

OPINION

by Assoc. Prof. Dr. Daniela Sevdalinova Doncheva, Criminal Law Studies Department at the Faculty of Law of Plovdiv University "Paisii Hilendarski" on the materials, presented for participation in a competition for the academic position of "Assistant Professor" at Sofia University "St. Kliment Ohridski" in the field of higher education 3. "Social, economic and legal sciences", professional field 3.6. Law (Criminal law)

In the competition for "Assistant Professor", published in the SG, no. 22 of 16.03.2021 for the needs of the Criminal Law Studies Department at the Faculty of Law of Sofia University "St. Kliment Ohridski" only one applicant takes part - **Chief Assistant Professor Dr. Miroslava Borisova Manolova.**

By order № RD 38-199/ 23.04.2021 of the Rector of the Sofia University "St. Kliment Ohridski" I have been appointed as a member of the scientific jury in an announced competition for the academic position of "Associate Professor" at the Faculty of Law of Sofia University in the field of higher education 3. "Social, economic and legal sciences", professional field 3.6. Law (Criminal law).

The materials presented by Ch. Assist. Prof. Dr. Miroslava Borisova Manolova in paper and electronic form are in accordance with the Development of Academic Staff in the Republic of Bulgaria Act and the regulations for its implementation.

The candidate Ch. Assist. Prof. Dr. **Miroslava Manolova** participates in the competition with a monograph entitled: **"Why do we punish? Theoretical and normative model of the purposes of punishment in Bulgarian criminal law"** as well as with six articles and reports published in collections. She has participated in five research projects.

Ch. Assist. Prof. Dr. Miroslava Manolova graduated in Law at the Faculty of Law at Sofia University in 1995. She was a judicial candidate at the Sofia City Court, after which she began working as an investigator in the Sofia Investigation Service. Since 2000 she has been an assistant professor in Criminal Law at the Faculty of Law

of Sofia University. She is engaged in research and teaching in the field of criminal law and justice, conducts seminars in Criminal Law - general and special parts, also lecture course in Criminal Law for students in the master's program "Social and Criminal Psychology" at the Faculty of Philosophy at Sofia University. In 2005-2006 she worked as a chief jurisconsult at the Ministry of Culture, and since 2006 she has been a legal adviser in the Legislative Advisors Department of the National Assembly.

In 2014 Miroslava Manolova successfully defended her dissertation on the topic: "Drugs offences" and was awarded a Doctoral degree.

Dr. Miroslava Manolova meets the requirements of the Development of Academic Staff in the Republic of Bulgaria Act and is rightly admitted to the competition. Her research in the field of criminal law is the result of in-depth work on issues related to certain types of crimes, but also of analyzes of key issues of the general part of the criminal law, which are extremely important and underlies the development of the criminal law. This interest and scientific research naturally led to the writing of a monograph entitled: "Why Do We Punish? Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law".

This monograph contains 213 pages with 1800 characters per page. The print edition contains 208 pages. Assoc. Prof. Dr. Ralitsa Ilkova is the scientific editor of the monograph.

The monograph is full and in-depth research on the subject of the purposes of punishment in Bulgarian criminal law from the point of view of the classical theories of punishment, namely the utilitarian, retributive and mixed ones. It consists of **three chapters, introduction and conclusion**, and an elaborated bibliography.

The question of the purposes of punishment has been studied in the light of the three classical theories of punishment - utilitarian, retributive and mixed ones. **Chapter 1** analyzes their most important characteristics, as well as the main criticisms that these theories provoke.

The first section is devoted to utilitarian views on punishment. According to them, crimes cause suffering, unhappiness, and therefore the purpose of punishment is to reduce, even prevent crime, and hence suffering, that is, to restore the balance between happiness and unhappiness. The emphasis in this case is on the good that would be achieved through punishment. That is why the utilitarian theory is also defined as a theory of consequences (consequentialist), because it considers punishment precisely in view of the consequences it leads to. And since punishment in this case is seen as a way to limit crime, i.e. to prevent the commission of future crimes, its main purposes are the prevention - both general and individual, as well as the rehabilitation of the offender.

The impact of utilitarian views on punishment in Russia and the United States during the same historical period, namely the first half of the 20th century, is examined in two separate subsections.

The most significant features of the retributive understandings of punishment are analyzed in the **second section**. Unlike utilitarian theory, retributive theory focuses on the past. It is based on the thesis that punishment aims at retribution, in other words to punish the criminal, to make him suffer, to pay for what he has done. Punishment is imposed because the criminal deserves this suffering, precisely because of the evil he has committed. In this case, it does not matter whether the punishment will achieve something else as a consequence - e.g. prevention or correction of the offender. Various retributive views on punishment are also considered.

The **third section** is devoted to the mixed theories of punishment, which try to "reconcile" the two classical views on punishment - the utilitarian and the retributive ones.

The question of punishment - in view of its goals and principles, in Bulgarian criminal law is studied in **Chapter 2**. The normative framework is analyzed in separate sections, as well as the theoretical views on the purposes and principles of punishment, and especially those on the personal nature of punishment (only those who have

committed a crime are punished) and on the proportionality of crime and punishment. The relevant provisions of both the various constitutions and the criminal laws have been discussed. The understandings of our doctrine before and after 1989 are fully explored with regard to the question of the general purpose of punishment as a legal institution, i.e., why there is punishment at all. The theoretical views on the immediate aims of punishment imposed by the court - those that have been enshrined in our criminal laws - are also analyzed in depth.

The **third chapter** examines the extent to which the legislative proposals and the adopted changes in the Criminal Code, especially in the last 15-20 years, are in line with this theoretical and normative model of the purposes of punishment. An in-depth critical analysis of some changes in the Criminal Code, as well as legislative proposals for such, has been made in a separate section. These are the changes in the criminal law regarding the kidnapping from 2010, the drug crimes from 2004-2006, as well as the legislative proposals for amendments to the criminal regime of minors from January 2020 and to the sanctions regime for serious transport offenses of April 2020.

The **conclusion** returns to the two classical theories of the purposes of punishment - the retributive and the utilitarian ones. An example illustrates the significance of the question "Why do we punish?" and to what extent the direction in which a society can develop depends on its answer.

The monograph is distinguished by some contributions:

- This monograph is full and in-depth research on the subject of the purposes of punishment in Bulgarian criminal law from the point of view of the classical theories of punishment, namely the utilitarian, retributive and mixed ones;
- The utilitarian, retributive and mixed theories of punishment in historical terms and in the present are considered;
- The issue of the purposes of punishment in the Bulgarian criminal law as well as the normative framework outlining the goals and two of principles of punishment at

the constitutional and legal level in historical terms and today are considered, as trends in the development of the Bulgarian legislative model are presented;

- The author has argued that the Bulgarian criminal law establishes a mixed model, which emphasizes the goals inherent in the utilitarian views of punishment, and among them in the first place is the correction and re-education of the offender. However, their achievement is possible within the restrictive frameworks typical of retributivism, expressed in two principles of punishment – on the personal nature of punishment and on the proportionality of crime and punishment;

- The changes in the Criminal Code regarding the punishments in the last decades are analyzed, and tendencies are outlined;

- The specifics of populism as a social phenomenon are analyzed and its appearance in the field of criminal law is substantiated.

- The author has argued that the examples of legislative changes and proposals for such contain populist features and because of that they do not provide an answer to the expectations for which they are made;

- The necessity of the legal changes in the Criminal Code, especially the significant ones, to be accompanied by a sufficient amount of scientific and criminological data is justified.

The contributions, mentioned above are especially significant, but I can not fail to highlight its other essential merits. Very interesting and somewhat unusual for a monographic study in the field of law is its title, part of which is a question. In this case, it is not an end in itself, but corresponds to the content of the book and the its style. The author raises the question "Why do we punish?" several times and presents various answers, refracted through the view of the theories under consideration. Different opinions of other researchers on the topic have been skillfully presented, but the author's position is also clearly expressed. The style is impressive - a clear, accurate statement with the necessary legal terminology in presenting different theses, at the same time - a clear author's opinion, which is legally substantiated. The study presents the analyzed issues in an interesting way, but at the same time the style remains

scientific. I share many of the author's theses and conclusions (such as on narrowing the possibility of legislative changes, on limiting legislative changes in the Criminal Code based on penal populism), which are unequivocally expressed without undue pathos and sufficiently substantiated. Distinctive for the monographic work is the approach chosen by the author - to answer a key question by putting many other topics and questions for discussion. Thus, presenting different opinions and theories, the reader is provoked to form his own opinion, to which the author consistently leads him, and at the end of a certain part, forms a reasoned conclusion, with which it is difficult to disagree. Citing many Bulgarian and foreign authors, whose research is related to the topic, shows the extensive knowledge of the author and gives her the opportunity to impartially present various opinions and theories, and then to form her own.

I will also make some not very significant critical remarks, believing that compliance with them will only improve the work. It is necessary to refine the footnotes - in some places their numbering is not correct (p. 43), in others there are errors in writing the electronic sources (p. 161) or some technical errors (p. 73). In some places there are extremely long quotations from the opinions of other authors, which fragment the text (pp. 103-104). It is sufficient to cite the source, especially when it is widely known, without the need to cite it in full.

From the overall presentation of the candidate, I can confidently say that Ch. Assist. Prof. Dr. Miroslava Manolova has in-depth scientific training and serious professional qualities for teaching.

Conclusion:

The documents and materials submitted by Ch. Assist. Prof. Dr. Miroslava Manolova meet all the requirements of Development of Academic Staff in the Republic of Bulgaria Act and the regulations for its implementation as well as the relevant Regulation of Sofia University "St. Kliment Ohridski".

The candidate in the competition has presented a sufficient number of scientific papers published after she has obtained the educational and scientific degree "Doctor"

in Criminal Law. There are original scientific contributions in the works of the candidate.

Having considered the materials and scientific papers presented in the competition, their significance and scientific contributions, I find it reasonable to give my positive assessment and to recommend the Scientific Jury to prepare a report-proposal to the Faculty Council of the Faculty of Law for election of Ch. Assist. Prof. Dr. Miroslava Borisova Manolova to the academic position of ‘Associate Professor’ at Sofia University “St. Kliment Ohridski ”in the field of higher education 3.“ Social, economic and legal sciences ”, professional field 3.6. Law (Criminal law).

14.06.2021 г

Assoc. Prof. Dr. Daniela Doncheva