

OPINION

by Prof. Darina Zinovieva, Institute for the State and Law, BAS and
Faculty of Law of PU "P. Hilendarski"

about a dissertation on:

THE PRINCIPLE OF PROPORTIONALITY IN THE PROTECTION OF
FUNDAMENTAL RIGHTS

by Maria Borisova Dimitrova, doctoral student at the Faculty of Law of
the SU "St. Kl. Ohridski", Department of "Constitutional Legal Sciences"

for the awarding of an educational and scientific degree "Doctor" in a
professional field 3.6 Law /Constitutional law/

Dear members of the scientific jury,

1. General notes

By order No. 38-674 of 21.12.2023 of the Rector of SU "St. Kl. Ohridski" I
was appointed as a member of the scientific jury.

Maria Dimitrova presents the necessary documents related to the
dissertation defense procedure. There are four publications related to the
topic of the dissertation, one of which is co-authored and the other is a
foreign publication. The abstract faithfully reflects the contributions. As
can be seen from the CV, Maria Dimitrova has considerable experience,
related to the activities of the ECHR.

2. Analysis and evaluation of the dissertation work

The structure of the dissertation is very good. It consists of four chapters, which, according to the content of the matter, are arranged in a logical system. The used bibliography has an impressive volume, with foreign authors predominating. Decisions of the European Court of Human Rights, the Constitutional Court of the Republic of Bulgaria, constitutional and supreme courts of other countries were used.

The author Maria Dimitrova, already in the introduction correctly emphasized the doctrinal division of the concept of "proportionality" into three aspects. The objectives of the research are well defined - to clarify the reasons for the emergence of this principle when implementing the powers of state authorities and when implementing national judicial control and supranational judicial control.

Thus, the third mentioned aspect of the manifestation of this principle appears in the dissertation as the center of the study - the set of procedural norms regulating judicial control over acts that affect rights and legal interests, related to the basic constitutional rights. The author's conclusion is correct that the principle of proportionality appears as one of the most significant principles for modern constitutionalism. She also correctly substantiates the reasons for this - this importance is related to the current role of courts in the nation-state and in the supranational judicial system.

She fine also substantiates the peculiarities of the administration of justice in our country, comparable to the peculiarities in different time periods in historical terms.

Consistently in the work, Maria Dimitrova examines the realization of the principle of proportionality in a historical aspect. She commented on the role of the separation of the three powers and highlighting the judiciary as a guarantor of the correct application of this principle. Appropriately, the author examines the relationship between national courts and the ECHR, pointing to examples from court cases in some European countries and reflecting on the problems associated with its implementation. With the detailed analysis, it gives a good idea of the reasons that potentiate the application of the principle.

The peculiarities of the principle of proportionality as a legal principle that prevents the authorities with authority from arbitrarily exercising their competences are well explained. The second aspect of the implementation of the principle is also well explained, namely the positive one - the implementation of management by the bodies of state power, so that it aims to guarantee the observance of the basic constitutional rights of citizens.

The author knows the comparative constitutional law very well and supports his reasoning with specific ones from the constitutional legal doctrine of the respective country.

At the same time, the author very appropriately makes a correlation and analyzes the Bulgarian jurisprudence and its compatibility with that of the European courts.

Maria Dimitrova's conclusion regarding the implementation of this principle in our country mainly in administrative and constitutional justice is correct. It correctly distinguishes the application of the principle of proportionality, according to the APC, in administrative justice from the essence of this principle in constitutional justice. In the analysis, she

gives good examples with decisions of the constitutional court in our country with the subject - administrative acts of a restrictive nature. Of the contributing points, the most important are the author's conclusions that the Bulgarian Constitutional Court still does not fully apply the principle of proportionality, mainly due to the lack of opportunity for direct protection of citizens' rights. She calls this problem the "constitutional insufficiency" of the Bulgarian constitutional model. According to her, the Bulgarian Constitutional Court currently does not have sufficient practice related to the assessment of proportionality of the limitations of fundamental rights /personal, civil and political rights/. And this is due, according to her, precisely to the lack of legal regulation for direct referral by citizens in case of violation of their fundamental rights. We agree with her conclusions that with this model, the court cannot fully apply this principle, on the one hand, and on the other hand, the practice of the supranational courts /ECHR/ cannot be fully included in the constitutional justice of the Bulgarian state. We agree that the national constitutional identity, the typicality of the Bulgarian legal tradition and culture are also manifested through the realization of this principle, when the interrelationship with the practice of the European courts is commented upon.

Thus, Maria Dimitrova argued the thesis that when the national judicial practice related to the limitations of fundamental rights is in sufficient volume and full value, there is also a more effective way to interact than the practice of the European courts. In this interaction, the limits of the non-interference of the state authorities in the limitations of fundamental rights will undoubtedly be more clearly and precisely defined.

3. Critical notes: The thesis uses expressions like "the international scene", "ecstatically received" in places, which are not in accordance with the otherwise very good legal language of the work.

CONCLUSION:

In view of the above and the observed requirements of the law, I consider that the dissertation meets the requirements.

I give my **positive** assessment and propose to the scientific jury to award the educational and scientific degree "Doctor" to Maria Borisova Dimitrova in professional direction 3.6 Law /constitutional law /, in the Faculty of Law of SU "St. Kl. Ohridski".

26.01.2024

prof. Darina Zinovieva