

## OPINION

on the scientific production of

Chief Assistant Professor Dr. Miroslava Borisova Manolova, candidate for an academic position of "Associate Professor" in the Criminal Law Department at the Faculty of Law of Sofia University "St. Kliment Ohridski", written by Assoc. Prof. Dr. Juliana Mladenova Mateeva, Varna Free University „Chernorizets Hrabar“ and South-West University "Neofit Rilski", member of the scientific jury

By order № RD 38-199/ 23.04.2021 of the Rector of the Sofia University "St. Kliment Ohridski" I have been appointed as a member of the scientific jury in an announced competition for the academic position of "Associate Professor" at the Faculty of Law of Sofia University in the professional field 3.6 Law (Criminal Law), published in the SG, no. 22 of 16.03.2021. I am preparing this opinion in pursuance of this order.

The only candidate for the position is Dr. Miroslava Borisova Manolova.

She graduated in Law at the Faculty of Law at Sofia University "St. Kliment Ohridski" in 1995. In 2014 she obtained the educational and scientific degree "Doctor" in Criminal Law at the same university. Since 2000, Dr. Manolova has held the positions of "Assistant Professor", "Senior Assistant Professor" and "Chief Assistant Professor" in the Department of Criminal Law and has more than 20 years of teaching experience.

She conducts lectures and exercises in the discipline "Criminal Law" at the Faculty of Law and Faculty of Philosophy of Sofia University, which provides her with the necessary study load. During the period 2011 - 2019, Dr. Manolova has

participated in five research projects. The reference to the citations shows 13 notable references to her works. The summary of publications includes: two monographs, one of which is a defended dissertation, two articles in scientific journals, twelve articles in conference proceedings. Of these, in order to meet the minimum national requirements within the meaning of Art. 2b, para. 2 and Art. 4, para. 1 of Development of Academic Staff in the Republic of Bulgaria Act, seven publications are presented: one monograph, which is a habilitation thesis in the present procedure, as well as six articles.

I accept all of them for review, insofar as the specified scientific production has been published by the candidate after the award of the educational and scientific degree "Doctor" and has not been presented in previous competition procedures. Articles published before the habilitation thesis, namely: "The Retributive Theory of Punishment or Why Do We Punish", "On Just Punishment and Aristotle", "Populism and the Bulgarian Criminal Code", "On the Proportionality of Crime and Punishment. A Principle vs Expectations", "Three Theories of Punishment and One Principle", contain part of the research and show the author's steady interest in the topic and the consistency of her scientific theses. To the extent that they substantially repeat the habilitation work, they should not be commented on separately in the present procedure.

The article "On Principles of Legality and Proportionality of Crimes and Penalties – More Than a Century After the First Bulgarian Criminal Law Act" contains some new points that distinguish it from the habilitation work. The quality, and - insofar as *de lege lata* we should also comment on the quantity of the presented scientific production - determine a conclusion for its compliance with the minimum scientometric indicators in the sense of Development of Academic Staff in the Republic of Bulgaria Act and the regulations for its application.

The habilitation paper presented for participation in the competition is dedicated to a fundamental question in criminal law - why do we punish. The problem of the purposes of punishment, the theories behind them, and the practical dimension of supremacy in their relationship is always relevant, albeit partially explored before. The monograph has a volume of 208 pages, the scientific apparatus covers a convincing volume of literature in Bulgarian, English and Russian. The references under the line are 397 in number.

What is written is read "in one breath". It is interesting and presented in a way that "grabs" the reader and keeps his attention like a novel, and this does not affect the scientific sound in the least. The paper is full of examples from Bulgarian and foreign legislative practice, which illustrate the conclusions of the author. The references to the footnotes are very skilfully handled. The large number of English-language works used is impressive. The candidate knows and refers to the published works on the topic and general theoretical statements. The work is concise and shows the high general culture of the candidate for the academic position, which seems to me important and relevant, and the necessary level of knowledge and insight in the criminal law. The approach is interdisciplinary: both philosophical and criminological with historical aspects of the topic derived and analyzed. I did not notice any repetitions, inaccuracies or language errors. All this for me expresses respect for the reader and leaves a very pleasant overall impression.

Some of the more significant contributions are the following:

What was written is the first complete monographic work devoted to the purposes of punishment. A thorough analysis of the retributive, utilitarian and mixed theories of the purposes of punishment has been carried out, taking in consideration the historical and comparative law context. The comparison between

the USA and Russia is very interesting in terms of the manifestation of the same theory for the purposes of punishment - the utilitarian - and its projection in the creation of normative preconditions for similar in scale and ferocity repression and injustice in punishment.

The normative basis has been traced - at the legal and constitutional level - historically from the first Criminal Law Act from 1896 to the present day. The general purpose of the punishment, related to Art. 1 of the Criminal Code and the immediate purposes of the punishment, outlined in Art. 36 thereof, are drawn, emphasizing the goal of correction and re-education of the offender.

All theoretical developments dedicated to the purposes of punishment in the Bulgarian criminal law theory are known in depth and are indicated and analyzed. Based on them, a conclusion is made about the mixed nature of the current view on punishment, which is utilitarian in its goals, but within the restrictive framework typical of retributivism, which Dr. Manolova binds to two principles of punishment - its personal nature and its proportionality to the crime committed. The second of these principles is cited as a legal obstacle to the provision of very severe penalties by the legislator and the pursuit through them only of general preventive purposes.

The trends of the changes in the Criminal Code in recent decades are analyzed. The lasting interest of the candidate for the academic position in her dissertation topic stands out in the examples she uses. One of the manifestations of the tendency to intensify repression is precisely in drug crimes. Other iconic examples are related to the incredibly high penalties for the crime of kidnapping and the 2020 legislative proposals to change the criminal justice regime for minors and to increase penalties for some crimes against transport.

Serious attention is paid to the phenomenon of populism, its criminal dimension, as well as how dangerous it can be. The results of two public opinion polls are presented and analyzed – one is relatively current from the Scandinavian countries and the other was conducted in our country in the last century - which lead to similar conclusions. They also justify the proposal to conduct such studies prior to the submission of legislative proposals for changes to the Criminal Code. I fully share this proposal, given that the reasons for the draft laws are too often schematic, such as "because so", and never rest on an in-depth analysis of the need for change. The legally required impact assessment can only conditionally be called so. This explains, of course, all the projections of spontaneity in criminal law - disobedience to changes in a unified penal policy, "meandering" of the legislator from one extreme to another and then returning to the previous, work "piece by piece" without compliance with the spirit of criminal law and general legal principles, the geometric progression of the repressiveness of Criminal Code as a result of penal populism or - as Dr. Manolova very aptly summed up - the fact that it is becoming more criminal and less code. Many skillfully selected expressive examples are used, which - although not the author's own - make the reading vividly memorable, illustrate the individual theories very well and show, brought to an end, to what would lead the absolutization of any of them by the legislator.

Some minor remarks: in the first chapter, in which the influence of the English-language literature is sensitive, as a result of negligence in the translation, some expressions such as "serving" a sentence are used, the terms "punishment" and "sentence" are used interchangeably. In the comment of the draft law for amendments of Art. 63 of Criminal Code, it is concluded that in such a change, it will be possible to impose a sentence of life imprisonment without replacement to minors. In this connection - in defense of the legislator - I note that with that draft

law a new version of Art. 38, para. 2 of Criminal Code was not proposed, so that at least the heaviest punishment could not be imposed on a person who was under the age of twenty at the time of the commission of the crime.

The remarks made above are negligible and in no way prejudice to the author's undisputed contributions. All of them are correctly reflected in the relevant report and undoubtedly represent the result of an individual creative process.

I do not know Dr. Manolova personally, only in absentia - from her works.

I accept that the scientific production presented by the candidate satisfies the requirements of Development of Academic Staff in the Republic of Bulgaria Act and the regulations for its implementation. Given that, I believe that the scientific jury, of which I am a member, should decide to grant the academic position of “Associate Professor” in Criminal Law at the Criminal Law Department at the Faculty of Law of Sofia University “St. Kliment Ohridski” to Ch. Asst. Prof. Dr. Miroslava Borisova Manolova. For that I will vote strongly.

3.06.2021

Varna

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