

## REVIEW

by **Prof. Boris Vladimirov Velchev, Dr. Sc.**,  
professor at the Sofia University 'St. Klement of Ochrid'  
on the habilitation thesis

**'Pardons in the Bulgarian Criminal Law and in the Practice of the Head of the State'**  
presented by **Iva Dimitrova Pushkarova, PhD**, chief assistant professor in Criminal law at  
the Law Faculty of the Sofia University, candidate for the academic position 'Associate  
Professor' in the field of higher education 3.6. 'Law', specialty 'Criminal Law'.

Iva Pushkarova graduated from the Sofia First English Language School. She finished her legal education in the Sofia University where she also graduated in history as a second specialty. She specialised EU and English Law in the University of Cambridge, UK. In 2008 she defended her PhD thesis in Criminal Law.

In addition to her activities as a lecturer in the Sofia University, she is also an Associate professor in Criminal law at the Ministry of Interior Academy and guest professor in the National Institute of Justice. She is a national consultant to a number of international organisations on issues of criminal law and justice, and penal policies.

In the past she also worked as Head of the Pardons Commission with the President of the Republic and as Executive director of the Bulgarian Judges Association.

Since 2011 she has been Head of the research and training center for legal and law-related studies 'Justice Development Foundation'.

She speaks fluent English, uses Russian and French.

Apart from the basic habilitation thesis, Dr. Pushkarova additionally presents 9 articles and studies to be reviewed as part of this competition procedure:

1. **Abduction in Cummulation with Other Crimes: Jurisprudence Problems Of Legal Qualification And Penalty Individualisation.** In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Sofia, 2021, Vol 87, p. 116-152, ISSN (print):0081-1866;
2. **Serial Crime in Bulgaria: Criminological Characteristic and Judicial Practice.** In: Annual Of Sofia University „St. Kliment Ohridski“. Faculty of Law, Vol 88, p. 104-134, ISSN (print):0081-1866;
3. **Recovery and Reflection Period Granted By the International And EU Law To Victims Of Human Trafficking: European Practice.** In: Annual of the Ministry of Interior Academy, Sofia, MoIA, 2020, Vol. 31, p.67-10, ISBN: 1312-6415;
4. **Maritime Piracy as an International Crime. Differentiation From Similar Crimes Under The National Law.** In: Jus Romanum: Mare Nostrum, Sofia, Sofia University "St. Kliment Ohridski", 2021, p. 456-472, ISSN (online):2367-7007;

**5. Pardoning According To the Law of Men and God: A Glance at The Influence Of The Christian Ethics And Doctrine Over Granting Of Supreme Mercy.** In: Law and Religion, Collection of Reports, Sofia, Sofia University “Sw. Kliment Of Ochrid”, 2021, p. 347-360, ISBN: 9789540751337;

**6. Pardon In Roman Legal Tradition.** In: JusRomanum, Sofia, Sofia University “St. Kliment Ohridski”, 2020, Vol. 2, p. 721-741, ISSN (online):2367-7007;

**7. Adaptation of Penalties Imposed By A Foreign Court Within Transfer Procedures Of Bulgarian Nationals.** In: Scholarly Readings: Predictability of Law. Collection of reports. Sofia University “St. Kliment Ohridski”, 2021, p. 241-254, ISBN: 9789540754789;

**8. Criminal Repression Established For Preventive And Regulative Purposes: Issues In Cases Of Criminal Protection Of Administrative Regulations And Duplicating Administrative And Criminal Offenses.** In: 50 Years Administrative Offences and Penalties Act – History, Traditions, Future. Collection of reports. Sofia University “St. Kliment Ohridski”, 2020, p. 228-240, ISBN:9789540749754;

**9. Schemes Of Financial And Economic Crime In Europe: Bulgarian Judicial Practice.** In: European Prospects For the Development of Criminal Legislation. Collection of reports. Sofia University “St. Kliment Ohridski”, 2014, p. 96-110, ISBN: 9789540737225.

All publications are dedicated to crucial criminal-law issues. All contain substantial contributions, mostly relevant to the criminal-law doctrine.

All scientific measurement indicators in respect to the candidate have been fully satisfied. The habilitation thesis fulfills all formal requirements for the scientific position ‘Associate Professor’. The scientific output presented for review equates to a total of 426 metric points.

No traces of plagiarism have been established in respect to the habilitation thesis. All scientific results and conclusions are original and belong to the applicant as their author. The same is true for the additionally presented 9 articles and studies.

The whole competition procedure has been duly and lawfully developed and the scientific jury is entitled to adopt legally-binding decisions.

This review will focus on the habilitation thesis which contains the basic set of contributive achievements.

I personally feel extremely honored to have been chosen to review this monography. I would only allow myself to point at a historical fact – the first habilitation thesis to have ever been defended in a law faculty in Bulgaria had been written by Dr. Aleko Konstantinov who had achieved via it the position of Associate professor in the Sofia University Law Faculty in 1896. Years ago I myself answered the call of the same challenge and achieved habilitation also via thesis dedicated to the right to pardon. Pushkarova’s study is the last in time and convincingly proves that this topic can always provoke innovative and original scientific thinking. In this sense, Pushkarova carries on a tradition which has been established long ago in the Faculty by a great Bulgarian man.

I claim to have invested a lot of time and efforts to study and clarify the right to pardon. Exactly for this reason I read Dr. Pushkarova's research with profound curiosity. I wanted to see how she has chosen to approach the problem, what conclusions she has reached. I was very honestly impressed. My presumptions that I probably know everything meaningful about the right to pardon have turned out to be ill-founded. I saw new and original approaches, new and contributive outcomes. Firmly standing upon everything that had been written prior to her habilitation thesis, having rationalized it critically and respectfully to all authors, she has successfully accomplished an innovative study with a number of substantial scientific achievements. Especially high is the value added to the habilitation thesis by the analyses of the practice of the head of the state on the exercise of the right to pardon – something that has not been done up until now.

The monography uses excellent legal language – fully scholarly but also intelligible for the reader. However, this is not a surprise, as Dr. Pushkarova is a well-recognised scientist with more than 150 publications. Her style and erudition have long been popular among the scientific community. Her experience has allowed her to reach convincingly substantiated scientific outcomes. Her skills to summarize abundant scientific material are additionally demonstrated in the monography, where she has referred to more than 100 titles and has made almost 400 footnotes.

The habilitation thesis is structured in an introduction, five chapters and a conclusion which summarizes the basic outcomes. This structure has been chosen to support comprehensive analysis of the right to pardon from huge variety of aspects. This choice has allowed the author to elaborate her scientific ideas in a very convincing manner. To an extent this has predetermined the striking scope of the habilitation thesis as well.

In the first chapter Dr. Pushkarova presents a general characteristic of the right to pardon as a criminal-law institute. Pardon's historical origins have been studied and its development has felicitously been divided in periods. The exercise of the right itself by the head of the state has been studied, as well as its scope and scope limitations. The typical strategic and tactical approaches and reasoning of pardon-seekers have been outlined. In general, Dr. Pushkarova has a clearly established and substantiated inclination to develop typologies and construct models – an approach which must be assessed as an achievement *per se*. The outcomes of its application constitute separate and substantial practical contributions as well.

The second chapter is dedicated to the types of pardon. Much attention has been given to the full and partial pardon and the pardon via commutation with a more lenient penalty.

In the third chapter Dr. Pushkarova analyses pardon's applicability in respect to the different types of penalties. Very convincingly she argues that pardon is not applicable to penalties affecting property rights but options exist within the powers of the head of the state to remit non-collectable state claims. For the first time in the doctrine pardon has thoroughly been analysed in respect to the penalty of probation and non-penal probation measures. Substantial scientific and practical conclusions have been reached in relation to the penalty of imprisonment and the two life imprisonment penalties.

The fourth chapter scrutinizes a very original comparison – one between pardon and the alternative institutes for alleviation of the severity of the penalty. Especially interesting are the conclusions related to the correlation between pardon and the preliminary conditional release from imprisonment, and pardon and the replacement of life imprisonment under Article 38a, subparagraph 3 of the Criminal Code. Highly original and contributive is the analysis of the comparison between pardon and amnesty, especially where the study considers the peculiar 'intertwining' of their scopes.

The last fifth chapter is entitled „Application of Pardon In Relation To the Application of a Legal Principle'. In its eight paragraphs in much detail and very analytically those legal principles are studied the violation of which may be remedied by means of pardon. I cannot but massively stress on the high theoretical and practical value of the analysis which Dr. Pushkarova makes in relation to the health-related arguments as grounds for pardon and the application of pardon in respect to parents based on parental-care necessity of a child. The last chapter should be used as a practical guideline to each of the future Pardons Committees with the presidential institution.

The thesis is of well-defined interdisciplinary nature. Apart from its solid legal background, it also relies on research methods typical for other scientific fields such as history, philosophy, psychology, etc. This complex methodological approach has allowed an extremely difficult result to be successfully achieved – typology of the pardon cases which is a definitely indisputable attainment, among others, in the work of Dr. Pushkarova.

The author's experience as a Head of the Pardons committee with the President of the Republic has allowed her to use data which had been inaccessible to the authors of previous studies. This adds value to her studies and - for the first time – supports the theoretical conclusions in it with empirical data.

Pardon has not been studied by Dr. Pushkarova as an isolated end in itself. It has been subjected to analysis in the context of a number of related penal and procedural legal institutes with similar legal effects. This approach in itself is a contribution.

As I have already stressed, the entire thesis of Dr. Pushkarova is dedicated not only to a pure academic study but to a broader and deeper practical meaning. Her skills to outline standards and models has led her to recommending concrete solutions to resolve virtually all historically established weaknesses in the application of the right to pardon and to guarantee its fullest value as *ultima ratio* which is designed to find application where all other instruments for alleviation of the criminal repression cannot or would not have been effectively used.

I fully accept and share Dr. Pushkarova's assessment on the contributive outcomes of her habilitation thesis as they have been reflected in the author's self-assessment review. Moreover, I am not convinced the review's format can do justice to all substantial achievements in the thesis under review.

I have already mentioned a number of achievements while presenting the content of Dr. Pushkarova's habilitation thesis. I find no point in repeating them here. I insist on my assessment

that Dr. Pushkarova has written a monography which contains achievements of different and various nature – relevant both to the Constitutional and Criminal law doctrine and practice, especially in respect to the policies of the presidential institution. I am sure that Dr. Pushkarova's study will be most valuable also for the defense lawyers engaged in assisting pardon-seekers and will provide them with useful practical instructions in respect for the applicable criteria which guide the decision-making process and the assessment of the grounds for pardon. The value of the thesis may be summarised in the following briefest way – it clearly and consistently outlines what pardon is and how it can be meaningfully applied in order to fulfill its constitutional purpose. A research of this depth and thoroughness has never existed before.

I would allow myself to additionally outline some of the achievements of Dr. Pushkarova, to which I personally attach specific value.

The typology of the closed cases on pardon which has been created for the first time in science is contributive not only because it requires and has been backgrounded by extreme scientific diligence and strive towards fully exhaustive analysis – it has been used as a foundation upon which models and standards have been developed to guarantee relative predictability of the execution of the right to pardon.

The suggested standard to pardon persons convicted to life imprisonment is excellently substantiated and will definitely be especially valuable to the presidential institution. The same is true for the suggested explanatory model of the correction process of the convicted person in respect for the goals of penalty.

The well-substantiated thesis that the right to pardon is inherently inapplicable in respect to penalties which have been imposed by a foreign court and the verdict has not yet been judicially adopted is also an achievement.

Contributive is the approach towards pardon as a means of last resort which has been substantiated by reasons that alternative practices violate fundamental legal principles.

The *de lege ferenda* proposals must also be treated as achievements, especially the ones concerning the institute of partial amnesty.

I have no specific critical comments towards Dr. Pushkarova's habilitation thesis.

In conclusion, the habilitation thesis of Dr. Pushkarova which I hereby review is substantially valuable to the practice as well – not only for the administration of the head of the state, but also for legal practitioners and law-drafters. It contains numerous and substantial scientific achievements.

The habilitation thesis 'Pardon in the Bulgarian Criminal Law and in the Practice of the Head of the State' contains theoretical conclusions и solutions to substantial and complex scientific and practical problems which correspond to the contemporary levels of the criminal-law doctrine and qualify as valuable and original scientific achievements. The thesis fully meets all requirements of the LDAS in the Republic of Bulgaria and its Enforcement Regulation. Based on the above, I do give, with the strongest conviction, my positive assessment of the habilitation thesis and

recommend that the honorable scientific jury should submit to the Faculty Council of the Law Faculty a proposition to elect ch. ass. Iva Pushkarova, PhD, 'Associate Professor' at the Criminal Law Department.

Respectfully,

Prof. Boris Velchev, Dr. Sc.