

## OPINION

By Prof. D.Sc. Margarita Ivanova Chinova, Member of the Scientific Jury in the competition for the academic post “Associate Professor” in higher education 3.6. Law (Criminal Law), announced by Sofia University “St. Kliment Ohridski” in the SG, issue 22 of March 16, 2021, with sole candidate Chief Assistant Professor Miroslava Borisova Manolova

In the announced competition for Associate Professor in Criminalistics, the candidate participates with one monograph entitled “Why Do We Punish? The Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law”. It is structured into three chapters, separated into sections, an introduction and a conclusion, with detailed content and a comprehensive bibliography. The reference for the literature sources contains 138 titles, and the footnotes are 397 in total.

The study of the question of the purposes of punishment in the light of the three classical criminal law theories - utilitarian, retributive and mixed ones, is particularly relevant for several reasons. There is no published monograph on this subject in the Bulgarian legal literature. It is true that some of the issues related to the purposes of punishment, and in particular of those of the imprisonment, have been raised for one reason or another, but this is the first comprehensive monographic study on this topic. And what goals are pursued with punishment is a matter that is extremely important both to the convicted person and to society. The relevance and usefulness of this research can easily be justified by the legislation aimed primarily at increasing penalties and aggravating criminal liability in general, as well as the recently adopted Concept of Criminal Policy 2020-2025, which aims to increase the effectiveness of criminal repression through the wider application of alternatives to imprisonment, to

improve the system of penalties and to increase the public confidence in criminal justice, ie. issues closely related to the purposes of the punishment.

A large volume of theoretical material was collected, studied and analyzed for the research. It is multifaceted and complex, related not only to the criminal law, which is another of its merits. The three classical theories of the purposes of punishment - the utilitarian, the retributive and the mixed ones, their most essential characteristics, as well as the main criticisms that these theories provoke, have been studied with professional skill. The valuable thing is that this is not done on its own and therefore it is not only informative.

On the contrary, it is a scientific analysis, which subsequently serves as a basis on which to analyze the purposes of punishment in the Bulgarian criminal law and doctrine. In order to make its final conclusions about the theoretical and normative model of these purposes, adopted in our country, the method of historical analysis was used with enviable creative skill. It clarified at a high professional level the essence of this model by tracing the genesis of the development of the issue of the purposes of punishment in our criminal legislation. To this end, the normative framework is outlined, as well as the goals and two of the principles of punishment - those regarding its personal nature and the proportionality of the crime and the punishment, at the constitutional and legal level. Its historical development from the end of the 19th century until today is traced and tendencies in the development of the Bulgarian legislative model are shown. As a result of this approach, a reasonable conclusion has been made for continuity in the legal regulation of the purposes and principles of punishment.

The historical analysis of the legislation in the considered matter is especially skillfully combined with a parallel study of the views on the purposes of punishment in the Bulgarian criminal law theory and their evolution over time. In this analysis, a

generalized conclusion is made, which is convincing and difficult to dispute. It is as it follows that despite the profound social changes that took place in the 1990s, the hitherto adopted utilitarian understanding of punishment in terms of its general and immediate goals does not change. The possible reasons for the lack of such a change are also indicated.

On this basis, the theoretical and normative model of the purposes of punishment, adopted in Bulgarian criminal law from the point of view of the three classical theories of punishment outlined for the first time in our scientific literature, should be assessed as a significant contribution. It is argued that it is a mixed model, with an emphasis on goals inherent in the utilitarian views of punishment, among which in the first place is the correction and re-education of the offender. However, the achievement of these goals is possible within the restrictive framework typical of retributivism, expressed in the two principles of punishment - its personal nature and the proportionality between crime and punishment.

Undisputed contributions should also be highlighted in the analysis of legislative changes in the criminal law of certain crimes (kidnapping and drug offenses), as well as proposals for such changes in the regulation of the criminal regime of minors and certain serious crimes against transport. It is argued that the trend they reveal is in the direction of deviating from the normative basis of the model adopted in our country for the purposes of punishment, and some of them even contradict it. It is therefore concluded that such changes not only make it difficult to achieve the utilitarian goals of punishment in this model, but also make it particularly vulnerable to the increasingly popular penal populism in our country.

In this regard, the analysis of populism as a social phenomenon and its manifestation in the field of criminal law is no less valuable. The dimensions of penal populism as a legal category and a problem of legal theory and jurisprudence with

increasing importance are outlined. It is argued that the legal changes in the Criminal Code, especially the significant ones, should be accompanied by a sufficient amount of scientific and criminological data. The view that there is a lack of sufficiently reliable and complete information about the public attitudes towards punishment and about the public sense of justice in punishment in general is also convincingly substantiated. It is understandable in this regard the proposal, according to which the public opinion polls, although to a much lesser extent than those analyzed in the survey, should be conducted periodically before the drafting or introduction of legislative changes in the criminal law.

Six articles are also submitted for evaluation by the candidate. They are more or less related to the topic of the habilitation work, which reveals the author's lasting interest in the subject matter.

The works of Dr. Miroslava Manolova, with which she participates in this competition, are an undoubted illustration of the excellent knowledge and handling of the doctrinal statements of Bulgarian legal literature, the Bulgarian and other legislation, as well as the statements of various theories of the purposes of punishment. They are also an indisputable proof of the developed skills for practical-theoretical analyzes of complex legal formulations at a high professional level. The research also illustrates the author's talent for conducting scientific discussions, in which with due respect to the already presented productions, one's own theses are presented in a clear and definite way, not unsubstantiated, but with the relevant scientific argumentation, which style is inherent in already established researcher.

In conclusion, I give a high positive assessment of the research and teaching activity of Chief Asst. Prof. Dr. Miroslava Manolova. Considering her overall scientific creativity and teaching activity, I believe that she meets the requirements for the academic position of Associate Professor under the Development of

Academic Staff in the Republic of Bulgaria Act. Therefore, I strongly recommend the Scientific Jury to propose to the Council of the Faculty of Law to grant her an academic post Associate Professor of Criminal Law at Sofia University “St. Kliment Ohridski”.

Prof. D.Sc. Margarita Chinova