity carried out by the prosecutor’s office in order to ensure the rule of law, the unity and the strengthening of legality, the protection of human and civil rights and freedoms, as well as the protection of the legitimate interests of society and the state. In conclusion, it is held that the legislator has provided for a reasonable distribution of powers between the court and the prosecution, which allows for the combining of their advantages, allowing each of them to independently perform the tasks set before them with their own means and methods, without duplicating the other and leading to inadmissible mixing of procedural functions in the criminal procedure.

CHAPTER TWO
Judicial review in pre-trial proceedings

§1. General characteristics of judicial review in pre-trial proceedings

In § 1 of Chapter Two, the general features characterizing judicial review in the first phase of the procedure are brought out, its main objectives are reflected - protection of the rights and legitimate interests of all participants in the criminal procedure, ensuring the legality of the preliminary phase of the proceedings and of the evidence incorporated in it. Judicial review in this phase is also considered as a guarantee for compliance with the principle of resolving cases within a reasonable time period. The legal norms of the CRB, the CCP and international acts are highlighted, which, according to the doctoral candidate, are fundamental for the realization of the judicial power in the form of judicial review of the pre-trial part of our criminal procedure.

§2. Judicial review in the initiation of pre-trial proceedings

In this paragraph, the principle points in the implementation of judicial review at the initiation of pre-trial proceedings are discussed. The necessity of regulating the possibility of judicial review of the prosecutor's decree to initiate pre-trial proceedings is excluded. Given the possibility of pre-trial proceedings being initiated by an informal act, the main achievements in the case law of the ECtHR and the ECJ regarding the moment at which a person is considered as accused within the meaning of the CPHRFF have been extracted. Innovations in the CCP with State Gazette No. 48 of 02.06.2023 regarding the possibility to appeal against the refusal to initiate pre-trial proceedings are discussed. A place is also devoted to the possible problems that will be put on the agenda, because of the object of the court's review - extra-procedural activity, not allowing the prosecutor’s competence to be affected and, ultimately, whether it is appropriate

de lege ferenda to specify in Article 213, para. 6 of the CCP that in case of revocation of the decree for refusal to initiate pre-trial proceedings, the court returns the file to another prosecutor with binding instructions on the application of the law.

§3. Judicial review over coercive measures in pre-trial proceedings

The paragraph presents the most significant features of judicial review in each of the coercive measures.

A. In the case of "Temporary Removal of the Accused from Office" (Article 69 of the CCP), the need for judicial review is brought out in order to assess the priority of its preventive and protective nature over the right to work of the accused, respectively the restriction of their income, indirectly affecting their reputation and their future professional and career development.

B. The judicial review in the procedural coercive measure "Prohibition to leave the boundaries of the Republic of Bulgaria" (Article 68 of the CCP) is examined in relation to the assessments of proportionality, relative to the conduct of the accused person, which constitutes a genuine, real and sufficiently serious threat affecting fundamental interests of society.

C. The introduction of the requirements of Directive 2012/29/EU has led to the need to extend the scope of the protection of victims of crimes incorporated in the measure of procedural coercion under Article 67 of the CCP. The necessity to apply such measures for the protection of the victim is justified which, on the one hand, guarantee the safety of the victim until the conclusion of the criminal proceedings and, on the other hand, do not exceed the proportionally necessary restriction of the right of movement of the accused.

D. With the serious growth of crimes under Chapter Eleven, Section II of the Special Part of the Criminal Code ("Transport and Communications Crimes"), the introduction in 2016 of Article 69a of the CCP - "Temporary Withdrawal of the Motor Vehicle Driving Licence" is justified. The judicial review in this measure of procedural coercion is accepted to follow not only from the gravity of the crime for which the accused is held responsible. The need to assess the nature and type of the committed violations of the Road Traffic Act over time by the accused, the establishment or not of a persistent tendency to disregard the established rules regulating traffic, thereby endangering the life and health of other citizens until the conclusion of criminal proceedings is taken into account.

E. Judicial review is also accepted as a guarantee of legality and reasonableness in the case of the procedural coercion measure "Placement of the

accused party in a mental health institution for examination purposes" (Article 70 of the CCP). The ECtHR standards for placement of the accused party in a mental health institution for examination purposes are presented in summary.

F. The author has adopted a view of a similar legal nature and purpose of the judicial review in the measures for securing the fine, confiscation and forfeiture of property in favour of the State (Article 72 of the CCP), of the civil action (Article 73 of the CCP) and of the costs incurred in the case (Article 73a of the CCP). The necessity of the review of a number of circumstances by the court, regulated not only in the CCP but also in the Code of Civil Procedure, as derived from case-law, is described.

As a result of the analysis and enforcement of the norms, numerous de lege ferenda proposals have been made.

3.1. Judicial Review of the Detention in the criminal procedure

3.1.1. Judicial Review of the Detention by the Prosecutor under Article 64, para. 2 of the CCP

In the first paragraph of § 4 of the research the content and purposes of the detention of the accused by the prosecutor under Article 64, para. 2 of the CCP are discussed in detail. It is affirmed that judicial review of the pretrial detention by the prosecutor to bring the accused before the court is derived through the case-law of the Strasbourg Court. According to the author, the possible hypotheses for non-judicial detention are related to the behaviour of the accused or objective reasons – to transportation or the technology of detention itself, which make it objectively impossible to immediately submit a request for the application of a remand measure. The thesis is substantiated, that the review of the 72-hour detention shall be carried out within one proceeding together with the request for the application of a measure of remand by the court.

3.1.2. Judicial Review of the measure of remand “Remand in Custody”

Judicial review in the application of the measure of remand “Remand in Custody” is considered as a form of basic prior judicial review, in contrast to the proceedings to review its effect, where the review is subsequent. This part of the dissertation sets out the basic standards for the implementation of judicial review in measures of remand, in particular the most severe of them "Remand in Custody”/"House arrest" according to the case-law of the ECtHR. The leading role of "justified suspicion" ("reasonable suspicion") according to the

terminology of Article 5, item 1 b. “c” of the CPHRFF is noted. Among the most important additional standards of lawfulness in the selection and/or continuation of the measure of remand "Remand in Custody" are: the risk of deviation from justice; the risk that, if released, the defendant may obstruct the case; the risk of re-offending; the risk of absconding; the standard of insufficiency - the defendant's lack of permanent residence and employment and prior criminal record in making a decision on "Remand in Custody"; the standard of substantiation of the claim that the defendant may influence witnesses, destroy evidence; the right of every accused person to be effectively defended by counsel appointed by the authorities, if necessary; the standard for assessing the accused person’s state of health; the need for judges to state publicly in their decisions why all available alternatives are not sufficient to ensure that the accused will appear in court and refrain from repeating offences or interfering with the investigation, the standard for the reasonableness of judicial acts, with which the measure of remand “Remand in Custody” is imposed, etc.

3.2. Judicial review of the remaining measures of remand in the pre-trial proceedings

In the present paragraph the author has briefly presented the most significant moments of the manifestation of judicial review in the case of the remaining two measures of remand - "Bail" and "Signed Promise of Appearance". The positive obligations of the court in carrying out judicial review in the case of the measure of remand "Bail" are reflected. By comparing the provisions of Article 4 § 1 of Directive 2004/38/EC, which grants EU citizens the right to free movement and residence within the territory of the EU Member States, Article 35 para. 1, sent. 2 of the CRB and Article 6, item 1 of the CPHRFF, the de lege ferenda necessity of extending the judicial review also over the measure of remand "Signed Promise of Appearance" is justified.

§4. Judicial review of investigative actions

The paragraph outlines the peculiarities of the judicial review in coercive (search, seizure, examination, etc.) and secret (special intelligence means) means of proof. The reasons for its introduction - immediate securing of traces after the act, reliability of the information obtained in a specific form, achieving the examination of cases within a reasonable time period, etc. - are outlined.

The criteria justifying the urgency to carry out the investigative actions are reflected, as well as the mandatory scope of the court's discretion in subsequent

judicial review of the search and/or seizure, etc. The view has been taken that judicial review has an impact on the legality and volume of evidence collected in pre-trial proceedings. The possibility of a more active participation of the defence counsel and the accused in certain investigative actions is justified. In this part of the study, the factors why judicial review of the special intelligence means has the most serious scope are brought out. Numerous de lege ferenda proposals have been made to improve the content of the norms governing judicial review here.

§5. Judicial review of the termination and suspension of pre-trial proceedings

This paragraph of the work deals with the legal nature and peculiarities of the judicial review in the pre-trial phase in the termination and suspension of criminal proceedings, the practical problems of its application, as well as the legislative possibilities for improvement. The most important reasons, according to the author, for the introduction of the judicial review of the prosecutor's acts for termination/suspension of the criminal proceedings are presented- the right of access to justice, the non-judicial nature of the authority in charge of the pre-trial phase of the procedure, the closed nature of the pre-trial proceedings, the principle of hearing cases in reasonable time periods (Article 22 of the CCP), fairness, etc. The view of part of the theory and case-law that in the exercise of judicial review the court may return the case to the prosecutor if evidence has been gathered that the accused has committed an offence other than that for which the criminal proceedings have been discontinued is supported. It is accepted that this would protect the interests of the victim of the crime, of society as a whole and would be in line with the basic principles of criminal procedure. The principle of review and the court's powers of review and revocation in these proceedings justify, according to the author, the limits of the judicial review - procedural legality of the investigation; analysis of the entire body of evidence on the basis of which the factual situation was established; assessment of the substantive legality of the prosecutor's decree. The opinion is supported that the decision of the appellate court under Article 243, para. 8 of the CCP confirming the order of the first instance concluding that the prosecutor's decision to discontinue criminal proceedings is lawful and justified or amending the grounds for discontinuance also has substantive legal force.

§6. Judicial Review of the Pre-Trial Settlement Agreement

The said proceedings have also been examined as a legally admissible form of judicial review of the legal possibility, regulated in the CCP, to resolve the case in a manner different from that provided for in the general rules (by passing a sentence). It is considered that in its review of the agreement, the court should take into account certain circumstances - whether a procedural violation of the category of the essential and remediable, which restricts the rights of the accused, the victim, was committed in the pre-trial proceedings; whether the persons to whom the law entrusts the mandate to conclude the agreement have complied with all the legal requirements, whether the prosecutor and the defense counsel (the parties in the trial phase) have taken into account in the agreement the entire set of issues in Art. 381, para. 5 of the CCP, whether the accused/defendant has voluntarily consented to the resolution of the criminal proceedings by agreement, whether the confession is not self-serving, etc.

§7. Other cases of judicial review in pre-trial proceedings

A. This covers the cases of enabling a witness, an expert, a witness person, a summoner, an official to appeal against a fine in pre-trial proceedings before the court (Art. 120, para. 5, Art. 126, para. 5, Art. 133, para. 3, Art. 137, para. 3, Art. 149 para. 6, Art. 182 para. 3 of the CCP) through a subsequent single-instance judicial review carried out in closed session by a single judge.

B. As a specific hypothesis of judicial review in the pre-trial phase, the power of the court to rule on the prosecutor's refusal to return to the right holders the objects seized as material evidence before the completion of the criminal proceedings (under Article 111, para. 3 of the CCP) is also accepted. A legislative proposal has been made to provide for the possibility for such persons to request directly from the court the return of material evidence in pre-trial proceedings.

C. Emphasis is also placed on the proceedings under Article 368 and Article 369 of the CCP - acceleration of pre-trial proceedings. It has been held that the court does not have the power to discuss the substance of the procedural-investigative actions carried out by the pre-trial investigation bodies and the acts drawn up by them, but rules on the factual and legal complexity of the case, the delays committed in the activities of the pre-trial investigation bodies and the reasons for that (Article 369, para. 1 of the CCP). Among the criteria to be considered by the court in order to check whether the time limit is reasonable, apart from the conduct of the accused person (their counsel), the doctoral candidate has held that the conduct of the victim, their heirs should also be taken into account. The paragraph makes two significant proposals de lege

ferenda. The first one is related to the legislative regulation of the hypotheses in which the victims/their heirs and the injured legal person may request the acceleration of the pre-trial proceedings despite the absence of an accused. The second one is to provide for a specific power for the court to be able, under specific conditions (after a referral with a request for violation of the reasonable time limit, granting a limitation period for taking certain actions, collecting of evidence or drawing up of an act by the prosecutor), to rule with a final decision on the merits of the case, either by terminating it or giving the prosecutor the opportunity to prepare an indictment/decree with a proposal for release from criminal liability, an agreement to resolve the case.

§8. Proposals for improvement of judicial review in pre-trial proceedings

The final paragraph of Chapter Two seeks to set out proposals for more effective implementation of judicial review. It has been proposed to create an institute of a judge who would be responsible for the control of the pre-trial proceedings or for a deliberate separation in the criminal divisions of the larger courts of judges who exercise control in the pre-trial phase of the procedure and those who administer justice, or for their exchange during a certain period of time. It is reasoned that in this way a more thorough examination of the grounds and conditions for carrying out actions during the preliminary investigation would be made, independence and impartiality would be guaranteed, as the judge would not have any relation to the pre-trial proceedings. It is acknowledged that the proposal would contribute to a more serious adequacy of the grounds provided in the pre-trial proceedings acts, for example in the measures of remand ("reasonable suspicion"), especially after the amendment of Article 270, para. 2 of the CCP. Arguments are also made as to why the proposal would not lead to logistical problems after the closure of the specialised courts and the reform needed by the military courts and the consolidation on a regional level.

CHAPTER THREE

Judicial review in the trial phase

§1. Nature of judicial review in court proceedings

In this first section of Chapter Three, attention is paid to the nature of judicial review in the trial phase - whether it constitutes a judicial activity or not.

It is reasoned that judicial review at the preliminary hearing, in the appeal/cassation proceedings and in the reopening of criminal cases has its own life and forms of manifestation. In some cases, judicial review is manifested in the form of justice - in the instance review and in the reopening of criminal cases, and in other cases - not related to the review of verdicts/decisions - as an independent criminal procedure function of protection (restoration) of the constitutionally regulated rights and freedoms of the participants in the criminal proceedings (i.e. an expression of the human rights function of the judiciary). Cases where judicial review manifests itself through the administration of justice concern the resolution of the most important issue for the trial - the guilt and criminal responsibility of a person. The second form is manifested in the preliminary hearing, in the appeal and cassation proceedings, in the proceedings before the appellate instance for review of the rulings and orders and in the proceedings for reopening criminal cases. It is reflected in a number of statutory provisions (Article 248, para. 5, item 1, in conjunction with Article 249, para. 3, Art. 270, para. 4, Art. 271, para. 11, sent. 2, Art. 289, para. 4, Art. 290, para. 2, Art. 306, para. 3, in conjunction with para. 1, item 4, Art. 377, para. 2, Art. 323, para. 2, Art. 341, Art. 395d, para. 3 of the CCP, etc.). This second function is ancillary and collateral to the main function of the court in the criminal procedure - the administration of justice in criminal cases.

§2. Judicial Review at the "Referral to court and preparatory actions for the examination of the case in a court hearing" stage

In § 2 of Chapter Three the control exercised by the court at this stage, often referred to as the control stage is analyzed. Guidelines are given for distinguishing the features of judicial review here. The activity of the court at the stage "Referral to court and preparatory actions for the examination of the case in a court hearing" is also considered as a means of exercising judicial review of the activity of the bodies of the pre-trial proceedings. In this part of the study, the most significant place is devoted to the main issue, according to the author, subject to judicial review, laid down by the legislator in Art. 248, para. 1, item 3 of the CCP - whether a substantial and remediable violation of the procedural rules was committed during the pre-trial proceedings. By summarizing and synthesizing of the case-law on the subject, it has been accepted that the courts mainly issue acts by which they return the cases from the preliminary hearing to the pre-trial phase due to inconsistency of the indictment with the statutory provisions of Article 246, para. 2 of the CCP. The author has substantiated the opinion that at this stage the initial internal

assessment of the evidence available and collected in the pre-trial proceedings is made by the court - in view of the possibility of having to rule on requests made by the parties, as well as when there are grounds for examining the case in accordance with Chapter 27, Chapter 28 and Chapter 29 of the CCP. In conclusion, it is considered that the preliminary hearing requires an exact judicial review not only of the prerequisites for the application of a measure of remand, for example (Article 56, para. 1 of the CCP), but also of the circumstances set out in Article 56, para. 3 of the CCP, in compliance with the objectives under Article 57 of the f.c. Also noted are the main guidelines of the judicial review in the event of obvious factual errors in the indictment - Article 248a of the CCP.

§3. General characteristics of judicial review in appeal and cassation proceedings

This part of the study provides an overview of the appellate and cassation appeal model in the country, revealing it as a complex system of judicial review. It is accepted that in addition to the elimination of errors, the control in appeal and cassation proceedings has other objectives - uniformity of case law, improvement of the competence of magistrates, quality of judicial acts and ultimately - confidence in the judicial system. On the basis of the analysis of the features characteristic of the appeal/cassation proceedings, it is considered that the judicial review has a two-sided internal information nature for the judiciary as well as an external information nature in relation to the other two authorities. The common features of the two proceedings are summarized, including - review of sentences/judgments that have not entered into force; referral to the court with an appeal/protest within an identical time limit; the power of the prosecutor to lodge a protest both in the interest of the prosecution and in the interest of the defendant, the right of the defendant to appeal against the sentence/judgment in all its parts, including only as to the motives and grounds for his acquittal; the right of the parties to receive copies of the appeal/protest; to make additions/objections; the possibility of withdrawing the appellate and cassation appeal; the binding nature of the instructions of the appellate/cassation instance when referring the case back for retrial; the prohibition to aggravate the position of the defendant (reformatio in pejus), etc.

§4. Appeal proceedings as a form of judicial review in criminal cases

Judicial review in appellate proceedings is considered as a form of procedural review of judicial acts. It is argued that the judicial review in these

proceedings has a dual legal nature, since the court of appeal carries out a judicial activity - a review of the correctness (legality, reasonableness and fairness) of the first instance act, which can also be considered as a judicial review. The main features of the appeal proceedings - the so-called "suspensive effect", the requirement of a proper appeal/protest lodged within certain time limits, the possibility of reviewing the factual circumstances of the case as well as of reassessing (re-evaluating) the evidence according to such rules and in compliance with such guarantees that are also in force in the court of first instance, the review of the criminal case in respect of other persons who have not lodged an appeal and in its entirety - are set out in a synthesized form. In the final part of the section, basic guidelines for conducting quality appellate review, according to the author, are provided.

§5. Peculiarities of judicial review in the review of decisions and orders by the appellate instance

In this section, the peculiarities of the judicial review of the decisions and orders by the appellate instance are presented in a synthesized form. This type of review is considered as an ongoing review, which concerns a limited type of acts explicitly specified by the legislator, in the absence of a mandatory suspensive and devolutive effect. The specificity of this review procedure is assumed to be related to the operative (rapid) restoration of the rights of the persons concerned, and thus the removal of obstacles to the examination of cases within a reasonable time limit. Attention is also drawn to the peculiarities related to limiting the effect of other principles in the criminal procedure - publicity, competition. Manifest forms of judicial review in different proceedings are examined.

§6. Nature of cassation proceedings as a form of judicial review

In this part of the study, the historical roots and role of the cassation proceedings are traced in general terms. The essential moments in the judicial review functions of the court of cassation are presented - competence of the highest judicial instance in the country, limited subject matter of the cassation appeal. Emphasis is placed on the need for the infringement, which constitutes a ground for cassation, to be 'substantial'. It is considered justified that the cassation review also covers basic violations under the CPHRFF or other international acts, part of our national law and the violation of fundamental principles in the criminal procedure. The essential peculiarity of the judicial review in cassation is noted, that when deciding the case on the merits, the SCC

does so on the basis of the factual findings of another, lower court and on the basis of the evidence already collected. Arguments have been developed that in certain hypotheses the ruling of the higher court on the factual circumstances is inevitable, being carried out in an analytical manner. The powers of the SCC in cassation proceedings in the context of judicial review are briefly presented. Their specificity is reflected when the contested judicial act is revoked and the case is returned to the first or appellate instance for a new examination, as well as the legal nature of the mandatory instructions given by the SCC.

§7. Nature and Content of Judicial Review in Proceedings for Reopening Criminal Cases

In the dissertation, a place is also devoted on the nature and content of judicial review in the proceedings for reopening criminal cases. The functions that derive from the formal and material legal force of a final judgment are presented. By means of a comparative analysis, the common features of judicial review in the proceedings for reopening of criminal cases and in the cassation review have also been brought out, due to their control and revocation nature - the limited type of acts subject to review in both proceedings; the identity of some of the grounds in both proceedings; the applicability in the proceedings on reopening of criminal cases of the cassation form of hearing the cases, etc. The latter is related not only to the subsidiary manner of application of the rules for cassation proceedings in the case under Art. 33 of the CCP, but also with the almost complete identity of the powers of the SCC and the court on reopening (see Article 354, para.1, items 2-5 and Article 425, para. 1 of the CCP); the absence of a judicial inquiry in both proceedings; the limitation of the review to the grounds for cassation review/reopening of criminal cases raised by the parties; the binding nature of the instructions of the SCC/court on reopening of the criminal case; the applicability of the rule of reformation in pejus in some cases, etc. The distinction between the grounds for reopening cases is made on the basis of the interpretation given in Article 4, § 2 of Protocol No. 7 to the CPHRFF.

Conclusion

In the conclusion, the approach used by the author to achieve originality and contribution to science is outlined - combining the multidisciplinary theoretical study of judicial review with the reflecting of aspects of its application in the case-law in criminal cases. The fundamental importance of judicial review for the criminal procedure activity under the CCP of the

Republic of Bulgaria is substantiated, confirming the necessity of its inclusion among the guiding principles of criminal procedure. On the basis of the analysis and the conclusions drawn in the scientific study on judicial review, some de lege ferenda proposals for its improvement have been made.

III. CONTRIBUTIONS OF THE DISSERTATION

The dissertation traces the main points concerning the nature and content of judicial review from a theoretical perspective. An attempt is made to derive generalizing legal categories, to compare and distinguish them according to different criteria from each other. On the basis of the author's practical experience, a number of conclusions have been drawn about judicial review, dictated by its specific manifestations in the judicial and pre-trial phase of the procedure, which can also be considered as scientific and applied contributions.

Among the most important I find that the following can be highlighted:

1. Historically, the emergence and development of judicial review from antiquity to the present day, and above all, the achievements of Roman law, English jurisprudence, canon law, the Code d'instruction criminelle of 1808 that have influenced these processes is traced. Attention is also paid to the situation in the country, especially after the adoption of the CRB and the ratification of the CPHRFF.

2. After a thorough historical, comparative and normative analysis the concept of judicial review in criminal proceedings is substantiated. The essence of judicial review has been clarified, and it has been accepted that the studied institute finds expression in independent deliberate proceedings, enshrined in the legislation within the pre-trial and trial phase.

3. The dissertation analyses the fundamental preconditions, according to the author, for the emergence of judicial review as a modern legal institute - the theory of the separation of powers and the judicial protection function of the judiciary.

4. On the basis of the analysis of theoretical works of eminent scholars, through a synthesis of the case-law, as well as of decisions of the CC, concepts of judicial power, justice, criminal justice and prosecutorial supervision have been derived, which, in the opinion of the dissertation author, most plausibly convey their essence and characteristic features and stand in a primary relationship with the judicial review under the CCP.

5. The general features and particularities of justice and judicial review are set out in detail. The relationship between them and the impossibility of

elaborating one concept in detail without knowing the content and characteristics of the other are reflected.

6. The limits of judicial review, which distinguish it from the other forms of control activity, are defined. A number of forms and types of judicial review are presented on the basis of various criteria. The serious practical application, according to the author, of the indirect judicial review of the evidence, especially in the pre-trial phase of the criminal procedure, is outlined. De lege ferenda proposals for legislative improvements are also made - specification in Art. 61, para. 3 of the CCP and Art. 65, para. 3 of the CCP that the ruling shall be made by a single judge.

7. Through a normative, linguistic and comparative analysis, greater legal precision of the term "public" instead of "open" hearings is derived and the need for its replacement in the CCP. It is also argued that when conducting judicial review in the pre-trial phase, where permissible, the principle of publicity shall not be unreasonably limited, but on the contrary. With a view to extending competition, it is justified de lege ferenda that the content of Article 12, para. 1 of the CCP should be supplemented, adding to the said provision sent. 2 with content "In the cases provided for by law, pre-trial proceedings shall also be adversarial".

8. It has been proposed de lege ferenda to replace the words "subject to" or "are subject to", which incorrectly reflect the dispositive judicial review, with "may" or "they may", (Art. 64, para. 6, Art. 65, para. 7, Art. 68, para. 4 and para. 7, Art. 69a, para. 7, Art. 70 para. 3, Art. 149 para. 7, art. 270, para. 4, art. 290, para. 2, art. 309, para. 6, art. 323, para. 2, art. 351, para. 6 of the CCP, etc.).

9. The thesis that judicial review in the pre-trial phase of criminal proceedings, given its nature and importance, shall be considered as a fundamental principle is substantiated. It has been proposed de lege ferenda to adopt Article 17a in Chapter Two of the CCP with the title: 'Judicial review in pre-trial proceedings' with the content: 'The court shall exercise control over acts, actions and omissions of the prosecutor and investigating authorities in pre-trial proceedings in the cases and according to the procedure provided for in this Code'.

10. A separate paragraph defines the common features and the principal differences between the control and supervisory activities as means of ensuring legality. The dissertation devotes a special place to prosecutorial supervision, tracing its historical development. A thorough comparative analysis is made with judicial review, concluding that the two activities are mutually reinforcing and have a parallel but independent existence. It is proposed de lege ferenda to

the legislator to provide for the obligation of the prosecutor to also give reasons for his requests under Art. 64, para. 1, Art. 69, para. 2, Art. 70, para. 1, art. 72, art. 73, art. 73a, art. 158, para. 3 and 4, Art. 161 para. 1 and 2, art. 165, para. 2 of the CCP similar to those under art. 123a, para. 3, Art. 159a, para. 3, Art. 165 para. 3, Art. 234, para. 4, Art. 242, para. 5 of the CCP.

11. The extensive attention paid to judicial review in pre-trial proceedings is aimed at justifying the idea of creating an institute of a judge who would be responsible for the control of the pre-trial proceedings or for a deliberate separation in the criminal divisions of the larger courts of judges who exercise control in the pre-trial phase of the procedure and those who administer justice, or for their exchange during a certain period of time

12. As a contributory point in the work the detailed examination of the judicial review of the decrees for refusal to initiate pre-trial proceedings can be pointed out. A number of problematic issues are highlighted and guidelines for their resolving are reflected upon.

13. The essential features of the judicial review of each of the procedural coercion measures are presented in analytical form, highlighting the reasons and conditions that mainly the ECtHR case-law has introduced to ensure the necessity of their application. A number of de lege ferenda proposals have also been made - the jurors in the proceedings under Art. 70, para. 1 of the CCP must be with a medical education or psychologists, providing to the judge upon approval of protocols of performed investigative actions under conditions of urgency (Art. 158, para. 4, Art. 161, para. 2, Art. 164, para. 3 and Art. 165, para. 3 of the CCP), of all materials on the pre-trial proceedings etc.

14. The view of part of the case-law and the theory that the necessity to detain the accused in order to bring them to court (Art. 64, para.2 of the CCP) cannot be interpreted expansively is reasonably supported. Therefore the need de lege ferenda of reducing the period of non-judicial detention from 72 hours to 48 hours is shared. Proposals have been made that the ruling on the legality of the detention under Art. 64, para. 2 of the CCP should be within the framework of the proceedings under Art. 64, para.1 et seq. of the CCP, as well as to supplement Art. 2, para. 1, item 1 of the Law on the Liability of the State and Municipalities for Damages to include detention on the basis of Art. 64, para. 2 of the CCP by a public prosecutor.

15. In the dissertation the main standards according to the ECtHR practice for a justified and lawful ruling of the court on the remand measure "Remand in custody"/"House arrest" are outlined.

16. The positive obligations of the court in exercising review of the measure of remand "Bail" are limited. Additional arguments are put forward in support of the theory and part of the case-law on judicial review also of the pre-trial detention measure "Signed Promise of Appearance".

17. In a separate section, the main reasons for the introduction of judicial review of investigative actions, which infringe to the most serious degree the inviolability of the human person, the home, the secrecy of correspondence, etc. are presented. As a result of the analysis of the legal framework, specific proposals de lege ferenda have been made - the introduction of a 3-day or 7-day time limit for appealing against the prosecutor's refusal under Article 68, para. 4 and the decree under Article 69a, para. 3 of the CCP; supplementing of Art. 67, para. 1 of the CCP in the direction that "The public prosecutor shall immediately submit the proposal after having established grounds for applying of protective measures to the victim; to Article 159a, para. 4 of the CCP, that the ruling of the relevant court of first instance on the request of the supervising public prosecutor in the pre-trial proceedings be immediate, similar to Art. 61, para. 3, art. 64, para. 3, art. 67, para. 3 of the CCP. The opinion of part of the scientific community and case-law on the necessity to approve the inspection record in the cases where the pre-trial proceedings authorities carry out an inspection of premises and seize evidence has been confirmed.

18. The factors which, according to the author, justify the urgency in the carrying out of the investigative actions and respectively subsequent judicial review are outlined. The thesis is advocated that despite the closed nature of the pre-trial proceedings, the investigating authorities and the prosecutor should ensure the possibility of active participation, if desired, of a defence counsel or an accused person in the carrying out of investigative actions. The circumstances from which the necessity follows of carrying out several types of judicial review of special intelligence means are reflected in detail.

19. Summarized are the grounds derived from theory and case-law for the introduction of the judicial control procedures under Art. 243, para. 5 and Art. 244, para. 5 of the CCP. The case-law that the termination of the criminal proceedings will be lawful only if, in the course of the investigation, no evidence of the commission of another publicly prosecuted offence has been gathered and/or the court's instructions for gathering evidence excluding the constitutionality of another criminal offence have been complied with is supported with arguments. The limits of judicial review, according to the author of the dissertation, of the prosecutor's decree to terminate/suspend the criminal proceedings are distinguished. It is proposed de lege ferenda to hold a public

hearing in the proceedings under Art. 243, para. 5 of the CCP before the first instance, the ruling of the court should be within 14 days, except in cases with factual and legal complexity, exchange of papers, similar to the appeal/cassation proceedings.

20. In a separate paragraph, attention is paid to the extension of the cases of judicial review in pre-trial proceedings in relation to sanctions imposed on participants in the criminal proceedings - witness, expert, witness person, summoner, official (Art. 120, para. 5, Art. 126, para. 5, Art. 133, para. 3, Art. 137, par. 3, Art. 149 para. 6, Art. 182 para. 3 of the CCP). Consideration has been given de lege ferenda to the proposals that the amount of the fines provided for all participants in the criminal procedure be uniform, and in the cases under Art. 111 of the CCP to provide for the possibility of those entitled to request directly from the court the return of material evidence in the pre-trial proceedings, which has been confiscated from them.

21. The author's understanding of the necessity to improve the judicial review in the procedure of acceleration of the pre-trial proceedings is expressed. Arguments have been put forward for giving victims/their heirs and the aggrieved legal person the legal possibility to also make a request for acceleration of the pre-trial proceedings in the absence of an accused. It is also considered reasonable that the court may (after referral with a motion for violation of the reasonable time limit, for granting a limitation period for taking certain actions, collecting evidence or drawing up of an act by the prosecutor) issue a final decision on the merits of the case, terminating it or giving the prosecutor the opportunity to prepare an indictment/decree with a proposal for exemption from criminal liability, an agreement to resolve the case.

22. A general description of the judicial review in the central phase of the procedure and its manifestations in the different stages has been made. The objectives, the nature and most essential powers in the implementation of judicial review at the stage "Preparatory actions for the examination of the case in a court session" are outlined. An opinion de lege ferenda is supported that Art. 258 para. 1 of the CCP be amended, providing that the case shall be examined by the same panel of the court from the commencement of the preliminary hearing until the conclusion of the court hearing.

23. In a synthesized form are presented the specifics of the appeal, related to its complex legal nature, with the parallel existence, according to the author, of controlling and judicial elements. The main characteristics and objectives of the appellate judicial review are presented in an analytical manner. A contributing point in this part of the study is the derivation of guarantees for the

implementation of quality appellate review. In a separate paragraph the specifics of judicial review when reviewing the decisions and orders by the appellate instance are described, which are based on its current nature, the legally defined type of acts that it covers, and the limitation of the effect of certain principles in its implementation. It has been proposed de lege ferenda that the revocation of the decision/order under Art. 344, sent. 1 of the CCP also be implemented in a "public hearing".

24. The main manifestations of the judicial review in the cassation proceedings are examined, emphasizing its importance. A place in the dissertation is devoted to the essential nature of the violations so that they are covered by the cassation grounds under Art. 348, para. 1 of the CCP. The opinion of some of the authors who have worked on the topic of extending the cassation review to the basic violations under the CPHRFF or other international acts, as well as to fundamental principles in the criminal procedure, is supported. It is accepted as legally valid de lege ferenda to use both concepts - appeal/protest, respectively complaint/protest (see e.g. Art. 349 – Art. 351 of the CCP) or the universal "contestation" as the verdict/decision can also be protested.

25. The operation of judicial review has also been considered in relation to the issues it raises in the proceedings to reopen criminal cases. Arguments have been put forward for the need for violations of fundamental procedural and substantive legal norms to be of a fundamental nature in order to prevail over the legal certainty of the judicial acts that have entered into force (sentences and decisions). The common characteristics of the two proceedings - the cassation and the reopening of criminal cases, given their review and revocation nature, are underlined once again.

IV. LIST OF PUBLICATIONS ON THE DISSERTATION TOPIC

1. Basic Standards for Judicial Review of the Remand Measure “Remand in Custody” , e-journal VFU, Varna Free University "Chernorizets Hrabar", ISSN 13-7514, issue 18/2022, pp. 1396-1410, available at https://ejournal.vfu.bg.
2. The Judicial Review in the Initiation of Pre-Trial Proceedings. Law, Policy, Administration, Southwestern University "Neofit Rilski", ISSN 2367-4601, vol. 10, issue 1/2023, pp. 63-73, available at https://lpajournal.swu.bg/wp-content/uploads/2023/04/Veselina-Stavreva-BG.pdf.
3. Main Differences Between Judicial Review and Prosecutorial Supervision in the Criminal Procedure of the Republic of Bulgaria. Legal Collection, Scientific Conference "Law and Security", 07-08.10.2022, ISSN 1311-3771, vol. 29, 2022, pp. 249-255, available at https://www.bfu.bg/uploads/pages/jur_sbornik_2022.pdf.
4. "The separation of powers and the right to judicial protection as grounds for the emergence of judicial review in the criminal procedure" (under seal). In: Collection of reports of the Jubilee Scientific Conference "Law in the XXI Century - Challenges and Prospects" on the Occasion of the 30th Anniversary of the Faculty of Law, held on 13 and 14 October 2022.