SUMMARY OF THE PUBLICATIONS

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1. MONOGRAPH:

Tsonkov, Ivaylo. ***The Principle of Full Appellate Review and the Powers of the Appellate Court in Bulgarian Criminal Procedure (Historical, Doctrinal and Practical Perspectives)*****.** Sofia, Ciela (2024), 564 pages, ISBN 978-954-28-4678-9 (hardcover); ISBN 978-954-28-4662-8 (paperback). Scientific reviewers: prof. DSc (Law) Margarita Chinova, prof. DSc (Law) Georgi Mitov.

The purpose of the monograph is to study comprehensively, and from different perspectives, the so-called "full appellate review principle" as well as its influence on the limits to the jurisdiction and the specific powers of appellate courts in Bulgarian criminal procedure. It analyses the objective inhibitions for the "complete manifestation" of the full appellate review principle in appeal proceedings. Based on this analysis, the monograph gives substantiated answers to the questions touching upon the true powers of the appellate court which, in the author's view, are controversial or have been incorrectly decided in the courts' practice. The monograph also makes a number of proposals for amendments to the Code of Criminal Procedure (CCP) which could optimise criminal procedure in general and the manner in which appeal proceedings are regulated in particular.

The monograph consists of an introduction, two parts (with a total of seven chapters) and a conclusion. The first part has two chapters, each of which has separate sections. The second part has five chapters, again with separate sections in each. In addition, the monograph has a detailed table of contents (8 pages in the printed edition), a comprehensive bibliography (156 sources cited) and footnotes (733 items).

The introduction presents the author's interest in the chosen topic and justifies the need to study it scientifically. Special emphasis is placed on the essential importance of the appellate courts' role and competence in Bulgarian criminal procedure, respectively on the influence of the so-called "full appellate review principle" in the legislative delineation of their powers. The logic and structure of the forthcoming study are also outlined in general terms.

The first part of the monograph is devoted to historical and theoretical issues relevant to the topic under examination.

Its **first chapter focuses on** historically existing alternative approaches to challenging/reviewing first-instance judgments in criminal cases, and the resulting need for some terminological clarifications (*section I*). It then traces the affirmation on the European continent following the French Revolution of 1789 of the so-called "principle of appeal" as an alternative to *proprio motu* (or *ex officio*) review by the higher court typical for the investigative (inquisitorial) criminal procedure (*section II*). The sources and reasons that led to the establishment of the principle of appeal in Bulgarian post-liberation criminal procedure are presented. The advantages of this principle over *proprio motu (*or *ex officio)* review by the higher court are outlined, but the objective necessity, in some specific hypotheses, for the higher court to have separate powers to review the correctness of the challenged judgment beyond the complaints raised in the appeals/protests lodged is also demonstrated (*section III*). The study then turns to the emergence and consolidation of the so-called "full appellate review principle", inextricably linked to a substantive reformatting of pre-socialist appellate proceedings into socialist second-instance proceedings (*section IV*).

The **second chapter** deals with the theoretical clarification of legal concepts cognate to the full appellate review principle. The focus is on the principle of officiality and the historically determined changes in the understanding of its role in the procedural doctrine, respectively its essence and content. These issues, in so far as the principle of official proceedings is recognised as a fundamental principle of criminal procedure, are addressed in a separate section I. The notions of instructional principle and *proprio motu* (or ex *officio*) principle in criminal procedure are also explored (*Section II*). The ultimate aim of the analysis is to compare all these legal

concepts with the full appellate review principle, outlining both the similarities and the differences between them (*Section III*).

In the **second part** of the monograph the research focuses, based on the previous theoretical analysis, on various practical problems relating to the statutory framework and the manner in which the law is applied. The task here is to examine comprehensively and thoroughly, and to clarify, the impact of the full appellate review principle (and above all the concept of its "full manifestation in the appellate proceedings") on the scope and content of powers of appellate courts. This inevitably requires analysing the factors which operate in parallel with, interact with, and thus substantially correct, the manifestations of the full appellate review principle. It is precisely their common action and influence which determine the jurisdiction of the second-instance court, the content of its powers and the specific features of the procedure before it. In the author's view, only when this integrative action and its systemic effect are taken into account will it be possible to assess fairly the correctness of certain legislative solutions, to adequately fill gaps and overcome ambiguities in the statutory framework, and to give a reasoned opinion on jurisprudence which is contradictory or gives the impression that it is *contra legem*.

The **first chapter** of the second part contains an analysis of the concept of "full manifestation of the principle of full appellate review in appeal proceedings". It examines the three main ways in which the principle of full appellate review broadens the limits of appellate review of the correctness of the first-instance judgment and takes a reasoned stance on a number of ambiguities arising from the provisions of Article 314 of the Code of Criminal Procedure (*Section I*). The additional aspects of the procedural rules in which the "full manifestation" in question can be observed are also presented (*Section II*).

The **second chapter** examines the extent to which the limits of appellate review depend on the factual and legal aspects of the charges brought before the court. It is argued that the limits of the charges in question are an absolute constraint on the limits of appellate review, and that the principle of full appellate review can thus in no way overcome the resulting limits on the jurisdiction of the appellate court (*Sections I and II*). The decisive extent to which the factual and legal limits of the charges limit the scope of appellate review also calls for an examination of the question whether (and to what extent) those limits may be altered at the various stages of the trial phase, or, as the case may be, under the various possible options for the manner in which the criminal proceedings may unfold (*Section III*). Based on this analysis, the specific powers of the appellate court are clarified: first, the power to establish the facts and circumstances of the case which have to be proved;

and second, the power to give the facts so established a correct legal characterisation under the Criminal Code (*Section IV*).

The next **third chapter** deals with the competence of the appellate court to establish and remedy serious breaches of the rules of procedure. This question requires a different approach and a differentiated answer turning on the different characteristics of the breaches - and above all depending on the procedural stages in the course of which they have been committed. The *first section* of this chapter deals with the possibilities of remedying serious breaches of the rules of procedure made in the proceedings at first instance. Particular attention is paid to the many complications and contentious issues in connection with the so-called "second appeal" (the situation covered by Article 335 § 3 of the Code of Criminal Procedure). In the *second section,* the study deals with the serious breaches of the rules of procedure made in the pre-trial proceedings. Here, the most complex and practically significant issue is whether, despite the amendments to the CCP in 2017, the appellate court is competent to establish, of its own motion, significant breaches in the pre-trial proceedings which have curtailed the procedural rights of the accused. The settled case-law is critically analysed, and the view that in a number of aspects it is not in harmony with the CCP is explained in detail.

Chapter Four discusses various aspects of the prohibition against *reformatio in peius* and the legal requirements for overcoming it (*Section I*). Then, some controversial issues are analysed in detail – the possibility to derogate from the prohibition of *reformatio in peius* by an appeal lodged by the representative of the private prosecutor/private complainant, and the existence of a prohibition in criminal procedure to worsen the position of those civil parties who have lodged an appeal (*Section II*). All hypotheses of aggravation of the position of the defendant in terms of criminal law are examined in detail, including the possible practical complications in these hypotheses, and for each situation the specific limitations on the appellate court's powers arising from the prohibition of *reformatio in peius* are presented and justified (*Section III*). In addition, several specific reasons are outlined which, in combination with the prohibition under discussion, actually contribute to limiting the appellate court"s ability to worsen the defendant"s situation in the criminal proceedings (*section IV*). The last section of this chapter (*Section V*) comprehensively discusses the conflicting views in the legal doctrine and the judicial practice on whether the prohibition against *reformatio in peius* continues to operate in cases where the court refers the case back to the prosecutor for it to resume in the pre-trial phase. A proposal is made as to how a fair balance can be struck between the interests of the accused (defendant), the victim and society if the criminal proceedings unfold in that manner.

The last, **fifth chapter**, of the second part of the monograph is devoted to the question of compliance with the standards of a fair trial of a specific power that the appellate court has – to give in its judgment a different legal characterisation of the facts at trial, which has not been presented to the defendant, if this characterisation is for an offence which carries the same or a more lenient punishment. The problem has been deliberately put into a separate chapter, as it is relevant not only to appeal proceedings in criminal cases – it may also arise in first-instance and cassation proceedings, and even in proceedings for setting aside a final judgment and reopening a criminal case. *Sections I to IV inclusive* clarify the nature of this problem and the reasons for its existence and follow with a critical analysis of the statutory framework. Both a fundamentally new approach to solving the problem and specific amendments to the CCP ensuring a fair trial standards are proposed. It is argued why such amendments would not go against the requirement that the court be impartial. Also, directly relevant to the problem under discussion is the judgment of the Court of Justice of the European Union in Case C-175/22, which was handed down just before the monograph was completed and is also critically discussed in the last section (*Section V*) of this chapter.

In the **conclusion**, some of the more important perspectives of the study and some of the more significant conclusions reached by the author in the analysis are presented in a synthesised form.

2. STUDIES

2.1. Tsonkov, Ivaylo. The Court's Power to Apply a 'a law for an equally or less severely punishable criminal offence' and Fair Trial Standards. // *Seventy Years of the ECHR - Impacts on Domestic Law, International Law and European Union Law.* Sofia, University Press "Sveti Kliment Ohridski" (2023), pp. 273-291. ISBN 978-954-07-5801-5

The study analyses the power of the court in Bulgarian criminal procedure to apply a law for an equally or less seriously punishable criminal offence (that is, a legal characterisation which has not been presented to the defendant) for the first time in the judgment convicting the defendant. The author outlines two groups of markedly different scenarios when this judicial power is exercised. It is argued that only in one of these two groups of scenarios would the defendant have

no effective remedy against the new, different characterisation. The study analyses critically the legislative approach, which does not take into account the difference between the two groups of scenarios, and therefore the amendments made by the legislator in Art. 422, para. 1, item 5 of the Code of Criminal Procedure (CCP) (promulgated in the State Gazette, No. 93 of 2011) have proved to be excessive from one perspective and insufficient from another perspective. In accordance with the 2010 judgment of the European Court of Human Rights in the case of Penev v. Bulgaria, both a fundamentally new approach to solving the problem under discussion and specific amendments to the CCP ensuring fair trial standards are proposed. It is demonstrated why such changes would not conflict with the requirement that court be impartial.

2.2. Tsonkov, Ivaylo. The Right to a Fair Trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Certain Features of Bulgarian Criminal Procedure // *Juridical World* (2015), No. 1, pp. 50-84. ISSN (print): 1311-3488

The study examines important aspects of the fair trial standards under Article 6 of the European Convention on Human Rights (ECHR), with particular attention to Article 6(3)(d) of the ECHR. In the light of the ECtHR case-law, various decisions of the Bulgarian legislator and national case-law are analysed and assessed: the conviction by the appellate court (without the appellate court carrying out any fact finding of its own) of a defendant acquitted by the court of first instance; the possibility not to involve a prosecutor when the court proceedings are conducted under the special rules of Chapter 28 of the Code of Criminal Procedure; the failure to distinguish the gravity of the breaches of the rules of criminal procedure when gathering and examining evidence, respectively the obligation for the national court to reject as inadmissible evidentiary materials presented by the defence only because the formal requirements of the Code of Criminal Procedure bar it from collecting, verifying and evaluating them, and not because it has reasonably assessed them to be irrelevant, unnecessary or obtained in breach of fundamental rights and freedoms; the appellate court's refusal to grant the defendant's request to be questioned and to give evidence directly before it; etc. Relevant proposals de lege ferenda are made, which the author considers to be capable of overcoming the problems outlined, which hinder ensuring the standards of a fair trial.

3. ARTICLES / SCIENTIFIC PAPERS /:

3.1. Tsonkov, Ivaylo. The rules in the Code of Criminal Procedure relating to expert evidence in the light of the ECtHR case law (Part Two) // *Law Review* (2017), No. 9, pp. 26-38. ISSN (print): 2534-9449 ISSN (online): 2534-9449

The article analyses the main reasons that can lead to a lack of neutrality of expert witnesses in Bulgarian criminal proceedure. It is argued that the procedural rights of the accused/defendant and his/her defence counsel are not sufficient to adequately and sufficiently compensate the legal possibilities of the prosecutor to appoint experts and order them to prepare expert reports in the pre-trial proceedings, respectively to use in court both the written conclusions of these experts and their additional oral explanations during their questioning during the trial. A number of specific recommendations have been made regarding the organisation and conduct of the pre-trial and trial phases of the criminal proceedings, which have the potential to contribute to ensuring 'equality of arms' in Bulgarian criminal procedure and real adversarial competition between the prosecution and the defence in the field of expert knowledge.

3.2. Tsonkov, Ivaylo. Again about expert evidence and the ′equality of arms′ in the criminal procedure (Part One) // *Law Review* (2017), No. 6, pp. 16 - 26. ISSN (print): 2534-9449 ISSN (online): 2534-9449

The subject of the article is the asymmetry in the capabilities of the state prosecution and the defence in the use of expert knowledge in publicly prosecutable criminal cases. It outlines the basic standards arising from the law of the European Convention on Human Rights and the case law of the ECtHR that are relevant to the preparation of expert opinions, experts and expert conclusions. The relevance to experts and to expert conclusions of the two guarantees of a fair trial arising from Article 6 § 3 (d) of the ECHR is discussed. Recommendations to the legislator and to the judicial practice are formulated in relation to the admission and use of expert knowledge in cases where the particularities of the specific criminal proceedings bring the position of the expert selected and appointed by the prosecutor or the investigating authorities closer to that of a prosecution witness.

3.3. Imova, Veronika, Ivaylo Tsonkov. Changes in the Code of Criminal Procedure - necessary or inadmissible? (Part Two) // *Society and Law* (2010), No. 2, pp. 3 - 22. ISSN (print): 0204-8523.

The article aims to analyse theoretically and justify some of the significant amendments and additions to the Code of Criminal Procedure, proposed in the bill for amending and supplementing that Code, in the preparation of which the two authors actively participated. Later, most of the proposed amendments were adopted by the legislator and became part of the positive law of the Republic of Bulgaria (promulgated in the State Gazette, No. 32 of 2010). The focus is on the changes with a biggest practical significance both in the pre-trial phase (the need to repeal Article 234(7) and Chapter 26 of the CCP) and in the trial phase (the need to amend Articles 279 and 281 of the CCP, so as to make it possible to read out the statements of a witness and explanations of an accused given to a pre-trial investigating authority; amendment of Article 287(1) of the Code of Criminal Procedure in order to expand the possibilities of amending the charges in the first-instance trial; reducing the possibilities for the appellate and cassation courts to refer the case back to the prosecutor at the stage of the pre-trial proceedings; etc.).

3.4. Imova, Veronika, Ivaylo Tsonkov. Changes in the Code of Criminal Procedure - necessary or inadmissible (Part One) // *Society and Law* (2010), No. 1, pp. 11 - 26. ISSN (print) : 0204-8523

The article aims to analyse theoretically and justify some of the significant amendments and additions to the Code of Criminal Procedure, proposed in the bill for amending and supplementing that Code, in the preparation of which the two authors actively participated. Later, most of the proposed amendments were adopted by the legislator and became part of the positive law of the Republic of Bulgaria (promulgated in the State Gazette, No. 32 of 2010). The statutory prohibition for the courts at the trial phase to assess the existence of a reasonable suspicion that the defendant has committed an offence when deciding on pre-trial detention has been criticised. The necessity of the figure of the reserve counsel and its compliance with the Constitution of the Republic of Bulgaria and the ECHR is demonstrated. Arguments have been put forward for the need to allow the court to question the investigating authority as a witness.

3.5. Trendafilova, Ekaterina, Ivaylo Tsonkov. Questions raised by the amendments to Article 234 and Article 236 of the Criminal Procedure Code. // *Contemporary Law* (1998), No. 1, pp. 37-46. ISSN (print) : 0861-1815

The article discusses the amendments to Articles 234 and 236 of the Code of Criminal Procedure enacted in August 1997. The legislator's aim was to speed up the criminal justice system and make it more effective. The main topic of the paper are the various problems which these amendments could cause in practice. The clashes between the existing and the new legislation are considered. Some de lege ferenda proposals for a better regulation of the relations between prosecutors and investigators in the pre-trial phase of the criminal proceedings are made. The changes to the provisions under discussion offer some rational ideas, while at the same time others could not be fully accepted. Even the positive ideas would face difficulties when being applied in practice due to the lack of precise and accurate statutory regulation.

3.6. Trendafilova, Ekaterina, Ivaylo Tsonkov. Detention by the Criminal Procedure Code and citizens' rights. // *Human Rights* (1998), No. 1, pp. 32-44. ISSN (print): 1310-9170

The article deals with one of the most important issues of human rights protection - the arrest of a suspect and the measure of pre-trial detention regulated in the Code of Criminal Procedure. A critical analysis is made of Articles 152, 185 and 202 of the Code of Criminal Procedure of 1974 (amended). The legal grounds for arrest and detention and the serious questions which they raise are examined and critically evaluated. Comparing them with the objectives of the coercive measures, it is concluded that some of the grounds for pre-trial detention do not correspond to its objectives. They turn detention into punishment for the accused – thus violating the presumption of innocence. The authors point out that coercive measures are intended to ensure the normal course of criminal proceedings. Particular attention should be paid to the new provision of Art. 152 para 3, which establishes a maximum period of detention of one or two years in cases where the penalty provided for is imprisonment for more than 15 years, life imprisonment or death. Discussing various problems that may arise in practice in connection with the application of Article 152, the authors propose de lege ferenda amendments to the Code of Criminal Procedure.

The approaches of modern legal systems are examined and used as additional arguments to support the authors' conclusions.

3.7. Tsonkov, Ivaylo. Issues concerning criminal procedural functions. // *Legal Theory* (1994), No. 2, pp. 88-94. ISSN (print) : 1310-7348

The article deals with various aspects of the theoretical concept of criminal procedure functions. It is argued that it should be further developed by taking into account the subject performing criminal procedural activity. A distinction is made between the concepts of 'functions in the abstract sense' and 'functions in the concrete sense'. It has been substantiated that the activity of collecting and verifying evidence has both an independent and important significance for the trial and essential specifics. Therefore, the refusal to consider it as a separate procedural function limits the possibilities for a full and detailed presentation of the diversity of criminal procedural activity.