

OPINION

by Ass. Prof. IVAN HRISTOV RANCHEV, PhD, Faculty of Law of Plovdiv
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member of the Scientific Jury in the procedure 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, announced at P. Hilendarski" in the doctoral program "Criminal Law" with an extramural PhD student Krasimira Ipokratova Ipokratova at the Department of "Criminal Sciences", with scientific supervisor Assoc. Prof. Tervel Georgiev, PhD;

ON the dissertation entitled: CRIMINAL LAW REGIME OF THE JUVENILES

1. General presentation of the procedure and the applicant.

By Order No. RD-21-1972/13.11.2023 of the Rector of Plovdiv University "Paisii Hilendarski" I have been appointed as a member of the scientific jury of the above competition.

Krassimira Ipokratova is enrolled as an extramural PhD student in the doctoral program "Criminal Law" at the Department of Criminal Science of the Faculty of Law of Plovdiv University "Paisii Hilendarski" in 2019.

The PhD candidate submits the necessary documents related to the dissertation defense procedure.

The dissertation on the topic "Criminal legal regime of the juveniles" was developed during the period from 2019 to the present, and is directed to public defense in the order provided by the laws and regulations.

The scientific supervision of the PhD student throughout the four-year period was retrieved by Assoc. Prof. PhD Tervel Georgiev. The rich practical experience of the PhD student in the chosen subject is obvious. She has worked as a junior prosecutor in the Regional Prosecutor's Office - Shumen and she is currently an investigative magistrate in the Investigation Department at the Sofia City Prosecutor's Office. In this regard, despite her additional commitment, she has managed to complete the necessary publications and the completion of her dissertation within the last year.

2. General about the habilitation thesis and its obvious contributions.

The title of the dissertation is "Criminal Law Regime of the Juveniles" and it is 284 printed pages.

It makes an impression the diversity of the subject matter of substantive and procedural criminal law discussed, given the multitude of provisions, not only in the Criminal Code and the Criminal Procedure Code, but also in a number of international and European legal instruments. This is a sign of the author's ambition, but the issues presented are too specific to be fully covered in an independent scientific study.

The dissertation of the PhD student Ipokratova is divided into four chapters, including many separate parts, subsections and a proposal for legislative improvement, as well as a bibliography in Bulgarian and English. The author's footnoted references are impressive - more than 390 in number, and are based on the legal literature, regulations and case law used, which is why his presentation is not only scientific but also cognitive, i.e. it is directed at a wider audience of legal practitioners.

3. Analysis and evaluation of the dissertation.

The structure of the dissertation work has a logical sequence. The title well reflects the author's idea to make a comprehensive scientific study of the criminal legal treatment of juveniles not only in the Republic of Bulgaria, but also in other countries.

The first chapter of the dissertation with the title - Historical Overview, includes the existing legal framework for juveniles in the periods of the First and Second Bulgarian State, the Byzantine and Ottoman rule, as well as after the Liberation to the present day.

The second chapter is particularly interesting in view of the precise analysis made in its initial part of age and insanity as prerequisites for the criminal responsibility of juveniles, the content of sanity and the peculiarities of insanity in these underage persons.

Of value to legal practitioners is the section which draws detailed attention to the special regime of criminal liability of juveniles. However, I find it unnecessary to note in its header that this concerns the criminal liability of criminally responsible juveniles, as there is clearly no such provision for criminally responsible juveniles. A necessary distinction is made regarding the discharge of the criminal responsibility of juveniles, the imposition of educational measures or administrative penalty.

Emphasis is correctly placed on the applicable penalties for juveniles, their different types and their replacement, as well as on the peculiarities of release from serving a sentence imposed /conditional sentence and early release/, rehabilitation, extinction of criminal prosecution and the imposed penalty, including the relatively rare cases of dangerous recidivism of these persons.

Interesting are also the discussed changes concerning the procedural statute of juveniles with the latest amendments to the Criminal Procedure Code of 02.06.2023, which entered into force on 01.09.2023. The amendments are important in view of the established special additional requirements in criminal proceedings involving juvenile defendants and accused persons, they are also relevant for the criminal regime of juveniles, especially in view of the possibility to conclude an agreement upon their release from criminal responsibility.

Part Two is devoted to the Law for Combating the Antisocial Behavior of Minors and Juveniles. It deals with the essence of juvenile delinquency and the educational measures, the authorities that impose them, the status of children's pedagogical rooms, social-pedagogical boarding schools and educational boarding schools. The need to reform the existing social-pedagogical boarding schools and educational boarding schools is also discussed, as it is fully justified the note that they no longer meet the modern requirements, as the current Law for Combating the Antisocial Behavior of Minors and Juveniles has long been obsolete and inoperative, which requires the adoption of an entirely new law dealing with this issue.

In Chapter Three, Part One, the author examines the international instruments and European legislation outlining the United Nations minimum standards, rules and guidelines for the justice of juveniles concerning juvenile delinquency, non-custodial and custodial measures. Council of Europe instruments on juveniles, including the Convention on the Rights of the Child, are also discussed.

Part Two could be a continuation of the previous one, because the author does not need to fully discuss the basic principles of Article 5 "Right to liberty and security" and Article 6 "Right to a fair trial" of the ECHR, the EU Charter of Fundamental Rights, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings. It is sufficient to draw attention to the provisions of Article 5 § 1 (d) of the ECHR relating to detention in order to ensure supervision for educational purposes of an juvenile, the principle of *habeas corpus* under Article 5 § 4 of the ECHR and the rule of ensuring a fair trial, including for juveniles within the meaning of Article 6 of the ECHR, illustrated by the ECHR cases cited in the footnote. The relevance of Directive 2016/800/EU on procedural safeguards for children suspected or accused in criminal proceedings is also indisputable.

Therefore, the above-mentioned acts provide a basis for discussing the criminal-legal regime of juveniles, but there is no comparative-legal analysis by the author of their treatment under the legislation of specific EU member states and other countries around the world, which would be a starting point for using their positive experience in our conditions.

In Chapter Four, the author has made a good classification of the nature and objectives of restorative justice, as well as the international legal instruments of the Council of Europe and the United Nations related to its implementation. However, it would have been good to combine Part II "Council of Europe International Acts Related to Restorative Justice" and Part IV "European Legislation Related to Restorative Justice" and discuss them chronologically, in view of the stated objectives. The conclusion at the end of this chapter on the future of restorative justice for juveniles in our state will thus logically follow.

The final part of the scientific work is devoted to the author's conclusions and proposals for the legislative improvement of the institutes considered. I find that there is no obstacle to share the opinion that in Chapter Eight in Article 78a of the Criminal Code could be included a text according to which the provisions of paragraphs 1 - 6 should not apply if an agreement is reached between the parties in mediation. At the same time, however, it is not clear what the distinction is between the conditions for concluding an agreement under Chapter 28, provided for in Article 78a of the Criminal Code for exemption from criminal liability with the imposition of an administrative fine, and those in mediation. Perhaps, on discharge from criminal liability in the case of a mediation agreement, the conditions should be more restrictive in their scope. Separately, it would be difficult to establish, before criminal proceedings are initiated at all, the existence of all these conditions within the mediation file, relating to the applicable legal qualification of the act and the criminal liability provided for it, the amount of the property damage caused, which must be recovered or secured, and that the perpetrator has not been convicted. In that sense, a special procedure under the Criminal Procedure Code should indeed be provided for, as the author considers for the amendments to the procedural law, but the same could then only take place within the framework of criminal proceedings. And if it is outside its scope, for example, it should be implemented under the procedure of the prosecutor's preliminary inquiry under Article 145 of the Law on the Judicial System, i.e. the proposed legislative change should be further developed. The author's view is also logical - Article 81 of the Criminal Code should contain a provision on the suspension of limitation from the initiation to the completion of a mediation procedure between the victim and the offender. But at the same time, this

could not last indefinitely in time, and it is good to set a time limit in order to avoid the perpetrator "delayed" the process.

In conclusion, the materials presented by the PhD student Krasimira Ipokratova meet the requirements of the Law on Development of Academic Staff in Republic of Bulgaria, the Regulations for its implementation and the Regulations for the Development of the Academic Staff of Paisii Hilendarski University.

Despite of the minor disadvantages found in the dissertation work of Krasimira Ipokratova, I can express my positive assessment of its scientific and practical contributions.

My opinion is that the required scientific work in terms of volume and depth has been presented, as well as the required three publications in scientific journals - Studia Iuris, the collection of scientific works of the Faculty of Law of Plovdiv University and the Law Journal of the Law Department of New Bulgarian University, which prove the research abilities of the PhD student, contribute to the achievement of the objectives of the dissertation and are the personal work of the author.

The work has some original scientific and applied contributions, and in this sense the necessary good scientific qualifications of the PhD candidate Ipokratova are present.

On this occasion, having read and analyzed the dissertation work presented by her, I give my positive evaluation and recommend the Scientific Jury to vote for the acquisition of the educational and scientific degree of "PhD" to the candidate.

05.01.2024
Plovdiv

Issued opinion:
/Ass. prof. PhD Ivan Ranchev/