

OPINION

by Associate professor Dr. Ralitsa Yankova Ilkova Petkova – member of the academic panel for the competition for taking the academic position “Associate Professor” in academic field “Social, economic and legal studies”, professional field “3.6 Law”, scientific specialty “Criminal Law”, called to meet the needs of the Department of Law at Sofia University “St. Kliment Ohridski” and promulgated in State Gazette issue 30 of 15 April 2022, with applicant – senior assistant Nikoleta Kirilova Kuzmanova, PhD

I. Information about the competition

The competition for the academic position “Associate Professor” in the academic field “Social, economic and legal studies”, professional field “3.6 Law”, scientific specialty “Criminal Law” is promulgated in State Gazette, issue 30 of 15 April 2022 by virtue of a decision of the Faculty Council of the Department of Law at Sofia University “St. Kliment Ohridski”. There is one applicant in the competition – senior assistant Dr. Nikoleta Kirilova Kuzmanova.

I have been selected as an internal member of the academic panel for the competition by virtue of Order № ПД–38–255/23.05.2022 issued by the Rector of SU “St. Kliment Ohridski”. By virtue of Protocol № 1 of a meeting of the academic panel for the competition for academic position “Associate professor” in professional field “3.6. Law” (Criminal Law), held on 17 June 2022 I was selected to prepare a statement of opinion which I herewith present.

II. Information about the applicant

Nikoleta Kirilova Kuzmanova was born in 1971 in Sofia. She graduated from SU “St. Kliment Ohridski” with a Law degree. She obtained her Master’s degree in Law in 1998. Between 1999 and 2012 she held the positions of “assistant” and “chief assistant” at the Department of Criminal Studies” at the Faculty “Police” at the Academy of Ministry of Interior (MoI). Since 2000 she was a part-time lecturer in Criminal Law at SU “St. Kliment Ohridski” and as of 2012 – chief assistant at the Department of “Criminal Law Studies”. In 2014 she became a doctor in law after successfully defending her dissertation thesis on the topic of “Legal Protection of Citizens’ Political Rights”.

The applicant boasts impressive teaching experience. For more than twenty years she has conducted seminars for students at Faculty “Police” at the Academy of MoI and students studying Law at the Faculty of Law at SU “St. Kliment Ohridski” in “Criminal Law Studies. General Part” and “Criminal Law Studies. Special Part” with the full number of academic classes. She has actively participated in the end-of-term exams, written final exams, entrance exams, academic and practical internships; she is a deputy-supervisor of the criminal law study group with third and fourth-year students studying Law at the Faculty of Law at SU “St. Kliment Ohridski”. Since 2010 she has taught Criminal Law at the Centre for Vocational Training at the “Human Resources” Directorate at the State Agency for National Security.

The applicant actively participates in the activity of the academic bodies at faculty and university level. Her activity as a scientific secretary of the Faculty of Law at SU "St. Kliment Ohridski" (in the period between 2014 and 2016) and as a secretary on the issues related to accreditation (since 2019 – present) are of great importance to the Faculty.

Nikoleta Kuzmanova is an esteemed university professor with more than 23-year teaching experience with extremely good reputation and unquestioned authority in academic circles. She is deeply respected and admired by students at the Faculty of Law who appreciate the energy, enthusiasm and dedication she puts into her work with students. She is good at triggering students' interest in the subject matter taught and motivating them to acquire knowledge with desire, devotion and commitment. Considering the above stated, I am deeply convinced that the applicant is a professor at a very high academic level, extremely well prepared and competent to take the academic position "Associate Professor", for which the current competition is called.

The applicant has built an impressive career in other areas, too. She successively held the positions legal reviewer at Directorate Legislation and European Law at the National Assembly of the Republic of Bulgaria (between 2004 and 2005), senior expert associate at the Legal Affairs Committee at the National Assembly (in the period between 2005 – 2008), advisor of the Minister of Internal Affairs (between 2008 – 2009), head of the political cabinet of the Minister of Internal Affairs (between 2008 – 2009), chief expert associate at the Legal Affairs Committee at the National Assembly of the Republic of Bulgaria (in 2009), state expert at "Legislative Council" Directorate at the Ministry of Justice (2010), senior expert associate at the Legal Affairs Committee at the National Assembly of the Republic of Bulgaria (in the period between 2013 – 2014) and head of the political cabinet of the deputy minister on public order and security and a minister of defence (in the period between 2017 – 2021).

She has participated in the drafting of a number of legal acts in the area of criminal law and procedure, administrative law and procedure, constitutional law and judiciary system structure and thus contributing essentially to the development of legislation and the implementation of the achievements of the doctrine in the state regulation. Mrs Kuzmanova demonstrates exceptionally profound preparation and expert potential in the area of law-making activity and the legal technique.

Nikoleta Kuzmanova is a recognized scholar in the field of criminal law. She has published two monographs ("Legal Protection of Citizens' Political Rights", Ciela, S., 2015, ISBN 978-954-28-1738-3 and "Freedom of Religion and Criminal Law", Iztok-Zapad, S. ISBN 978-619-01-1001-9); she has written separate chapters in two other monographs, 11 articles and 4 studies. She has compiled the proceedings of conferences organized by the Department of Criminal Law Studies at the Faculty of Law at SU "St. Kliment Ohridski". She has participated in a number of scientific and research conferences.

Mrs. Kuzmanova's interests are mostly in the field of criminal law. The review of her research activities points out the importance of her monograph for awarding the academic and scientific degree "Doctor in Law"- "Legal Protection of Citizens' Political Rights", Ciela, S. 2015, as well as the articles: "The direct object of infringement of crimes against creditors"- published in the Bulletin "Police", issue 14/2002, publishing house Academy of MoI, ISBN 1310 – 4705, pp. 112 – 124; "Limits of legal use of physical force and legal consequences when exceeding it"- in

Bulletin “Police”, issue 15/2002, publishing house Academy of MoI, ISBN 1310 – 4705, pp. 225 - 240; “About the implementation of article 12a of the Criminal Code - in Contemporary Law, issue 3/2002, ISSN 08611815, c. 75 – 85; “General Characteristic of Crimes Against Citizens’ Political Rights”, in DE JURE, issue 2/2013, ISSN: 2367-8410 (Online), ISSN: 1314-2593 (Print), pp. 86 – 96; “Legal Protection of the Right to Opinion and the Right to Complaints, Proposals and Petitions”- in European Perspectives for Development of Criminal Legislation, a collection of reports, “St. Kliment Ohridski” University Press , S., 2014, ISBN 978–954–07–3722–5, pp. 134 – 144; “Historical Development of the Regulation of the Legal Protection of the Political Rights of Citizens Under the Bulgarian Criminal Legislation” – in Contemporary Law, issue 1/2014, ISSN 08611815, pp. 76 – 89; “Legal Protection of the Right to Political Association”- in DE JURE, issue 1/2015, ISSN: 2367-8410 (Online), ISSN: 1314-2593 (Print), pp. 71 - 76.

Nikoleta Kuzmanova meets and significantly exceeds the minimal national requirements for taking the academic position “Associate Professor” at Sofia University, laid down in the LDAS in the Republic of Bulgaria (art. 2b) and the Regulations for its Implementation (art. 1a, para. 1). As evident from the submitted document about the fulfillment of the national requirements under art. 2b of the LDAS of the Republic of Bulgaria for academic field 3. Social Sciences, professional field 3.6 “Law”(Criminal Law) chief assistant Dr. Kuzmanova collects the required points under all groups of indicators regulated in the Regulations for the Implementation of LDAS of the Republic of Bulgaria, as follows: group of indicators A – dissertation paper for awarding educational and academic degree “Doctor”- 50 points; group of indicators B – habilitation thesis – monograph – 100 points; group of indicators C – research publications – 152.5 points; group of indicators D – citations – 85 points. The total number of points given the fulfillment of the quantitative indicators under groups A + B + C + D is 387.5 points.

III. Information about the research publications submitted for review

For the participation in the competition the applicant Nikoleta Kirilova Kuzmanova has submitted the monograph “Freedom of Religion and Criminal Law”, Iztok – Zapad, S., 2022, ISBN 978–619–01–1001–9; the articles “Tendencies in the Interpreting Activity of General Assembly of the Criminal Bar of the Supreme Court of Cassation after 1991”- published in Scientific Readings in memory of Venelin Ganev and Nikola Dolapchiev, a collection of reports, “St. Kliment Ohridski” University Press, S., 2017, ISBN 978–954–07–4260–1, pp. 239-247; “On the Principles of Criminal Law in Interpretation Decision № 3/2015 of the General Assembly of the Criminal Bar Association at the Supreme Court of Cassation – published in Scientific Readings on the topic of “Legal Norms and Legal Principles”, a collection of reports, “St. Kliment Ohridski” University Press, S., 2017, ISBN 978–954–07–4321-9, pp. 296 – 314; “The Principle of Lawfulness and the Administrative Penalty “Detention at a Division of the MoI”- published in a collection of reports from a scientific conference “Amendments to the Administrative Violations and Fines Act from 2020”, “St. Kliment Ohridski” University Press, S., 2022, ISBN 978–954–07–5359, pp. 124 – 134; “About Some Criminal Acts in the Criminal Code”- in Law Journal of New Bulgarian University, XVII.2, 2021, ISSN (Online): 1314-5797, pp. 10-16 and studies “About Implementing art. 40, para. 2 of the Constitution of the Republic of Bulgaria”(in co-authorship with chief assistant Kapka Georgieva PhD) – in a collection of reports from a National Scientific and Practical Conference “Media in Bulgaria – 30 Years On”, NBU,

Department of Law, 2020, ISBN 978-619-233-143-6, c. 101–124; „Reasons for Administrative Fines in the Special Part of the Criminal Code (discussion questions) – published in a collection of reports from a scientific conference on the topic “50 years Administrative Violations and Fines Act – history, traditions, future”, “St. Kliment Ohridski” University Press, S., 2020, ISBN 978–954–07–4975–4, pp. 272-297; “Object and System of Legal Protection of Freedom of Religion”- in Legal World, issue 1/2021, ISBN 1311–3488, pp. 11 – 31 and “Scope of Legal Protection of the Financial System”(in printing) – in Legal Thought, ISSN 1310-7348.

The reviewed works are a continuation and further development of the scientific searches of the applicant in the area of criminal law. All the scientific papers submitted for review are in the field of criminal law, for which the competition is called.

Among the scientific works of the applicant particular importance can be attached to the submitted habilitation thesis – **the monograph “Freedom of Religion and Criminal Law”**. The monograph is an authentic paper presenting valuable scientific contributions.

The object of the scientific analysis is the clarification of the importance of criminal law in the legislation of the freedom of religion as a guarantee for the normal exercising of this freedom and as one of the juridical mechanisms for the provision of the efficiency of bans and limitations related to it. The author explains comprehensively and in depth the content of the respective features of the independent crimes against the freedom of religion. The paper exhibits marked scientific value but also has significant practical importance.

The structure of the research paper includes introduction, three chapters and a conclusion.

Chapter One, “Freedom of Religion”, is dedicated to the analysis of legislative decisions in the constitutional legislation concerning the definitive inclusion of this freedom in the catalogue of the key rights and liberties and the impact of the relations between the state and the religious institutions have had on the content of this legislation during the various historical periods, as well as the international and European standards which bear relevance to it. The meaning of the concepts faith, religion, theology, creed and their derivatives which are directly related to the criminal legislation has been explained. A comparison is drawn revealing the construction and development of the legal system of freedom and religion starting with the Constitution of the Principality of Bulgaria until the Constitution of the Republic of Bulgaria from 1991 and the impact exercised on this legislation by two factors in each historical period – the relations between the state and the religious institutions and the international rules and regulations which our country was a party to, as well as the legal acts of the European Union which are relevant to the subject matter under consideration. A number of conclusions are drawn about the essence of the freedom of religion being the main freedom of man which is the base of the author’s thesis about the role of criminal law in the legislative framework, related to it.

The second chapter of the habilitation work, “Legal protection of the freedom of religion”, focuses on clarifying the legal protection of the freedom of religion as a guarantee for freely exercising this right. The research in this part tracks the development of this protection since 1896 to this day. The analysis is structured according to the type of crimes which are of importance to the discussed subject matter following the commonly adopted standard for clarification of the characteristic features of the infringements, taking into consideration the

connection between the respective criminal law and the constitutional regulation of the freedom of religion during the respective historical period.

Chapter three of the research, “Legal liability for breaking the bans and restrictions connected to freedom of religion”, examines the importance of criminal law to legislative norms and regulations related to the freedom of religion as a legislative mechanism used for guaranteeing the efficiency of bans and restrictions related to that freedom. The author examines into detail the legislative regulation of bans and restrictions concerning the freedom of religion, clarifies the characteristic features of the legal consequences of violating the bans and restrictions concerning the freedom of religion and explains the content of the constituent elements and characteristics of crimes providing legal protection from such offences.

The publication has 252 pages, the literature reference contains 75 titles in Bulgarian, there are 464 footnotes; all citations are properly made; relevant legislative acts and judicial regulations are given. *De lege ferenda* proposals are made.

For the purpose of this competition the applicant has presented four articles and four studies, published in referenced collective volumes.

In the article “**Tendencies in the Interpretative Ruling of the General Assembly of the Criminal Bar Association at the Supreme Court of Cassation after 1991**” the author analyses the interpretative practice of the GACRA at SCC in the field of criminal law after 1991. On the basis of the content of the interpretative acts the author outlines and concludes the trends in the interpretation activity. A few findings which were not defined as trends at the time the research was carried out are presented since their existence is of importance to the implementation of the Criminal Code due to the compulsory nature of interpretation.

The article “**About the Principles of Criminal Law in Interpretative Ruling № 3/2015 of GACRA at SCC**” is dedicated to the challenges posed by the implementation of Interpretative Decision № 3 of 2015 – obstruction to implementing criminal liability irrespective of the actual infringement characteristic which corresponds to the constituent elements of the crime or refusal to assume crime liability, without having legal reasons for that.

The article “**Principles of Lawfulness and the Administrative Penalty “Detention in a Division of the MoI**” discusses detention in a division of the MoI as a traditional administrative penalty applied in Bulgarian legislation. The author is of the opinion that its legal framework deviates from the principle of lawfulness since it is not included in the system of administrative penalties. She has concluded that on this ground it should either be excluded from the legal acts which envisage it or be included in the system of administrative penalties under art. 13 of the Administrative Violations and Fines Act.

In the article “**About Certain Executive actions in the Penal Code**” Mrs Kuzmanova analyses in detail the great number of amendments in the Criminal Code made over the past 30 years and the legal technique used to outline the characteristic features of a great number of crimes.

The study entitled “**About Implementing art. 40, para. 2 of the Constitution of the Republic of Bulgaria**” aims to clarify the addressees of the regulation, the content of the limitation under art. 40, para. 2 of the Constitution of the Republic of Bulgaria and the way of its implementation.

The authors justify the thesis that the addressee of the regulation are the media be they social media, television, radio etc. On that basis they point out that the restrictions are directed at the content of both print media and of all other mass media and that a regulation cannot be applied without rules specified in legislation. Considering the grounds for the implementation of art. 40, para. 2 of the Constitution of the Republic of Bulgaria, conclusions are made regarding the possibilities for their implementation.

The study on the topic of **“Reasons for Administrative Penalty in the Special Part of the Criminal Code (discussion questions)”** states that the reasons for imposing administrative penalty, set forth in the Special Part of the Criminal Code, are the crimes for which administrative penalties are imposed. This conclusion is based on the traceability of their detection, the link with the bodies of criminal liability, on the administrative penalties and the general rules of criminal law.

The study **“Object and System of Legal Protection of the Freedom of Religion”** aims to specify the object and system of crimes against freedom of religion, both essential and non-essential ones. The author upholds the thesis that irrespective of the differences in the classification and the differences in the characteristic features of the types of crimes against freedom of religion in the Bulgarian criminal laws, the legal protection of this type of freedom is based on identical starting positions. It has to guarantee that freedom of religion is exercised adequately through protection from criminal offence motivated by one’s belonging to a certain religion. This conclusion is not subject to change due to the different range of protection in the different historical periods because it is only a formal feature which defines the attitude of the state to this freedom. That is why, even in times of actual denial of the importance of the freedom of religion as a key liberty, the philosophy of its legal protection does not change.

The study on the topic **“Scope of Legal Protection of the Financial System”** explains the scope of the legal protection of the financial system based on the object of crimes which impact its regular functioning. Through this prism the study explains the meaning of the notion “financial system”, the connection of this notion with the subject of regulation of financial law and its importance to criminal law for the generic and direct object of crimes against the financial system. Based on the tracking of the legal framework, conclusions about the scope of this protection and suggestions for its improvement are presented.

IV. Assessment of the scientific and practice-related results and contributions of the dissertation

The monograph is an undisputable and substantial contribution to the criminal justice theory.

The habilitation thesis of the applicant is the first in the Bulgarian criminal justice theory comprehensive monographic research into the problems of the legal protection of the freedom of religion and the legal methods and means for exercising impact in case the bans and restrictions related to the freedom of religion have been violated.

The research is an in-depth analysis of the importance of criminal law to guaranteeing religious liberty and the related rituals and customs. It presents a comprehensive explanation of the essence of the freedom of religion as a key human liberty, the ways it can be exercised and its legal

regulation, and along with that – the possible ways to violate the different aspects of the freedom of religion and the legal response of the state. This leads to the obvious conclusion about the complex and interdisciplinary nature of the research with focus, of course, on the legal protection of religious freedom.

The exceptionally high theoretical level of the research is successfully combined with its practical significance. It is for the first time in the doctrine that such an extensive and extremely thorough study of the content of the objective and subjective constituent elements of crimes, providing legal protection of various aspects of religious freedom, is presented. This part of the research will contribute significantly to the adequate interpretation and implementation of the law by legal practitioners and for the unification of the practices employed in courts concerning the discussed criminal offences. The conclusions drawn by the applicant bear important scientific and practice-related relevance.

It can be firmly stated that the applicant has focused her searches in the field of currently topical subject matter of legal protection of different aspects of religious freedom. Hence, the conclusion that the research is particularly topical and could contribute significantly to the development of legislation – not only criminal one but also of law enforcement.

The applicant has made valuable contribution to formulating *de lege ferenda* recommendations. Their adoption could lead to updating and improving criminal legislation in the field.

The articles and studies submitted for the participation in the competition and published in referenced collective volumes are also a significant scientific contribution and undoubtedly further enhance the development of legal theory and law enforcement.

V. Critical remarks and recommendations

The analysed academic works make a number of undisputable contributions but a few **critical remarks** have to be made, in particular ones concerning the monograph.

The research could be considerably improved if the author conducts a comparative legal analysis of the legal protection of the freedom of religion in this country and in other member countries and uses the analysis to outline good practices which could be used to update the Bulgarian legislation and further develop it in line with the author's theses. It would also be of interest to summarize the achievements of foreign authors working in the same field.

It would be appropriate to explain the subject matter concerning the prosecution of crimes against the freedom of religion immediately after the general characteristic of the infringement and before explaining the content of the constitutional elements of each of the respective criminal offences.

VI. General assessment of the scientific and practice-related contributions and recommendations

The academic works submitted by chief assistant Nikoleta Kirilova Kuzmanova, PhD for participation in the competition – the habilitation thesis and the other papers, not just meet but exceed the quality requirements set out in the law. They contain a great number of valuable academic contributions. The applicant convincingly demonstrates her abilities to formulate and

substantiate her scientific theses. The conclusions, summaries and *de lege ferenda* proposals made in the works have both scientific and significant practical relevance because they are not made for their own sake but are in complete conformity with the public needs and the legal practice.

The critical remarks do not affect the overall positive assessment of the academic works submitted for review. These remarks are fragmented and do not contradict the undisputable conclusion that the academic papers are the result of hard work and dedicated efforts made by the author in conducting academic analysis.

The academic work of the applicant unambiguously illustrates that senior assistant Nikoleta Kuzmanova, PhD stands out with its ability to study the criminal law subject matter in all its aspects and in depth, to provide adequate and relevant to law enforcement solutions directed at updating and improving the Bulgarian criminal legislation. The applicant is a criminal law professor with long experience and has earned the trust and respect of both her colleagues and students.

VII. Conclusion

In **conclusion** I can state that the entire assessment of the teaching activity and the academic performance of the applicant for the academic position “Associate Professor” in professional field 3.6 Law (Criminal Law) chief assistant Nikoleta Kirilova Kuzmanova, PhD meets the requirements of art. 24, para. 1 of the Law on Development of Academic Staff in the Republic of Bulgaria and therefore

I give a definite positive assessment and I am firmly convinced that the esteemed panel of judges should recommend the Faculty Council of the Faculty of Law at SU “St. Kliment Ohridski” decide in favour of chief assistant Nikoleta Kirilova Kuzmanova, PhD assuming the academic position “Associate Professor” in professional field 3.6 Law, specialty: Criminal Law” at the Faculty of Law at SU “St. Kliment Ohridski”.

Member of the scientific jury for the competition:

(Assoc. professor Dr Ralitsa Ilkova)

Sofia, 4 July 2022