

REVIEW

by **Prof. Rumen Petrov Vladimirov, PhD**, professor of criminal and international criminal law;

On dissertation work for the acquisition of the educational and scientific degree "PhD" in the field of higher education 3. Social, economic and legal sciences, professional field 3.6 Law, doctoral program "Criminal Law";

Author: Krasimira Ipokratova Ipokratova

Subject: "Criminal Law regime of the juveniles"

Scientific supervisor: **Assoc. Prof. Tervel Georgiev** - Paisii Hilendarski University.

After taking into account the relevant provisions of the Law on development the Academic staff in Republic of Bulgaria, Regulations of its implementation and the general rules, as well as the specific samples of the Plovdiv University for the content and formatting of the reviews for "PhD", the following may be stated:

1. General description of the submitted materials.

By Order No. RD-21-1972/13.11.2023 of the Rector of Plovdiv University "Paisii Hilendarski" /PU/ I have been appointed as a member of the scientific jury for providing the procedure for the defense of a dissertation on the above-mentioned topic, author and scientific supervisor, for the acquisition of the educational and scientific degree "PhD" in the above-mentioned field of higher education, professional field and doctoral program. The author is a PhD student in independent training at the Department of "Criminal Science" at the Faculty of Law of the University of Plovdiv.

The set of paper materials submitted by the PhD student, through the administration of the Faculty of Law, is in compliance with the requirements of Art. 1 of the Regulation of Development the Academic staff at Plovdiv University and contains all the necessary documents that prove successful training in the doctoral program in Criminal Law. In accordance with the rules and requirements, the PhD student has submitted all the required documents, including: dissertation, author

summary, CV, declaration of originality, as well as a list of 3 /three/ publications /articles/ related to the dissertation.

It is evident from the attached CV that the PhD student Krasimira Ipokratova Ipokratova has completed her secondary education /1998-1992/ at the Humanities High School "D. Blagoev" in Plovdiv. Higher education with a degree of "Master of Law" and qualification "Lawyer" she acquired /from 2000 to 2007/. She has worked successively as a legal adviser in Plovdiv Municipality and in the Directorate Territorial of the National Revenue Agency Plovdiv. After winning the Supreme Judicial Council competition for a junior magistrate, she successfully passed training at the National Institute of Justice, after which in mid-June 2018 she was appointed as a junior prosecutor in the Regional Prosecutor's Office in Shumen. Later, she returned as a legal advisor in the Directorate Territorial of the NRA - Plovdiv, and from 01.11.2022 and until now she works as an investigative magistrate in the Investigation Department of the Sofia City Prosecutor's Office. She speaks English at a very good level and has the necessary computer skills.

2. Relevance of the topic, knowledge of the problem, methodology of the presentation.

It is clear why the topic on the special regime of juveniles, as well as the topic of the dissertation "Criminal Law regime of the juveniles" have always attracted the attention of the doctrine. Bulgarian researchers have proceeded from the need to legislate of providing for maximum liberal treatment to violations of the law, and also for the prevention of the behavior of persons with mental deficiency or weakened psyches. Therefore, the topic is permanently relevant and this is confirmed by the fact that over the last 15 years no comprehensive study of this issue has been carried out in Bulgaria, especially in the context of the amendments and additions made to the Criminal Code and the special Law for Combating Antisocial Behavior of Minors and Juveniles. Neither, the acts of international and EU legislation have not been analyzed, nor the case law of the relevant universal or regional institutions.

Impresses that the methodology of the study is sufficiently rich and diverse. The possibilities of the historical method, the normative analysis and the comparative legal approach, the deductive method and the systematic research, the formal-logical method of aggregation, etc. are used.

3. Contents of the dissertation work.

The peer-reviewed dissertation has a total length of 284 pages. Their scope includes: introduction, four chapters, proposals de lege ferenda and references. Each chapter includes sections denoted by Roman numerals as well as some internal divisions into paragraphs and sub-paragraphs. The scientific literature used consists of 98 titles in Bulgarian and 5 in English. Footnotes made are 390.

Chapter One is titled "Historical Overview", which is based on the various historical events of importance for Bulgaria, as well as the existing and accepted contemporary sources of feudal, bourgeois and modern criminal law. I will only mention that the author distinguishes 7 /seven/ periods of different duration, namely: Establishment of the Bulgarian state /by Khan Asparuh/ ; Byzantine rule ; Establishment of the Second Bulgarian state; Ottoman rule; Third Bulgarian state; Communist regime; Modern period from 1989 to the present day.

Each of these periods is briefly discussed in social and normative terms, primarily for attitudes towards punishable offences, in view of the young age of the perpetrators. In this regard texts from the Byzantine Eclogue, the Law of Judging the People, the Slavic Eclogue, Matthew Vlastar's Syntagma, etc. are quoted. During the Ottoman rule, Bulgarian customary law was in force, along with the Law of Constantine Justinian, as well as the later adopted Ottoman Penal Law of 1858. This law was in force for 18 years after the establishment of the Third Bulgarian state, together with the Statute on the penalties that justices of the peace could impose, adopted in 1880. During the next 130 years of Bulgaria's development, three criminal laws were adopted /1896, 1951 and 1968/, and after the codification of 1956, the only source of criminal law norms is now called the Criminal Code. In all Bulgarian criminal laws the issues of the specificity and relevance of age for the criminal responsibility of children have been explicitly and precisely regulated. Along with the Criminal Code, the special Law for Combating Antisocial Behavior of Minors and Juveniles has been in force since 1958, where the procedure and conditions for imposing one or more educational measures on juvenile offenders are provided.

Chapter Two is entitled "The criminal regime of the juveniles in view of the current national legislation". It is divided into two parts, the first dealing with the Criminal Code and the second with the Law for Combating Antisocial Behavior of Minors and Juveniles.

In the first section of **Part One**, age and sanity are mentioned as prerequisites for the criminal responsibility of juveniles. In the second part, the mitigation regime for criminally responsible juveniles provided for in the Criminal Code is examined,

according to the current Criminal Code. First of all, attention is given to the maximum consequence - exemption from criminal liability for the offence committed by the offender under the conditions of Art. 61 and Art. 78a, para. 6 of the Criminal Code. Then the penalties provided for in Art. 62 and their replacement under Art. 63 of the Criminal Code are commented. Further, the hypotheses of exemption from serving the imposed punishment under Art. 64, as well as the special hypotheses of conditional sentencing, early release from serving the imposed punishment, rehabilitation, extinction of criminal prosecution and the imposed punishment, as well as under the conditions of recidivism are considered. Particular attention is paid with comments to the important new provisions in Chapter Thirty of the Criminal Procedure Code (SG No. 48 of 2023) concerning the regime for juvenile defendants, where some considerably more favorable special rules have already been established for them.

Part Two contains an exposition in three sections on the Law for Combating Antisocial Behavior of Minors and Juveniles in the light of the 2004 amendments. Section One is devoted to the changes established and their guidelines, as well as the new principles introduced. The second section deals with educational measures and their comparison to the penalties provided for juveniles in the Criminal Code. A classification of the educational measures, including the most severe ones under Art. 13, para.1, p. 11 and 13 of the Law for Combating Antisocial Behavior of Minors and Juveniles, ruled by the courts and other competent authorities is also made. The consequences of non-compliance with the educational measures imposed are also commented on, as well as the status of Children's pedagogical rooms, Socio-pedagogical boarding school and Educational boarding school. Finally, the third section sets out the arguments "for" and "against" the existence of the Socio-pedagogical boarding school and Educational boarding school, which are not only considered by the author to be outdated and ineffective. In this regard, the proposal for the adoption by the National Assembly of the draft law prepared in 2016 on the "Law on diversion from criminal proceeding and imposition of educational measures on juveniles" is supported, along with the new regulation envisaged therein.

The Third chapter of the dissertation is structured in two parts, the first deals with the juvenile criminal regime under international law and the second with the regime under EU law.

Accordingly, in Section One of Part One, the United Nations Minimum Standards for the Administration of Juvenile Justice are listed and briefly analyzed. To them are referred: the UN Rules on Minimum Standards for Juvenile Delinquency

/Beijing Rules 1985/ ; the UN Guidelines for the Prevention of Juvenile Delinquency /Riyadh Guidelines/; the UN Rules on Minimum Standards for Non-custodial Measures /Tokyo Rules/; the UN Rules for the Protection of Juveniles Deprived of their Liberty /Havana Rules/. Section two lists the acts of the Council of Europe relating to juveniles. Specific reference is made to: the Guidelines on Child-Friendly Justice /2010/; Resolution 2010/2014/Child-Friendly Justice: from rhetoric to reality; Recommendation CM/Rec(2008) 2011, on the European rules for juvenile offenders subject to sanctions and measures. The UN Convention on the Rights of the Child of 1989, in force for the Republic of Bulgaria since 1989, is highlighted in a separate section three, underlining its importance.

Part two of this chapter has four sections interpreting the most important EU acts. First and foremost is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Art. 5 and 6, which are respectively entitled “Right to liberty and security” and “Right to a fair trial”. The following sections refer to: the Charter of Fundamental Rights of the European Union; Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings; and Directive 2016/800/EU on procedural safeguards for children suspected or accused in criminal proceedings.

The final chapter, Chapter Four, is entitled "Restorative Justice" and contains five sections on its application to juveniles. The first one examines the origination of this modern and alternative way of justice, its concept /according to the theory and the UN Handbook of 2020/ as well as its objectives. In the next section, the most relevant Council of Europe instruments on restorative justice are commented, namely Recommendation R/2003/20; Recommendation /2006/8; Recommendation CM/Rec/2018/8. The third section refers to the UN instruments on restorative justice namely: UN Minimum Standards on Juvenile Justice; UN Social and Economic Council E/RES/1999/26 on mediation and restorative justice measures; UNSCR E/RES/12. Further, section four discusses EU instruments on restorative justice, namely: Framework Decision 2001/220/JHA; Directive 2012/29/EU. Finally, section five analyses the arguments “for” and “against” the application of restorative justice. The author finds that although the Criminal Code, the Criminal Procedure Code and the Law for Combating Antisocial Behavior of Minors and Juveniles lack explicit provisions on alternative justice, some of the existing norms contain potential for its establishment and use. For instance, this would be possible on the occasion of the application of Art. 61, par.1 of the Criminal

Code, Art. 78a of the Criminal Code, as well as under the newly established regime in the Criminal Procedure Code - Chapter 28, Art. 375a.

Finally, **the dissertation concludes** that since the earliest Middle Ages to the present day, a socially justifiable favorable regime of criminal treatment of underage offenders has existed and will continue to exist. And in connection with the development of contemporary international and European legislation on juveniles and its transposition in Bulgaria, the author has made relevant proposals de lege ferenda, for the improvement of Bulgarian legislation. Among the most important of them should be mentioned: The proposals in the Criminal Code to provide for the possibility of exemption from criminal liability in case of an agreement through mediation. Accordingly, it is proposed that the Criminal Procedure Code should include in the grounds for initiation and termination of criminal proceedings the hypothesis when there has been an approved agreement after the mediation has been concluded. It is proposed that the discharge of criminal liability through mediation itself be established as a differentiated procedure in the Criminal Procedure Code with regard to the prerequisites, form and content of the regulated procedural possibility of an agreement, as well as its legal effect.

4. Contributions and contributory moments in the dissertation work.

It should be categorically stated that in general the development of the dissertation can be assessed as interesting and fully corresponding to the modern universal and regional trends on the methods and means of counter measures against crimes and antisocial acts of a person under 18 years of age. /It is known that international legal sources refer to such a person by the term "child"/. The positive assessment of the dissertation work stems mainly from the fact that the author has made a thorough complex analysis, taking into account the state of both the legal framework and the theory and case law in our state. The distinction and analysis of contemporary international legal sources is also an unconditional contribution. It should be particularly noted that, in general, the scientific model used is extremely orderly and useful, both for reaching theoretical contributions and as a basis for improving the legal framework on juvenile offences and responsibility /Criminal Code and Criminal Procedure Code/ and the sanctioning of juvenile delinquency and certain categories of juveniles. I believe that the dissertation is sufficiently complete and well balanced. Some contributions and positive aspects have meanwhile been

noted in the preceding pages of this review. To these a number of other general or specific contributions and contributory moments could be added.

- Such is the character of the **exposition in Chapter One**, which examines the emergence and development of feudal legislation, including the responsibility of juveniles, during the differentiated periods after the establishment of the Bulgarian state. It highlights the norms used by the Byzantine state, the written and customary rules in force in Bulgaria, the Ottoman Penal Code and the three Bulgarian criminal laws, including the current one. The exposition in this chapter shows the quantitative peculiarities that determined current legal framework for the prevention and punishment of crimes and antisocial acts of juveniles.

- In the following three chapters, can be identified not only in-depth analyses de lege lata, but also an aspiration to establish into Bulgarian legislation new and relevant legal changes, for example for the use of mediation and other forms of so-called "restorative justice", for a more efficient and gentle counteraction to the crimes and misdemeanors committed. The statement on the current regime of liability under the Criminal Code and the Criminal Procedure Code and the need for their improvement, including the adoption of a new special law, is convincing. Certainly, an unconditional contribution is also made by the presentation in chapter three on the contemporary international and European legal framework for the protection of child offenders and victims.

- As a more specific contribution, mention may also be made of the critical statement on the punishment "probation" /p.89 ff./ and on its meaningful use for juvenile offenders.

- Finally, it would not be an exaggeration to say that, although the subject of the proposed theme on the criminal law regime of juvenile offenders is sufficiently well known and developed, it represents an upgrade that reflects contemporary new and inevitable changes in our national legal framework. Therefore, I propose, after taking into account the recommendations of the scientific jury and after editorial and stylistic improvement, that the dissertation work to be published as a monograph. I believe that it would not only attract the attention of specialists, but would also intrigue any inquisitive reader.

5. Critical comments and recommendations.

As to any scientific work, some criticisms and recommendations can be made to the reviewed dissertation. These are of different nature and importance, and I think

that their consideration in whole or in part would further improve the value of the work in connection with its future printing and publication as a scientific monograph.

Critical remarks and recommendations of a general nature refer to some aspects of the presented thesis.

- First of all, I believe that the current title of the topic "Criminal Law Regime of the juveniles" is incomplete. It lacks guidance on the specification of one or both of the parameters - time and place - of that regime in question and a certain emptiness has appeared. It could be filled by adding the words „in Bulgaria“ at the end of the quoted title or finding another suitable addition.

Failure to consider the specific parameters of time and place has led to the use of contemporary terminology when commenting on crimes and norms from very old sources. For example, on p. 13 /and also on p. 15 etc./ refers to cit. "... basic composition of premeditated murder..." without taking into account that at that time there was no criminal law science with its own explained and specified institutes, categories and concepts, such as the composition of crime, guilt, etc..

- Next, it is unjustified and should be objected to the statement that although Art. 64 of the Criminal Code is an atypical case of exemption from serving a sentence, this can be considered a form of suspended sentence, which is interpreted in Chapter Two, para. 3.1, entitled "suspended sentencing of juveniles" /p. 98/. In fact, regarding the conditional sentencing of juveniles, Art. 69 of the Criminal Code contains additional mitigations but it is more important that Art. 64, para. 1 explicitly opposes and distinguishes it from suspended sentencing. In this regard, the two types of exemption turn out to be alternative hypotheses, not cumulative. The author /on p. 99 and 100/ has also separated and distinguished them clearly enough, which is justified, but this should also lead to an adequate change in the quoted title of para. 3.1.

- Third, when referring to insanity in juveniles /especially to overcome the limitations of its medical criteria/, the author may be advised to use other, sufficiently clarified and accepted in the doctrine terms, such as "lack of sanity" or "age-related insanity".

- Finally, I believe that the dissertation would have benefited if the PhD student had paid more attention to the commutation and reduction of penalties for juvenile offenders – Art. 63 of the Criminal Code. The author could have consider the question of the age differentiation within the juvenile system, which is only 4 years - from 14 to 18. In the past, these limits have been more distant, e.g. from 10 to 17 under the 1896 Act. But the principle question comes down to this: to what extent is it justified to have another internal differentiation in the Criminal Code and to divide

juveniles into two subgroups from 14 to 16 years of age and from 16 to 18 years of age? For them, the commutation is associated with stricter penalties, for offences punishable by life imprisonment and imprisonment for more than 10 years, with no possibility of judicial discretion in this case.

6. Conclusion

The critical remarks and recommendations for improvement of the dissertation mentioned in the review do not suggest any serious and qualitative revisions. The criticisms do not dominate the contributions and do not change the overall positive evaluation of the research. The reader will find that considerable creative work and serious effort have been expended which have resulted in the fulfilment of the stated aims and academic objectives. Among other objective and personal factors, the fact that the PhD student has fully used the accumulated and varied, but very useful legal practical experience and theoretical knowledge as a legal advisor in the Plovdiv Municipality and in the Regional Directorate of NRA - Plovdiv, from the training at the National Institute of Justice after winning a competition, the two-year work as a junior prosecutor in the Regional Prosecutor's Office in Shumen, currently working as an investigative magistrate in the Investigative department of the Sofia City Prosecutor's Office, has contributed to this success.

Therefore, I once again explicitly emphasize that all the requirements of the Law for development the Academic staff in Republic of Bulgaria and the Regulations for its implementation are met and I confidently give a positive assessment of the dissertation "Criminal Law Regime of the juveniles". In this regard, I propose to the honorable scientific jury to vote that the PhD candidate Krasimira Ipokratova be awarded the educational and scientific degree of "PhD" in the scientific specialty of Criminal Law.

11.01.2024
City of Sofia

Reviewer:.....
/ Prof. Rumen Vladimirov, PhD/