

**TO THE MEMBERS OF THE
SCIENTIFIC JURY FOR THE
DEFENSE OF THE
DISSERTATION WORK**

RECENSION

from Assoc. Prof. Dr. Nikoleta Kirilova Kuzmanova for dissertation work for
awarding of the educational and scientific degree "Doctor"

Scientific field: 3. Social, economic and legal sciences

Professional field: 3.6 Law

Scientific specialty: Criminal Law

Scientific supervisor: Prof. Doctor of Law Boris Velchev

Faculty: Faculty of Law at SU "St. Kliment Ohridski"

Department: Criminal Law Sciences

Title of the dissertation: "Mental coercion under the Bulgarian Criminal Code"

Doctoral student: Rusi Viktorov Alexiev

Grounds for presenting the recension: member of the scientific jury for the defense of the dissertation work, according to Order No. ПД-38-204/26.04.2023 of the Rector of SU "St. Kliment Ohridski" with commissioned preparation of a recension, according to Protocol No. 1 of a meeting of the scientific jury, held on 27 April 2023

I. Presentation of the doctoral student, the dissertation, the abstract and the publications

Doctoral student Rusi Viktorov Alexiev obtained an educational and qualification degree "Master" in the specialty "Law" in 1998. Since 2001 he has been working in the judicial system. For the period from 2001 to 2015, he was a junior prosecutor and prosecutor in the Sofia District Prosecutor's Office. Within the same period and in the same structure of the prosecutor's office, he successively held the positions of "head of the 02 Economic Crimes Department" (2006 - 2008) and deputy district prosecutor (2008 - 2013). Acquired the status of irreplaceability in 2006 (decision of the Supreme Judicial Council, Protocol No. 18/12.04.2006). From 07.07.2015 he is a judge in the Sofia City Court, Criminal Division with the rank of "judge in the Supreme Court of Cassation and the Supreme Administrative Court", acquired on 30 April 2015 (decision of the Supreme Judicial Council, Protocol No. 22/30.04.2015). From 19.09.2019 to the present, he is the deputy head of administration - deputy - chairman of the Sofia City Court and head of the Criminal Department.

Along with his professional development as a magistrate, doctoral student Rusi Alexiev is upgrading his knowledge in the field of criminal and criminal

procedural law and by participating in numerous scientific forums in the country and abroad, as well as in other formats with a focus on the same field. A logical continuation of his development is his enrollment as a doctoral student of independent training from 01.02.2022 (order No. ПД - 20 - 208 of 25.01.2022 of the rector of SU "St. Kliment Ohridski") in the department of "Criminal Sciences" at the Faculty of Law of SU "St. Kliment Ohridski" in the field of higher education 3 "Social, economic and legal sciences", professional direction 3.6 "Law", scientific specialty "Criminal Law", with the topic of the dissertation work "Mental coercion under the Bulgarian Criminal Code". The scientific supervisor of the doctoral student is Prof. Doctor of Law Boris Velchev. Doctoral student Rusi Alexiev was dismissed ahead of schedule with the right of defense from 10 April 2023 (order No. ПД - 29 - 847/19.04.2023 of the rector of SU "St. Kliment Ohridski").

The dissertation work on the topic "Mental coercion under the Bulgarian Criminal Code" has a total volume of 218 pages, including table of contents, list of abbreviations used and bibliography. The bibliography contains a total of 98 titles, of which 83 are in Bulgarian and 15 in Russian. They are reflected in the content of the dissertation in a total of 240 footnotes.

The study is structured in an introduction, four chapters and a conclusion.

In the introduction, the argumentation for the relevance of the research is presented. According to the author, it is determined by the specific problems that arise from crimes related to mental coercion and which requires the application of an interdisciplinary approach for its clarification - from a criminological, criminal law and criminal procedural point of view. Scientific interest in the field of criminology is justified by the need to determine the specific factors that influence the personality of the criminal who commits such crimes and determine their victim groups. The criminal law study of this type of crime is justified by the problems related to their legal qualification and the application of some institutes of the General Part in relation to these crimes. The same problem, as the doctoral student rightly notes, is directly related to their proof in the criminal process, as well as to the specifically applicable mechanisms for the protection of the victims of such crimes.

The starting point thus derived is the reason for the author to define the subject of his research as mental coercion as a basis for criminal liability. Based on it, the object of the study includes the essence of mental coercion as a type of illegal criminal influence, the features of the behavior of the person who exercises such coercion, which are relevant for his criminal liability, and those of the behavior of the person on whom it is exercised the compulsion. It is on the basis of the object of research that the subsequent structure for the presentation of the research is determined.

Chapter one "Essence of mental coercion" is devoted to clarifying the legal essence of mental coercion as a form of mental influence on another natural person. The doctoral student offers a definition for it, which he derives from the multitude of theoretical developments that examine the mental impact in its

entirety or individual aspects of it through the lens of various criminal law institutes of the General Part and of separate compositions of crimes from the Special Part. As can be seen from the footnotes in this part of the study, the doctoral student has researched and analyzed the scientific sources, in Bulgarian and in Russian, in accordance with the scientific standards established for this form of education. The presented content of the individual elements of the definition is also in accordance with these standards. Through their prism, the possible forms of influence in which mental coercion is expressed - verbal and non-verbal - are clarified. On the basis of their specific manifestation, the conclusion was formulated that through mental coercion, the person affected can be motivated to perform lawful or unlawful behavior. In accordance with the multifacetedness of the discussed issues formulated in the introduction, the doctoral student brings out the relationships between mental coercion and other criminal law institutes, as well as with concepts from criminological science.

Chapter two "Criminal significance of mental coercion for the responsibility of the criminal" is devoted to the criminal significance of mental coercion for the responsibility of the perpetrator. The researched problem is presented through the prism of the two main directions of this meaning, which the doctoral student has brought out. The first of them is defined as the specifics that manifest themselves in the application of institutes from the General part in the case of exercised mental coercion. Within its framework, the forms of mental coercion at the stages of intentional criminal activity, complicity and the totality of crimes are examined. Special attention is also paid to the peculiarities of the individualization of the punishment for a crime related to mental coercion. In view of the second direction of the criminal law significance defined by the doctoral student, the summary of the crimes in the Special Part of the Criminal Code with the sign of the composition "exerted mental coercion" is presented. 2 classification criteria are also proposed for the subdivision of the types of crimes related to mental coercion. When applying the first of them - in view of whether mental coercion is a feature of the main composition or is only a qualifying feature, substantive and non-substantive crimes related to mental coercion are distinguished. And with regard to the second criterion - whether coercion is the only possible form or is only one of the possible forms of the executive action, crimes committed through coercion and crimes committed through various forms of motivational influence are distinguished, including mental coercion.

The **third chapter "Criminal significance of the behavior of the person subjected to mental coercion"** is devoted to the criminal significance of the behavior of the person subject to mental coercion. Emphasizing explicitly that this question from the discussed issues has currently been studied in criminal law science only through the prism of exculpatory circumstances, the doctoral student presents his view on the quality of "victim" of the person against whom mental coercion was exercised, for the purposes of criminal law in its entirety and for its relationship with the criminological concept of "victim of the crime". It also presents the levels of the victim's behavior differentiated based on

different criteria, as well as the significance of this behavior for the criminal responsibility of the perpetrator who exercised mental coercion. In this context, the means of protection of the victim, which the doctoral student defines as specific, are also listed. And given the criminal law focus of the research, in this part the emphasis is placed on the mechanisms for the protection of the victim, which are relevant to the criminal proceedings.

In the **fourth chapter** of the dissertation work "**Crimes related to mental coercion as a basis for realization of the responsibility of legal entities**" the institution of property liability of legal entities is discussed. The issues of the mechanism of their benefit and the peculiarities of the individualization of their property responsibility were discussed. Special attention is also given to the hypotheses in which the application of this institute is excluded.

The abstract of the dissertation research is correctly prepared. Its content includes a statement on the relevance of the research, its subject, objectives, volume and structure, as well as a description of the methodology used. The main theses of the dissertation work, the contributing points in it and the list of the doctoral student's publications on the topic of the work are presented in separate parts.

The doctoral student has **three publications on the subject of the dissertation**. 1. "*Mental coercion on the criminal as a form of complicity under Bulgarian criminal law*" - Newspaper: De Jure, 2021 (22), No. 1, pp. 41-49. 2. "*Special circumstances of importance for the individualization of criminal responsibility for crimes related to mental coercion*" - Newspaper: Contemporary Law, 2020, No. 3, pp. 81 - 94. 3. "*Mechanism of benefiting legal entities under Art. 83a of the Law on Administrative Violations and Punishments for Crimes Related to Coercion*" - Newspaper: The Reform in Administrative Punishment from 2020. Collection of Reports - S., UI "St. Kl. Ohridski", 2021, pp. 171 - 181. I accept them for recension, since they highlight the content of the dissertation work, which is in full accordance with the standard established in science for disclosing part of the results of scientific research already in the course of preparation of a dissertation. As can be seen from their content, the doctoral student does this by publishing them. In these publications, the features of complicity, the individualization of punishment and the application of the institute of property liability of legal entities in crimes related to the exercise of mental coercion are presented as the main highlights of the study. And their content is expanded compared to what is included in the dissertation on the same issues.

In the content of my dissertation submitted for recension, the scientific sources used are correctly cited in the footnotes. Literal quotations that occur in the text are marked in quotation marks, and semantic quotations are indicated as such in their respective footnotes. This conclusion is also confirmed by the originality check of the dissertation work and the similarity report based on it, confirmed by the PhD student's supervisor on the basis of Art. 65, para. 5, item 4

of the Regulations on the terms and conditions for acquiring scientific degrees and holding academic positions at SU "St. Kliment Ohridski".

On this basis and in view of the amount of scientific production, my conclusion is based that PhD student Rusi Alexiev fulfills the minimum national requirements in the sense of Art. 2b, para. 2 and 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria in connection with Art. 25 of the Regulations for its implementation. The total sum of the doctoral student's points on the scientometric indicators for acquiring the educational qualification degree "doctor" in professional direction 3.6 Law is 80.

II. Evaluation of the scientific and scientific-applied results and contributions of the dissertation work

The way of developing the exposition in the dissertation work and its content give me grounds for the conclusion that the main contributing points are brought out in the abstract of the dissertation work through the prism of seeing that the research is of emphasized practical importance. Although implicit, the doctoral student himself defines this goal of his research already in his introduction. It is also confirmed by the choice of topic, given that the issue of the place and role of mental coercion in criminal law is not an independent focus in another scientific work in the way it is presented in the dissertation - the subject of this recension.

The chosen structure of the dissertation itself can be defined as a contributing point. On the one hand, it expresses the different point of view of scientific research. And on the other hand, it is fully consistent with the tendency in criminal law scientific research, which has become more and more established in recent years, to present problematics based on the Special Part as a topic of scientific analysis through the prism of the General Part of criminal law. This approach should be admired, because through it the important emphasis is placed on the relationship of the two parts that form one whole - criminal law.

In the same context is the choice of the doctoral student to present his view on the issue of property liability of legal entities as an institute of administrative law. Through it, on the one hand, it illustrates the jurisprudential differentiation of the branches of criminal law and administrative law. And on the other hand, the issue of distinguishing their field of application and their ratio in the manifestation of boundary issues for the two branches is also touched upon.

The PhD student has endeavored to explore the nature of mental coercion in criminal law, as compared to its analysis for the purposes of criminological science. It offers a definition for it and explains the marks, which is the scientifically established approach to the study of criminal law institutes of importance for both the General and the Special part of the criminal law. Emphasizing the type of mental coercion belonging to the genus "mental impact" facilitates the understanding of its essence for the purposes of applying the criminal law. In the same context, the differentiation of verbal and non-verbal mental coercion and the presentation of their specific manifestations, as well as the discussion of the specifics of its manifestation in the stages of

intentional criminal activity and complicity in crimes related to mental coercion, are made in the exposition.

Importance from a criminal law point of view has always been, is and will continue to be any research that discusses and makes proposals for solving controversial issues in connection with the determination of the legal qualification of acts and those in the determination and individualization of punishment for individual types of crimes. Undoubtedly, the doctoral student's work as a magistrate has had a significant impact on his scientific pursuits to highlight the issues that are relevant to law enforcement agencies in relation to the qualification of acts involving mental coercion and the determination and individualization of punishments for them. In this direction are his efforts to give his answers to these questions in the part of the research on the criminal law significance of the behavior of the perpetrator who exercises mental coercion and that of the victim of the crime.

On this basis, the *de lege ferenda* recommendations are also derived. They are a contributing point for any scientific research, as they provide an opportunity for the development of a scientific discussion not only in the direction of enriching the presented arguments, but also for exposing counter-arguments. And every discussion with such a subject objectively creates an opportunity to reach a unified view on the possibilities for changes in the legislation and outlines the steps for their implementation.

It is indisputable that the issue of the study "Mental coercion under the Bulgarian Penal Code" is relevant. It stems not only from the essential relationship between mental coercion and mental impact in criminal law, but also from the development of the understanding of the very essence of mental coercion in the context of modern understandings of it in international law and the law of the European Union. Therefore, the scientific work with such a focus is particularly relevant and can contribute to the upgrading of knowledge about it for the purposes of criminal law, which is essential for the correct application of the criminal law.

III. Recommendations

Several recommendations can be made about the dissertation "Mental coercion according to the Bulgarian Penal Code", **which I base on my critical analysis of the research.**

1. The conclusions about mental coercion under the Penal Code are undoubtedly based on the compositions of crimes in which it is provided as a constituent element. § 2 of chapter two is devoted to this question in the dissertation work. It is true that the catalog of these crimes is large and includes different types of crimes with different objects of concern. Therefore, from a scientific point of view, it is advisable not only to derive criteria for their grouping, but also to clarify in more depth the features of each of the species, which are defined on the basis of these criteria. From the content presented in the dissertation in this part of it, it is not clear how the real and non-real crimes related to coercion relate to each other, on the one hand, with the types that are

differentiated based on the other criterion - whether coercion is the only possible form of enforcement act or one of its variant forms (p. 121 – 122). By interpretation, it can be concluded that the division of real and non-real crimes related to mental coercion is basic, and the other classification criterion is complementary. However, from the point of view of the established scientific standards, it is advisable to formulate conclusions with such content explicitly in the research. This can be done by describing the relevant components of the crimes for each of these types (eg the actual crimes related to coercion, where it is the only form of enforcement action to follow from a description of the crimes related to this type). "Description" should mean not only their enumeration, but also an analysis of the selected legislative decision and the conclusions in connection with it. Applying this or another similar approach contributes to enriching the content of the dissertation work in a way that is consistent with its scientific character. Therefore, I recommend that this part of the study be revised.

2. Without excluding the contributing nature of the analysis of the property liability of legal entities, its relevance to the topic of the dissertation can hardly be shared. The content presented in chapter four essentially expresses the doctoral student's view of the essence of this institute in its entirety, and not so much in view of the type of crimes related to mental coercion. In my opinion, there are two possible options for overcoming this deficit. The first of these is to develop this matter in a separate scientific study. The second is to revise its content so that it is relevant to the topic of the dissertation work. In the event that the latter is chosen, I believe that it should be preceded by a more detailed clarification of the types of crimes related to mental coercion, so that on the basis of the conclusions about them, those about the mechanism of the enrichment of the legal person when performing them.

3. The issue of the individualization of responsibility is discussed separately in two places in the dissertation - in chapter two, § 1, item 4 (regarding the criminal responsibility of the subject of the crime related to mental coercion) and in chapter four, § 3 (regarding the property liability of the legal entity). It is evident from the content in these parts that the author's idea is to emphasize possible mitigating and aggravating circumstances. But it is hardly aimed at listing them exhaustively, and in such a way that they are applicable to every perpetrator, even though the compositions of crimes related to mental coercion are so heterogeneous. On the other hand, it is not clear why, in the part that discusses this issue in relation to the property liability of legal entities, circumstances that are relevant to the criminal liability of the individual are cited as such, and are not related to the prerequisites for the liability of the legal entity (eg the intensity of the coercion (p. 192), the specific content of the threat (p. 193), etc. (up to p. 194). Therefore, I recommend that the chosen approach for these parts of the study be reconsidered.

4. It is an established scientific standard that formulated theses are illustrated with specific examples. Usually their number is determined by the complexity of

the thesis, because their purpose is actually to clarify its content. Therefore, it is difficult to share the view that the role of the examples is to replace this content. It makes a strong impression that in the discussed exposition, the development of examples is used as the main concept for arguing theses. Moreover, their accumulation in separate places in the exposition is so noticeable that it significantly complicates the understanding of the substantive part of the thesis (eg on pp. 91, 97, 98, 140, etc., etc.). Therefore, I recommend rethinking this approach within the entire content of scientific research. Since its change, the practical orientation of dissertation work will not change. Even on the contrary, it will be significantly emphasized, since it will enable those expressed in it to be applied to many more concrete cases. In addition, by reducing the examples presented in their entirety, some contradictions related to them will be removed, which I believe are the result of the objective difficulty of citing multiple examples for each thesis.

In the event that he accepts the recommendations made, the doctoral student can take them into account when preparing the dissertation "Mental Coercion under the Bulgarian Criminal Code" for subsequent publication of his defense.

IV. Conclusion

Based on the findings presented in the recension and the conclusions drawn from them for the scientific contributions of the study, **I give a positive assessment** of the dissertation submitted for defense by the doctoral student Rusi Viktorov Alexiev on the topic: "Mental coercion under the Bulgarian Criminal Code". The scientific composition meets the requirements of Art. 6, para. 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria and of Art. 27, para. 2 of the Regulations for the Implementation of the Law on the Development of the Academic Staff in the Republic of Bulgaria for obtaining the educational and scientific degree "Doctor", therefore **I propose to the respected scientific jury to award the educational and scientific degree "Doctor"** in scientific field 3. Social, economic and legal sciences", professional direction 3.6 Law, scientific specialty "Criminal Law" of Rusi Viktorov Alexiev.

Member of the scientific jury:

(Assoc. Prof. Dr. Nicoleta Kuzmanova)

Sofia, 11 May 2023