

STATEMENT

by Ekaterina Salkova Getova, PhD -

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concerning a PhD thesis
for the acquisition of the educational and scientific degree of “**Doctor**”
in the higher education area 3. Social, economic, 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

1. General description of the documents and the doctoral candidate

By Order № P33-5781/03.Dec.2020 of the Rector of “Paisii Hilendarski” University of Plovdiv (PU), I have been appointed as Member of the scientific jury participating in the public defense procedure of the PhD thesis titled “Crime against the Tax System” for the acquisition of the educational and scientific degree of “Doctor” in Criminal Law in the professional field 3.6 Law, higher education area 3. Social, economic, and law sciences. The author of the PhD thesis is Daniela Minkova Stoyanova – an independent doctoral student at the Criminal Law Department, with supervisor Prof. PhD Yonko Dimitrov Kunchev from “Paisii Hilendarski” University of Plovdiv.

Daniela Stoyanova acquired her high education degree in Law in 1999 at “Paisii Hilendarski” University of Plovdiv. Between October 14th 1999 and October 13th 2000, she worked as a judicial candidate for the District Court in Plovdiv. From November 15th 2000 to June 18th 2012, she was Senior and Head Legal Advisor for the National Revenue Agency (NAP) and since June 25th 2012 she has been prosecutor for the District Attorney’s Office (Okrazhna prokuratura), Plovdiv.

Daniela Stoyanova started her education as an independent doctoral student at the Criminal Law Department of the Faculty of Law at Plovdiv University following Order № P33 – 2317 as of May 14th 2019. By Order № P33 – 1167/March 5th 2020, Ms Stoyanova finished her doctoral education with the right to public defense due to her fulfillment of the individual doctoral curriculum, preparation of the PhD thesis and compliance with the minimal national requirements concerning PhD degree ac-

quisition. The PhD thesis was discussed and its public defense was suggested by the Criminal Law Department of the Faculty of Law at “Paisii Hilendarski” University of Plovdiv on September 11th, 2020.

2. Relevance of the topic

The topic of the PhD thesis is relevant due to the lack of a sufficient number of theoretical studies on crime against the tax system which resort to a complex scientific approach necessitated by the specifics of tax-based relationships (presupposing knowledge of various professional fields – law, administration and management, and economics, as well as awareness of various specialized areas within the general field) and the characteristic features of the mechanism for the perpetration and substantiation of tax-related crime. Beside the relatively novel regulation of crime against the tax system and the frequent amendments to the tax law governing tax-based relationships, the relevance of the topic is also grounded in the necessity for coordinating domestic law with a number of applicable provisions and rulings of the European Union.

3. Knowledge of the problem

The PhD thesis presented shows the candidate’s substantial knowledge of the regulation of crime against the tax system and its application in judicial practice. The author also analyzes the major theoretical studies relative to the topic of the PhD thesis.

4. Research methodology

As a whole, the research methods used by the PhD candidate to a great extent facilitate the fulfillment of her goal, as posited in the dissertation abstract, to conduct thorough analysis of the matter but, in view of the completeness of the text, it is advisable to use comparative analysis in order to contrast the laws concerning the crimes under study as applied in different countries and review the scientific literature on foreign laws. The usage of the comparative method would facilitate the substantiation of the recommendations to improve Bulgarian laws.

5. Description and evaluation of the PhD thesis and its scientific contribution

The PhD thesis amounts to 319 pages and includes an introduction, four chapters, conclusion, and a list of references. It contains 322 footnotes. The bibliography comprises 82 sources, of which 70 in Bulgarian and 12 in other languages, as well as two Internet sources and seven European Union rulings.

From the viewpoint of its structure, the analysis is subdivided into four chapters whose titles and number of pages are as follows: “Appearance and development of the criminal law regulation of the crime against the tax system” (65 pages), “Criminal law characteristics of the crime against the tax system” (56 pages), “Types of offences against the tax system and the question of their limitation periods” (152 pag-

es), and “Similarities and differences in the crimes against the tax system and other criminal offences” (26 pages). I do not support the intentional search for balance in the size of the different parts of PhD theses but I believe that if the author changes the structure of the text, she may achieve a more balanced analysis of the issues under study in the respective sections of the dissertation to coordinate them in a more logical fashion, and, which is also very important, she may avoid the unnecessary repetition of facts. In the context of the above-mentioned, I suggest that the last chapter (Chapter Four) is incorporated as a separate paragraph into Chapter One, the last paragraph of Chapter Three (on the limitation of prosecution) being included in Chapter Two since there is greater relevance with the general description of crime against the tax system and the incorporation of this paragraph into Chapter Three seems random, rather than well considered. These structural changes, as well as the inclusion of analysis on the subjective aspects of the crime against the tax system in Chapter Two, would make the research on different issues more clear and complete.

Chapter One of the PhD thesis focuses on the various stages in the regulation of the crime against the tax system in the historical context of the time periods when tax-related law was introduced and amended. The author compares the relevant provisions concerning offences pertaining to the crime against the tax system to repealed ones. She pays attention to the questions having to do with the harmonization of Bulgarian law to European Union law.

Chapter Two is interested in the object, the objective aspects, and the subject of the crime against the tax system (where we discover that the study is incomplete due to the lack of reference to the subjective aspects of such crime). A separate paragraph deals with the proportion of such crime to the administrative violation of tax law. In this respect, we may also see that the analysis is somewhat incomplete since, in her review of Interpretative Ruling № 3 from 2015 of the High Court of Cassation, the author refers in general terms to the practices of the European Court of Human Rights (ECHR) but she fails to discuss the developments in those practices (especially the practices concerning the interpretation of the “bis” concept (duplication of proceedings) in the ECHR ruling from November 15th 2016 in the case ‘A and B v/s Norway’).

Chapter Three analyzes the offences in the composition of the crime against the tax system (the evasion of the establishment or payment of tax obligations; the evasion of the establishment or payment of tax obligations via adjustment or execution of transactions; acquisition from the government budget of non-allocatable amounts of money or enabling another person to acquire them; illegal obstruction of tax authorities; establishment of non-profit legal persons or foundations with the purpose of tax exemption or the generation of tax benefits; presenting incorrect evaluation or conclusion, and certification of incorrect annual reports). This chapter studies the specifics of applying limitation periods in the case of crime against the tax system.

Chapter Four compares crime against the tax system to document crime, document fraud, and crime against the order of management.

In the conclusion, the candidate lists her considerations *de lege ferenda* which, together with the analysis in the PhD thesis, are scientifically applicable and deserve the attention of both the scientific collegium and legislators. Some of these considerations are substantiated in detail and constitute a good basis for scientific discussion

but other considerations do not rely on sufficient scientific proofs, such as the suggestion to increase the maximum punishment for offences under Art. 255, Art. 255a and Art. 256, penal code. I would like to point out that the major role in crime prevention as regards punishment is played not by the severity of the punishment, but by its inevitability. We should not forget that all amendments to penalties for specific types of crime result in an imbalance among penalties for all criminal acts due to their systematization in the penal code and the prioritization of the goods protected via their incrimination. Moreover, as a whole, more efficient preventive measures would be other actions on the part of government bodies, such as the imposition of timely control, the government officials' timely fulfillment of their responsibilities, the elimination of the prerequisites for their failure to act during large periods of time, etc., i.e. actions concerning the lack of efficient regulation of tax law, financial law, and administrative law because the inefficient application of law in practice cannot be compensated for by the severity of the punishment.

In order to help the candidate to improve her PhD thesis, I would like to recommend that she makes the titles of some chapters and paragraphs more precise (e.g.: in the title of Chapter One, the word “регламентация” should be replaced by “уредба” (“regulation”) and in § 2 “анализ между” (“analysis between”) should be replaced by “анализ на” (“analysis of”); in § 2 of Chapter Two, the title is to be made more concrete since the focus falls not on the subject of crime in general, but on the subject of the crime against the tax system in particular; in the title of Chapter Three, the expression “въпросът за *тяхната* давност” (“the question of *their* limitation”) should be made more accurate and in § 1 of the same chapter the expression “продължено или продължавано престъпление” (“continued or undisrupted crime”) should be omitted; in the title of § 7 of Chapter Four, “приложението” (“application”) is to be replaced by “прилагането” (“applying”). The usage of some terms should be paid attention to (e.g.: “... identity of the subject in the two criminal procedures” (p. 121) – the author is supposed to distinguish between “criminal proceedings” and “criminal procedure”; “the offences of undisrupted crime” (pp. 201, 210 and 226); “it is obvious and evident” (“ноторно известно”, p. 266) – these words mean the same thing, etc.), as well as the usage of some expressions (e.g.: on p. 12: “In a historical context, Bulgaria did not develop the protection of its financial and tax system for over a hundred years, until 1997.” – the protection of some societal relationships can be guaranteed via other methods, not only by criminal law regulations; on p. 33: “The State Gazette, Issue 62/1997, in Art. 260, subpar. 1 of the penal code, criminalized...” – the respective amendment to the law criminalizes, not the gazette; on p. 121: “This principle is activated ...” – having in mind that the rule is normatively regulated, it is not activated, but applied, etc.). It is necessary that the author avoids the repetition of the same information (the candidate herself points out at the beginning of the concluding part “as it was mentioned many times” but repetitive mention is not an advantage, it is a negative aspect of a PhD thesis). The author should eliminate those parts of the text which contain too general information, typically found in a textbook, and not in a PhD thesis (e.g.: on p. 58 and afterwards, as regards the characteristics of the EU and its legal order; on p. 60 and afterwards, concerning Bulgaria's accession to the EU; on p. 71 and afterwards, on the characteristics of regulations and directives; on p. 105 and afterwards, where the author includes basic knowledge on “subject of crime” and “criminally liable person”; on p. 266, as regards the concept of

limitation, types of limitation, and suspension and interruption of limitation periods, etc.) since this diverts readers' attention and hinders the assimilation of the new information building upon more general knowledge. It is advisable that the too verbose reviews of respective authors (which the reader is supposed to be acquainted with, so their opinions need not be retold in detail) are replaced by a discussion of the different issues, which would involve the application of an analytical approach, rather than a compilation one.

6. Review of the candidate's publications and scientific contribution

Ms Stoyanova has presented a list of three articles on the subject of the PhD thesis, one of these awaiting publication. The articles have been published in the specialized e-journal "Studia Iuris" of the Faculty of Law at "Paisii Hilendarski" University of Plovdiv. They are devoted to some of the problems to be found in the PhD thesis and they enable the scientific collegium to get acquainted with a few major conclusions of the dissertation.

These publications are the product of the candidate's personal effort and are undoubtedly due to her rich practical experience in the application of tax-related law, amassed in her work for state executive and judicial bodies. Such experience benefits the author immensely, having in mind her in-depth awareness of legislation and its application in practice, but it is advisable that she probes more deeply into the analysis of the theoretical studies on the issues related to the topic of the PhD thesis by paying attention to older publications of some Bulgarian authors (e.g.: Acad. Petko Staynov, Acad. Petko Stoyanov, and Prof. Milcho Kostov).

7. Doctoral dissertation abstract

The doctoral dissertation abstract amounts to 32 pages and includes a title page, information concerning the public defense procedure, general outline of the PhD thesis (relevance, object, subject, goal and objectives of the research, scientifically applicable contribution, number of pages and contents of the thesis); short review of the PhD thesis and list of publications on the subject of the dissertation. The doctoral dissertation abstract adequately presents the contents of the PhD thesis and its most significant results.

8. Recommendations for future use of the scientifically applicable contribution and results of the PhD thesis

Doctoral dissertations are of importance not only in view of the PhD students' expected improvement of their knowledge, but also as regards enriching theory with more specific aspects contributing to the respective level of knowledge. In order to achieve this, the doctoral candidate is advised to disseminate these scientific results within the respective scientific collegium. Therefore, I think that Ms Stoyanova can also publish other excerpts from her PhD thesis after elaborating and correcting them and making them more precise.

CONCLUSION

The PhD thesis has scientifically applicable and authentic contribution and observes the requirements of the Law for the Development of Academic Staff in the Republic of Bulgaria (ZRASRB), the Rules for the application of ZRASRB and the corresponding Rules of “Paisii Hilendarski” University of Plovdiv. In view of the above, I evaluate positively the PhD thesis and I encourage the honorable members of the scientific jury to grant the educational and scientific degree of ‘Doctor’ to Daniela Minkova Stoyanova in the higher education area 3. Social, economic, and law sciences, professional field 3.6 Law, “Criminal Law” doctoral program.

January 25th 2021

Author of the statement:

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