REVIEW REPORT

by **Prof. PhD Rumen Petrov Vladimirov**, expert in criminal law and international criminal law;

on a PhD thesis for the acquisition of the educational and scientific degree of **"Doctor"** in the higher education area 3. Economic, social, and law sciences, professional field 3.6. Law, "Criminal Law" doctoral program;

Author: Daniela Minkova Stoyanova;

Topic: "Crime against the Tax System";

Supervisor: **Prof. PhD Yonko Dimitrov Kunchev** – "Paisii Hilendarski" University of Plovdiv /PU/.

Taking into account the respective rules and regulations of the Law for the Development of Academic Staff in the Republic of Bulgaria (ZRASRB), the Rules for the application of ZRASRB (PPZRASRB) and the general requirements and document specimens of PU concerning review reports on PhD theses, we may point out the following:

1. General description of the documents presented.

By Order № P33-5781/03.Dec.2020 of the Rector of "Paisii Hilendarski" University of Plovdiv, I have been appointed as Member of the scientific jury participating in the public defense procedure of the above-mentioned topic, with the said author and supervisor, for the acquisition of the educational and scientific degree of "Doctor" in the said higher education area, professional field and doctoral program. The author of the PhD thesis is an independent doctoral candidate at the Criminal Law Department of the Faculty of Law /FL/ of PU.

The doctoral candidate, with the help of the administrative staff of the FL, has presented a set of documents in print which observes the requirements under Art. 36, subpar. 1 of the Rules for the Development of Academic Staff at PU (PRASPU) and contains all necessary information proving the candidate's successful education in the Criminal Law doctoral program. Following the respective rules and requirements, the candidate has presented the relevant documents, including a PhD thesis, a dissertation abstract, a CV, a declaration of authenticity, as well as a list of 3 /three/ publications /articles/ on the topic of the dissertation.

The European-format CV shows that Daniela Minkova Stoyanova finished her secondary school education /1988 – 1992/ graduating from the School of Music "Plovdiv". Her higher education degree, an MA in Law and the professional

qualification of "lawyer", she acquired /1994 - 1999/ at the FL of PU. Since then she has worked as: a judicial candidate for the District Court in Plovdiv; Senior Legal Advisor for TDD - Plovdiv; Senior and Head Legal Advisor for "Appeal and Enforcement Management" department (OUI), Plovdiv, at the Central Office of the National Revenue Agency (NAP). Since the middle of 2012, she has been prosecutor for the District Attorney's Office (Okrazhna prokuratura), Plovdiv. In 2018, she became prosecutor at the appellate prosecutor's office (Apelativna prokuratura). She has a good knowledge of English and the necessary computer skills.

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

The topic of the PhD thesis, "Crime against the Tax System", belongs to a relatively new field of study due to the criminalization of the respective criminal acts by the penal code in 1997 and it is extremely relevant and significant. It is important since the penal code formulated for the first time new, unknown to that point in time, offences concerning the financial and economic public relations in Bulgaria, more specifically the relationships which originate from and develop in the tax system. They stem from the radical changes in social developments in the Republic of Bulgaria following 1989. This is a complicated and labor-consuming topic which is also always relevant because the positive organization of the taxation system is dynamic and mutable. This undoubtedly affects its criminal law protection norms, as well as the case law concerning tax crime proceedings.

It is worth pointing out that as a former legal advisor for the tax authorities in Plovdiv, and especially as a current prosecutor working on many tax-related cases, the candidate knows professionally and in detail the problems of the tax system, its administrative penalties and criminal law protection. Irrespective of the fact, however, the contents of the PhD thesis show that the author has also made the necessary in-depth research on the Bulgarian tax-system criminal-law doctrine, as well as on the relevant judicial practice. That is why the author successfully manages to accomplish the tasks and objectives posited by the thesis.

The research methods used are sufficiently rich and multifarious. The candidate has resorted to the history-oriented method, normative analysis, comparative method, deductive method, systematic analysis, the formal-logic means of generalization, etc.

3. Structure of the PhD thesis.

The PhD thesis under review amounts to 321 pages. It includes: contents, introduction, four-chapter narrative, conclusion, and a list of references – scientific literature and regulations. There are 322 footnotes and 87 bibliographic sources including Bulgarian and foreign authors and Internet sources. The chapters are structured in paragraphs: three in the case of the first, the second, and the fourth chapter, and seven in the largest third chapter. The content of the text in the introduction, the chapters, and the paragraphs in them can be briefly summarized as follows.

The introduction has four separate sections, each of them titled. The section dealing with the relevance of the study emphasizes the dynamic development of the tax system and the effects on its criminal law protection. The second section titled "Object and subject of the study" specifies that it has to do with the offences and norms of tax-related crime and their appearance and development since 1997 to date in Chapter 7 of the penal code. Further on, as goal and objectives of the research, the author highlights the detailed theoretical analysis to be conducted, as well as the identification of problematic areas in practice. Finally, the introduction delineates the most important scientifically applicable contribution constituting considerations de lege ferenda.

Chapter One bears the title "Appearance and development of the criminal law regulation of the crime against the tax system". It is composed of three paragraphs. The first one gives the necessary information on the constitutional basis underlying the positive regulation of the tax system, as well as the offences and the norms in the penal code related to its criminal law protection. The second paragraph has a comparative character and is interested in the developments both of tax law and criminal law which, despite the short period of time under study amounting to 23 years, are essential and great in number. These developments pose many questions concerning case law, special emphasis being put on the temporal effects of criminal law. Alongside the objective prerequisites for tax law modifications and tax crime, the third paragraph pays attention to the necessity for an initial and a consequent harmonization of domestic law to European Union (EU) law.

Chapter Two, which is more general in character, is titled "Criminal law characteristics of the crime against the tax system". It contains three paragraphs. The first one gives interpretation of questions related to the specificities of the object and subject of this type of crime, especially criminal acts under Art. 255, 255a and 256, penal code. The focus falls on the normal functioning of the tax system which is obstructed by the non-establishment or non-payment of massive tax liabilities, according to the criteria in Art. 93, point 14, penal code. In order to

clarify the objective aspect of the problem, the author accentuates the important fact that the crime against the tax system is in reality blanket crime and the determination of some of its features necessitates the identification of concrete tax law violations which allow for the non-payment of tax. Therefore, the author analyzes some theoretical premises and ideas relative to the interpretation of material tax law and Tax-Insurance Procedure Code (DOPK). On the basis of this, the author demarcates the means of committing tax crime and identifies the most common forms and patterns of the evasion of taxes from revenue obtained not only in Bulgaria, but also in other EU countries. The second paragraph on the general characteristics of tax crime is devoted to its subject. Although the subject is formulated in general terms - as a taxable natural person – there are some specificities in case law which stem from certain permissions in tax law. According to the latter, a taxable trader can use other natural persons, such as representatives, commercial agents, accountants, etc. in the process of fulfilling their tax responsibilities. Case law accepts that, being non-taxable, such parties can participate in the perpetration of tax crime and are subject to criminal liability. Moreover, as likely participants in some types of tax crime, the penal code visualizes other parties as well since they encourage the perpetration of such crime. Finally, the third paragraph compares crime to administrative violations of the tax system. The basic criterion to distinguish between them is the degree of public risk.

Chapter Three is titled “Types of offences against the tax system and the question of their limitation periods”. This is the main, most important and largest chapter constituting half of the text of the PhD thesis. In this chapter, for the first time, together with typical instances of tax crime, the author in a logical and systematic fashion analyzes other types of offence /Art. 258, 259 and 260, penal code/ referred to as atypical. This chapter is structured in seven paragraphs. The first one is interested in the norms of Art. 255, penal code – the evasion of the establishment or payment of massive tax liabilities, especially the means of doing so. The author discusses the possibility that such criminal acts are committed as undisrupted. The second paragraph analyzes the evasion of the establishment or payment of tax obligations via adjustment or execution of transactions – Art. 255a, penal code. In essence, these are eligible actions stipulated in Commercial Law (TZ) and Tax-Insurance Procedure Code (DOPK) but they can potentially be misused since such misuse of rights avoids tax payment. The third paragraph is devoted to the so-called tax fraud (Art. 256, penal code) whose character and formulation are similar to those of document fraud under Art. 212, penal code, but the specific instances of fraudulent behavior, the object, the damage and type of victim, together with the aggravating circumstances, the promoting provision, and

the prevalence of the offences, constitute sufficient grounds for modifying the object of the crime and describing the crime as typical tax crime.

The next three paragraphs analyze the offences pertaining to the so-called atypical tax crime which is to the indirect detriment of the state budget. Thus, the fourth paragraph interprets the illegal obstruction or coercion with respect to the way in which revenue authorities fulfill their obligations – Art. 258, penal code, compared to similar offences under Art. 269 and 270, penal code, and suggests amendments to Art. 258, penal code, concerning the authorities harmed. Paragraph Five is interested in crime under Art. 259, penal code: establishment of a non-profit legal person or foundation to their undue advantage, including tax exemption or the generation of tax benefits. The sixth paragraph has to do with the following two non-genuine tax-related crimes: presenting an incorrect evaluation or a conclusion concerning property value on the part of a certified assessor /Art. 260, subpar.1, penal code/ and certification by a certified auditor of an incorrect annual report of a trader /Art. 260, subpar. 2, penal code/.

In the final paragraph seven, the author is justified to discuss a question which is of great importance to case law. This is the question of the limitation period of prosecution in the case of tax-related crime. It is expedient to clarify this question since the most common tax-related crime under Art. 255, penal code, is usually committed as undisrupted, which means that its termination is very important in view of the aggravating circumstances, the reduced limitation with following incentive payments and the determination of a more beneficial law.

The final **Chapter Four** bears the title "Similarities and differences in the crimes against the tax system and other criminal offences". Three separate paragraphs compare the offences against the tax system: firstly, to document crime; secondly, to document fraud, and thirdly, to crime against the order of management.

The **conclusion** of the PhD thesis systematizes and generalizes the scientific results obtained by listing the already mentioned in the text considerations de lege ferenda. They are grouped in six points and some of them can be used.

4. Scientific contribution of the PhD thesis.

I have to emphasize in categorical terms that as a whole the thesis can be evaluated positively. This is because the author has conducted an in-depth

complex analysis taking into account the condition of tax law and criminal law, from the viewpoint of both theory and case law. The author analyzes the application of tax norms and criminal law norms with respect to the collection of due taxes and the administrative-offence protection of the tax system, as well as with respect to the hearing and resolving of the cases pertaining to crime against the tax system. The scientific approach opted for is very useful, both as regards the arrival at theoretical contribution, and as a basis for improving the regulatory framework of the two interdependent spheres of law – tax law and criminal law. Moreover, at the end of the study the candidate brings to the fore suggestions for future amendments to the penal code. Some positive aspects of the PhD thesis have already been pointed out on the previous pages of this review report. We may add to them a few general or more specific aspects of scientific contribution, namely:

- The scientific contribution is evident in Chapter One which reviews the appearance and development of tax-related law from the beginning of the 1990s /and shortly after/ and the initial incorporation into the penal code in 1997 of offences against the tax system, as well as their subsequent improvement /p. 12 and after/;

- Of scientific significance is also the comparative-law analysis of the repealed offences pertaining to crime against the tax system, contrasted to current ones /p. 47 and after/;

- One cannot but notice the excellent treatment of case law, not only with respect to the interpretative rulings of the High Court of Cassation, but also as regards acts of the Court of First Instance and the Court of Appeal;

- It is important to mention also the part of the thesis interested in the types of taxes: their theoretical grounds and their regulation, both in material law and in Tax-Insurance Procedure Code (DOPK). The author clarifies and uses concepts and terms with the help of which she delineates the offences pertaining to tax-related crime in the penal code /p. 77 and after/;

- Of scientific significance is also the analysis of the forms of illegal tax evasion, especially those concerning the most common schemes and means of revenue concealment and the disregard of tax obligations /p. 92 and after/. In her analysis of tax-related schemes and various instances of embezzlement, the author successfully substantiates the path to the constitution of the group of criminal acts perpetrated;

- Another example of scientific contribution is the analysis of the types of typical offences /Art. 255-256, penal code, p. 133 and after/ and the so-called

atypical crime against the tax system /Art. 258, 259 and 260, penal code/ /p. 230 and after/;

- Finally, of scientific importance are also the 6 points containing considerations de lege ferenda listed in the PhD thesis and the dissertation abstract. It is possible to make use of the suggested amendments to Art. 255, subpar. 1, penal code; to improve Art. 93, point 14, penal code; to incorporate in Art. 258, penal code, the person of the enforcement officer, and the edited formulation of Art. 260, subpar. 2.

5. Critical remarks and suggestions.

Every scientific text, the PhD thesis under review not making an exception, can be subject to critical remarks and suggestions. They are of various character and have different significance. If the author of the thesis takes them into account as a whole or in part, she would improve the scientific value of the text in view of its future publication as a monograph.

- My general critical remarks have to do with several aspects of the PhD thesis. Firstly, the author should pay attention to the **structure** of the thesis, i.e. the number of chapters, their volume, and contents. I will refrain from more specific comments but, in order to avoid the editorial and compositional imbalance with some chapters /e.g.: Chapter Three - 153 p., Chapter Four - 25 p./, I suggest that Chapter Four is left out, its edited text being incorporated as a separate paragraph into Chapter Two;

- When we read the PhD thesis carefully, we acquire the impression that the largest Chapter Three constituted the first variant of the dissertation in its entirety, the other chapters been added purposefully later on. This explains the great number of repetitions of the same statements and theoretical premises, as well as the insufficient logical links and lack of coordination among the separate chapters;

I would like to also make some general and specific remarks of an editorial and theoretical character necessitated by the **contents** of the PhD thesis.

- In the first place, in order to improve the logical sequencing of thought, the orderliness and readability of the thesis, I would like to recommend that the paragraphs used include additional internal lists of numbered items, sub-items, etc. In order to improve description, it is necessary to edit the entire text because in this way the author will also avoid sentences like this one on p. 81, paragraph 1, op. cit.: “To perform the conduct, it is necessary to fulfill all cumulatively given features visualized in the disposition …”. The quote presupposes that it is not the conduct which realizes the features, but the features realize the conduct;

- The author may also consider the elimination of some aspects related to the editing of the text. For instance, indices are not always positioned at the end of sentences following the rule /e.g.: p. 149, ind. 171 and many other/; some sentences are too long /e.g.: the first introductory sentence amounts to 8 lines, on p. 120, par. 1 – 10 lines, p. 135 below – 8, and p. 136 – 13 lines, etc./; the author may also reduce the facts concerning the procedure in the submission of tax returns on pp. 138-146; the pages in the contents do not correspond to the pages in the text /e.g.: § 3 of Chapter One, also Chapter Four, etc./; the author uses platitudes and incorrect expressions /e.g.: "refers to" ("касае") and expressions based on it; "criminal documents" ("престъпни документи") – p. 218, final paragraph/ , etc.; some pages have no new paragraph /pp. 30, 32, 62, 63, 118, 165, 195, 196, 203, 277, 308/, etc.;

- It is absolutely necessary to include the numbers of the articles in the titles of the paragraphs of Chapter Three, as it has been done in the first one of them. Moreover, in Chapter Two, concerning the general description of tax-related crime, there is no explanation as to its subjective aspects, which makes the text incomplete. On the other hand, there is much insignificant or excess information which obstructs the readability of the text /e.g.: references to all types of punishment regarding every offence against the tax system, references to their ordinary and absolute limitation periods for criminal prosecution, etc./;

- The most common repetitions, which are to be eliminated, are, for instance, those stating that: tax-related crime and crime against the tax system are characterized by a different scope; the difference between an authentic document and a false one /as a whole, the repetitions concerning document-related crime are greatest in number/; aggravated-circumstance offences involving the participation of border police officials, customs officials, etc.; the criteria to distinguish between serious and exceptionally serious crime; the evaluation of certified assessors, which may be more positive or more negative, and so on.

- **We can also object to** some opinions and statements in the PhD thesis.

For example /in the context of the previous paragraph concerning repetitions/, many excerpts from the text wrongly claim that the norms regarding the payment of due taxes within the specified time periods /Art. 255, subpar. 4, 255a, subpar. 3, and 256, subpar. 4, penal code/ constitute offences subject to lesser charges. In reality, these lesser charges are incentive /stimulating/ norms for subsequent prescribed lawful conduct which renew /as a whole or in part/ the harmful consequences of already committed crime.

What is more, in her analysis of Art. 255, subpar. 1, points 1-7 /p. 138 and after/, the author confuses by equalizing the conduct and the means of its

perpetration, as visualized in the composition of the offence. As a result, the means of perpetration are discussed as forms of conduct, which is incorrect, but unfortunately such interpretations are also evident in some High Court of Cassation rulings. This hinders the substantiation of the likely existence of undisrupted crime /according to Art. 26, subpar. 1, penal code/ in the case of offences under Art. 255, subpar. 1, penal code.

I cannot share the opinion that offences under Art. 256, penal code, the so-called document fraud, are not typical tax-related offences /p. 220 below/. If this was the case, then we have to pose the logical question as to why this /second most common/ crime has its place in tax regulations despite the fact that the penal code has long contained similar offences pertaining to document fraud – Art. 212, penal code. We should also object to the statement that the second subparagraphs of Art. 255 and 256, penal code, related to increased liability when the perpetrators are some of the parties listed, envisage special subjects of the crime and determine the presence of aggravating circumstances with respect to the subject /p. 116, final paragraph/. In fact, in the case of the offences in question, the public risk is increased qualitatively due to the existence of beneficial conditions for the successful perpetration of the given crime having in mind that the participants are engaged in abuse of authority.

Finally, I cannot support the suggestion for amending the penal code via the increase in custodial sentence periods for tax-related crime which are currently among the greatest in the world and in the EU. /An exception is China where Art. 205 and 206 of the penal code envisage life sentences and death sentences, respectively./ Refraining from in-depth discussions on the matter, I claim that in this case custodial sentence periods in Bulgaria should be diminished, the severity of the envisaged penalties in property being increased and the internal resources of the tax system itself being utilized in the prevention of such crime.

6. Conclusion.

The critical remarks and suggestions in this review report do not presuppose serious or quality corrections of the PhD thesis. They do not surmount the scientific contribution of the text or alter the overall **positive evaluation** of the study. The reader is able to discern that the author has made significant labor-

consuming effort in order to achieve the academic objectives and fulfill the scientific tasks. Together with other factors, the success of the PhD thesis is also due to the fact that the candidate has amassed substantial practical experience, at first working for the tax authorities, then as a prosecutor for the District Attorney's Office (Okrazhna prokuratura), Plovdiv, working on many tax-related cases.

Therefore, I would like to emphasize once more that the candidate has fulfilled all requirements of ZRASRB and PPZRASRB and I **am convinced to evaluate positively** the PhD thesis titled "Crime against the Tax System". In view of this, I suggest that the honorable scientific jury award the candidate Daniela Minkova Stoyanova with the educational and scientific degree of **"DOCTOR"** in Criminal Law.

January 18th, 2021 Author of the review report:

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Sofia /Prof. PhD Rumen Vladimirov/