SOFIA UNIVERSITY ST. KLIMENT OHRIDSKI

FACULTY OF LAW

DEPARTMENT OF CRIMINAL LAW STUDIES

DEBORA MILENOVA VALKOVA-TERZIEVA

TERMINATION OF CRIMINAL PROCEEDINGS IN A COURT SESSION

AUTHOR'S SUMMARY

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Scientific supervisor:

Professor Doctor of Legal Sciences Georgi Mitov

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I. GENERAL CHARACTERISTIC OF THE THESIS

1. Relevance of the research

The relevance of the thesis study is primarily determined by the fact that the Bulgarian legal doctrine lacks a complete monographic scientific work on issues related to the termination of criminal proceedings in a court session. The only existent monographic study is around 15 years old, and it analyzes the institution of criminal proceedings' termination in both phases of the process.

The need for an independent scientific study of this institute is also justified by the practical problems of its application. A large number of the reasons for termination are applied unlawfully, thus violating the presumption of innocence and several European standards.

2. Purpose and tasks of the research

The tasks of the present research are associated with:

— a comprehensive study of the prerequisites for the termination of criminal proceedings in the first instance court session;

— analyzing the procedure and format for terminating the criminal proceedings in the first instance court session.

3. Objective and subject of the research

The thesis ***objective*** covers the issues associated with the termination of criminal proceedings in a court session.

Subject of the research are the special features in the termination of criminal proceedings in a court session. To this end, a historical analysis has been conducted on the termination of criminal proceedings in the first instance court session for cases of general nature. It examined the essence of criminal

proceedings as a legal institution and the legal consequences of its practical application. The grounds for the termination of criminal proceedings in the first instance court session were also analyzed. Finally, the following issues were taken into consideration: the authority competent to terminate the criminal proceedings in the first instance court session, and the legal nature, format and content of the deed by which the proceedings are terminated. The control exercised over the termination of criminal proceedings in the first instance court session was also analyzed.

The termination of criminal proceedings in court sessions of appellate and cassation instances was not included in the scope of the research, the reasons for that being that the termination prerequisites and the associated procedure are almost identical in the court sessions of the first, appeal and cassation instances. The termination of criminal proceedings in the first instance court session for cases of private nature was also excluded from the subject of the research because the specific reasons for the dismissal of such cases have been studied in detail in the Bulgarian legal literature. Furthermore, the general grounds for termination under Art 289, para 1, in connection with Art 24, para 1, item 2 through item 10 of the Criminal Procedure Code, which are applicable to cases of private nature, reveal a number of specifics that deserve an independent and separate study.

3. Research methods

The following characteristic knowledge methods applicable in the legal doctrine were employed for the achievement of the scientific objectives and tasks: analysis; comparison; synthesis; summary; monitoring; description; inductive and deductive method; method of historical analysis.

4. Practical significance of the research

— ***In terms of legislation*** **-** a number of *de lege ferenda* proposals were made in view of improving the legislation and bringing it into line with the European standards.

— ***In terms of law enforcement*** – the analysis of the Criminal Procedure Code provisions regulating the termination of criminal proceedings in a court session is aimed at improving and streamlining the law enforcement practice.

— ***In terms of starting a discussion*** **-** the proposed solutions to the current problems in the legislation, doctrine and practice are trying to provoke a discussion that will result in better legislation and improved court practice and will generate scientific disputes on one or other topics in this area.

II. VOLUME AND STRUCTURE OF THE THESIS

The thesis was drafted in a volume of 186 pages, including contents and list of references. There are 168 footnotes, and the references include 39 sources.

The scientific research consists of introduction, three chapters with separate sections, conclusion and list of references.

III. CONTENTS OF THE THESIS

The actuality and significance of the termination of criminal proceedings in a court session are substantiated in the **preamble** of the thesis research. The need for an independent scientific study on the thesis' topic is motivated, and the subject and objectives of the research are outlined.

Chapter One is devoted to the historical review and legal essence of the termination of criminal proceedings in the first instance court session under cases of general nature.

Section One of this research includes a historical analysis of the termination of criminal proceedings in the first instance court session and analyzes the statutory regulation in the termination of criminal proceedings under all procedural laws that have been repealed (the Courts Organization Act from 1897, the Criminal Procedure Code from 1952, the Criminal Procedure Code from 1974). Special attention is paid to the legal nature of the act by which the criminal proceedings were terminated in the court session. In terms of the 1897 Courts Organization Act /repealed/, this is a court verdict for the defendant's release, and in terms of the 1952 Criminal Procedure Code and the 1974 Criminal Procedure Code /repealed/, this is a ruling. Answer is given to the question if the following issues have been investigated during the operation of the three procedural laws prior to the termination of proceedings in the first instance court session: has the act been committed; has it been committed by the defendant; has it been committed in a culpable manner; does the act constitute a crime; and what is its legal qualification? It was justifiably concluded that the institute of terminating the criminal proceedings in the first instance court session under the current and repealed procedural laws had been applied without exploring the aforementioned issues.

Section Two examines the essence of criminal proceedings as a legal institute and the statutory consequences emerging upon its implementation. A comparison was also made between the termination of criminal proceedings in the first instance court session and similar legal institutes such as: suspension of criminal proceedings; termination of court proceedings; termination of criminal proceedings during the pre-trial phase of the process; termination of criminal prosecution. In

particular, when comparing the criminal proceedings in the judicial and pre-trial phases of the process, a *de lege ferenda* proposal was made with regards to the grounds for the termination of criminal proceedings under Art. 24, para 1, item 1 of the Criminal Procedure Code, *i.e. the act had not been committed or it does not constitute a crime.* These two prerequisites are applicable only in the pre-trial phase because in the event of either of them being established in the course of the judicial hearing, the court will be obliged to deliver an acquittal verdict. Therefore, it was *de lege ferenda* proposed that these two prerequisites be excluded from Art 24 of the Criminal Procedure Code and regulated as specific ones only in Art 243 of the Criminal Procedure Code.

Chapter Two is dedicated on the reasons for the termination of criminal proceedings in the first instance court session. For the sake of greater clarity, a comparison was made on how certain reasons are applied in the stage named "Reference to court and preparatory actions for case hearing in a court session". The judicial practice of the Bulgarian courts, the Human Rights Court and the Court of Justice of the European Union was analyzed. The problems were highlighted, possible practical solutions were suggested, and *de lege ferenda* proposals were made.

The grounds referred to in Art 289 of the Criminal Procedure Code are ranked. It is emphasized that in the phase called "First instance court session", the reasons for the termination of criminal proceedings are non-rehabilitating, except for the proceedings under Art 289, para 1, in connection with Art 24, para 1, item 6 of the Criminal Procedure Code, where it is not possible to initially determine if the reasons are rehabilitating or non-rehabilitating. In practice, however, when it comes to non-rehabilitating grounds, the court panels do not examine the following issues: has the act been committed; has the act been committed by the defendant; has the act been committed in a culpable manner; does the act constitute a crime;

and what is the act's legal qualification? The motives behind judicial rulings are normally formal and do not contain similar conclusions.

Therefore, the thesis maintains that if the reason for termination has arisen *after the end of the judicial investigation*, and all evidence has been collected, then the court must examine the merits of the case based on this evidence. Should this circumstance emerge *prior to the start of the judicial investigation*, the court may come up with a conclusion in the motives behind its ruling on the act committed by its perpetrator based on the evidence collected in the course of pre-trial proceedings, and where the reason is established *after the judicial investigation has been initiated, but has not yet finished*, the court will have the opportunity to refer both to the evidence collected during the pre-trial proceedings and the evidence it has managed to immediately collect and verify.

It is true that there is an exception to the principle of immediacy when, upon the termination of criminal proceedings in the first instance court session, the court has explored the merits of the case, i.e. the act and its perpetrator, based on evidence collected during the pre-trial proceedings. This idea, however, is not unknown to the Bulgarian procedural law - the principle of immediacy is limited also under the differentiated procedure described in *Chapter XXVIII "Exoneration from criminal responsibility by imposing an administrative penalty*, *Chapter XXVIV – "Resolving the case by settlement"*, and under the differentiated procedure described in *Chapter XXVII – "Summary judicial investigation in first instance proceedings"*.

Furthermore, such resolution is not contrary to the procedural law, for in its ruling on termination the court does not find the defendant to be guilty or innocent, nor does it impose any punishment. It commits itself to the conclusion that the act was committed by the defendant only in the motives behind the act.

Section One contains an analysis of the three grounds for the termination of criminal proceedings – death, amnesty, and expiry of the statute of limitations provided for by the law. These grounds are examined in one section because of the similar procedures used in their implementation.

A comparison is made to the use of death as a reason for the termination of criminal proceedings in the phase titled "Reference to court and preparatory actions for case hearing in a court session". At this stage, the court cannot explore the issue if the act has been committed by the defendant because at this point the merits of the case cannot be determined under any circumstances. Therefore, it is proposed that these issues be decided based on the circumstantial part of the indictment.

It is advocated that unlike death, in the event of amnesty and statute of limitations, the court does not take into account the issues dealing with guilt and authorship of the act, for the Criminal Procedure Code enables the defendant, given the existence of such prerequisites, to request that the proceedings continue and that the court deliver its verdict. Since the defendant has failed to avail of this right, he conclusively pleads guilty and agrees that the merits should not be investigated and the proceedings shall be terminated.

Unlike death, the Criminal Procedure Code stipulates that upon the expiration of a statute of limitations or in the event of amnesty, the criminal proceedings shall not be terminated if the accused person or the defendant requests their continuation. The conflicting practice concerning the format of the defendant's request for the continuation of proceedings is analyzed. Arguments are presented as to which of these practices is correct and compliant with the law.

Finally, the issue of **how to proceed in the case of a civil suit accepted for joint consideration in criminal proceedings in the event of amnesty, statute of limitations and death is also addressed**. Interpretive Decision № 1 - 2013 of the

Criminal Boards' General Assembly is subjected to review, and additional arguments and considerations are presented in support of the adopted resolution stating that following the termination of criminal proceedings on the grounds of statute of limitations, amnesty and death, the court must also rule on the civil claim accepted for joint consideration.

Section Two examines the justification for termination under Art 289, para 1, in connection with Art 24, para 1, item 5 of the Criminal Procedure Code, i.e. the perpetrator has fallen into a state of prolonged mind disorder, except for sanity, after the crime had been committed. To this end, a number of European standards were been analyzed, which oblige the member states to include in their domestic legislation guarantees for compliance with the procedural rights of the accused persons or the defendants who have been diagnosed with mental illness. Within the meaning of the European Union Law, people suffering from lasting mind disorders fall into the category of the so called "vulnerable persons".

The purpose of "Measure D" of the European Parliament's roadmap is to emphasize on suspects or accused persons who cannot understand or follow the contents or the meaning of the proceedings due to their age, mental or physical condition. This is the reason why the member states must take into account the special needs of the vulnerable suspects or defendants in a way that shall ensure their right to receive information within the criminal proceedings, along with verbal and written translation, access to lawyer, and non-violation of their presumption of innocence.

After reviewing the judicial practice in relation to this prerequisite for the termination of proceedings, there arises the question of it being in compliance with the European standards. With the practice being analyzed in the aforementioned way, it is concluded that after including the psychiatric examination in accordance with Art 282 of the Criminal Procedure Code and once the court panel has decided

that the defendant is suffering from a prolonged mind disorder, except for sanity, it shall terminate the proceedings without any motives.

The thesis supports the opinion that such an approach is illegal. According to Art 24, para 1, item 5 of the Criminal Procedure Code, the criminal proceedings shall be terminated when the defendant, after committing the *crime*, has fallen into a prolonged mind disorder, not including sanity. Therefore, the court should deduce that the required evidence has been collected, and based on it, it can be concluded that the defendant has culpably committed the crime of which he has been accused. By terminating the criminal proceedings without examining these very issues, the court is violating the presumption of innocence which is a fundamental procedural guarantee of the right to defense.

Another issue is considered in this regard: **Does the Criminal Procedure Code provide for the necessary guarantees enabling the participation of a vulnerable defendant in criminal proceedings held in strict observance of his rights?**

To this end, Consideration 11 of the European Commission's Recommendation specifies that the especially vulnerable defendants shall not waive their right to be represented by a lawyer. Undoubtedly, defendants suffering from a long-term mind disorder, excluding sanity, are also treated as particularly vulnerable. The Bulgarian Criminal Procedure Code meets these standards, since its Art 94, para 1, item 2 provides for the mandatory involvement of a lawyer in the criminal proceedings when the defendant suffers from *mental deficiencies* that prevent him from organizing his own defence.

Actually, in most cases the defendant is not interdicted, i.e. there is no guardian. It is argued that in this particular case it shall not be enough for the defendant to have an appointed defender practicing the lawyer's profession. If the European standards are to be complied with, the case must be adjourned in order

for the defendant to be placed under full custody and have a guardian assigned to him. This is the only way in which the requirements set out in European Commission's Recommendation dated 27th of November 2013 will be met, which means that along with a lawyer, the vulnerable defendants will also have an appointed legal representative or appropriate adult person.

Where the interests of the defendant are in conflict with the interests of his/her guardian, a special representative (lawyer) shall be assigned to the vulnerable defendant. Therefore, *de lege ferenda*, Art 101 of the Criminal Procedure Code should stipulate that *a special representative (lawyer) shall also be appointed for a defendant who, following the perpetration of the act, has fallen into a continuous mind disorder, except for sanity, and his interests contradict the interests of his/her guardian*.

In addition to that, **Art 17 of European Commission's Recommendation dated 27.11.2013 provides for the police officers and the law enforcement and judicial institutions empowered in criminal proceedings against vulnerable persons to take part in a special training**. For this purpose, the cases against vulnerable defendants should be heard by court panels that have gone through such training. In a similar way, such panels have been successfully set up in some of the country's courts when charges have been brought against minors.

Finally, an analysis was also made of the hypothesis when **the mind disorder, except sanity, has been present at the time of the act's perpetration, and this fact has been established during a court session**. In this regard, a preliminary inquiry by Lukovit Regional Court dated 17.07.2018 was taken into account, resulting in the delivery of the already quoted Ruling of the European Court of Justice on Case

C - 467/18. According to the said Ruling, the European standards require that the competent authorities conduct an investigation when the accused person, the

defendant or any person that has not acquired any procedural capacity is in a vulnerable situation due to a mental illness suffered by him/her. This rule shall be valid no matter if the perpetrator has committed the act in a state of mind disorder or has fallen into such a prolonged condition after committing the crime.

Section Three contains a review of the reason specified in Art 24, para 1, item 6 of the Criminal Procedure Code (*non "ne" bis in idem*), i.e. against the same persons and for the same crime there are pending criminal proceedings, an effective sentence, a decree, an effective ruling or order for the dismissal of the case.

Firstly, subject to dispute is the reason stated in Art 24, para 1, item 6 of the Criminal Procedure Code, which says that criminal proceedings shall always be terminated on non-rehabilitative grounds. It is concluded that whether the termination reason is a rehabilitative or a non-rehabilitative one depends on the type of deed the first proceedings have ended with. Where the first proceedings have ended with an acquittal verdict or a deed for the termination of criminal proceedings on rehabilitative grounds, one should not expect the second proceedings to be suspended on non-rehabilitative grounds.

Secondly, it is accepted that in order to determine whether the *non (ne) bis in idem* rule is existent or not, i.e. if the facts under the two criminal proceedings are identical, the court shall *compare*, at the stage "first instance session", the operative part of the deed issued in the first criminal proceedings with the operative part of the indictment filed during the second proceedings. The second criminal proceedings shall be terminated subject to the existence of any of the deeds referred to in Art 24, para 1, item 6 of the Criminal Procedure Code, concerning identical facts in terms of the same person. Therefore, it is irrelevant whether the court in the second criminal proceedings has taken into consideration

the issues of authorship and guilt. Furthermore, these issues have already been settled by the deed that has ended the first proceedings.

Thirdly, the preconditions for the application of Art 24, para 1, item 6 of the Criminal Procedure Code, and namely: the first proceedings were of criminal nature; the act committed was the same in both proceedings and was related to the same person; there are pending criminal proceedings, effective sentence, decree or effective ruling/order for the dismissal of the case.

For the sake of clarity, each of the aforementioned prerequisites was examined within the context of the Human Rights Court's practice in the application of Art 4 of Protocol № 7 issued by the European Convention of Human Rights, which regulates the *non (ne) bis in idem* rule. A number of rulings delivered by the Human Rights Court in Strasbourg were also analyzed.

To this end, some *de lege ferenda* proposals were made, such as: to delete the wording *"pending criminal proceedings"* from Art 24, para 1, item 6 of the Criminal Procedure Code, since the envisaged hypothesis of terminating the criminal proceedings as per the European standards does not violate the *non (ne) bis in ide*m rule.

This is not the case when the criminal proceedings are terminated by the prosecutor via a decree. Although the Human Rights Court has accepted in its practice that the prosecutor's termination of criminal proceedings does not constitute a conviction or an acquittal sentence, resulting in Art 4 of Protocol No. 7 not being applicable in this situation[1], I think that the Bulgarian legislative solution is an expedient one, despite going beyond the standards adopted by the Human Rights Court. Otherwise, there is a practical likelihood of a hypothesis for a decree with no legitimate effect due to it not having been appealed before a court, not

[1] Smirnova and Smirnova v. Russia, Harutyunyan v. Armenia, Marguš v. Croatia

having been cancelled on the grounds of Art 243, para 10 of the Criminal Procedure Code, with new criminal proceedings having been initiated at the same time against the same person for the same act. Moreover, it is even possible for the second proceedings to end with an effective guilty verdict. Thus, we will be facing an issue when in terms of the same person and identical facts there are two acts in the legal environment – a prosecutor's decree on the termination of criminal proceedings and an effective sentence. I believe that this manner leads to insecurity in the defendant's procedural situation and absolutely violates his right to defend himself/herself, which is a basic principle in the criminal proceedings.

A proposal has been submitted for the **effective order** to be *de lege ferenda* included in the provisions of Art 24, para 1, item 6 of the Criminal Procedure Code. Following the changes made in the Criminal Procedure Code in 2017 (Law on the Amendments and Additions to the Criminal Procedure Code published in State Gazette № 63, effective as of 05.11.2017), the Judge-Rapporteur will no longer have the authority to terminate criminal proceedings by injunction. The issue of terminating and suspending criminal proceedings is decided by the court panel by delivering a ruling.

Finally, there is an in-depth analysis of **whether the decree, by which the opening of pre-trial proceedings is rejected, gives rise to *non (ne) bis in idem* consequences, although this act is not among the ones explicitly referred to in Art 24, para 1, item 6 of the Criminal Procedure Code**. As a result of that, it was *de lege ferenda* proposed that the decree, by which the opening of pre-trial proceedings is rejected, be included in the provisions of Art 24, para 1, item 6 of the Criminal Procedure Code.

Section Four examines the grounds under Art 24, para 1, item 7 of the Criminal Procedure Code, and it includes a brief general description of private-public cases. It is important here to check if the legal qualification is correct and if

it falls into the respective section of the Criminal Code's Special Part, i.e. should the victim be required to file a complaint to the prosecutor.

Section Five deals with the reason for termination referred to in Art 24, para 1, item 8 of the Criminal Procedure Code - exemption from criminal liability and imposition of educational measures.

Where during the stage **"First instance court session"** there are grounds for exemption from criminal liability with the imposition of educational measures under Art 61 of the Criminal Procedure Code, the court may either terminate the criminal proceedings or issue a verdict.

When applying Art 61 of the Criminal Procedure Code, the court should explore the following topics: has the act been committed; has it been committed by the defendant; has it been committed in a culpable manner due to infatuation or recklessness; does the act pose great risk to society; and can the defendant be successfully subjected to educational measures.

Several court rulings were analyzed, including a multitude of practical problems associated with the court's power to terminate criminal proceedings based on Art 289, para 1, in connection with Art 24, para 1, item 8 of the Criminal Procedure Code. Hence, a *de lege ferenda* proposal was made for the revocation of the court's authority to terminate criminal proceedings and send materials to the Commission for Combating Minors' Anti-Social Behavior with the purpose of imposing educational measures. Therefore, in Art 289, para 1 of the Criminal Procedure Code, the reference made to Art 24, para 1, item 8 of the Criminal Procedure Code should also be repealed. It is proposed that where the court has established the prerequisites under Art 61, para 1 of the Criminal Code, the court shall release the defendant from criminal liability by delivering a verdict, and not a ruling, and shall itself impose an educational measure. In view of the aforesaid, there should also be an amendment to Art 61, para 2 of the Criminal Code: *"In*

these cases the court may itself enforce an educational measure by notifying the local Commission for Combating Minors' Anti-Social Behavior or by sending the file for the imposition of such a measure." The expression "…*or by sending the file for the imposition of such a measure"* should be dropped from the provision.

A comparison was also made with the implementation of this reason for termination in the stage called "Reference to court and preparatory actions for case hearing in a court session". During the regulatory session for court submission, the court may avail of such authority only if the case has been submitted with an indictment, and the facts described in its circumstantial part result in a conclusion on the existence of the preconditions stipulated in Art 61, para 1 of the Criminal Code. In this regard, a reasoned answer has been given to the question of how the court should decide on the existence of the prerequisites referred to in Art 61, para 1 of the Criminal Procedure Code, taking into consideration only the indictment.

Section Six reviews the termination grounds regulated by Art 289, para 1, in connection with Art. 24, para 1, item 8a of the Criminal Procedure Code, i.e. does the act committed constitute an administrative offence for which the administrative criminal proceedings have been concluded.

First to be analyzed are the preconditions required for the existence of such grounds - coincidence of the facts set forth in the indictment and the effective penal decree; is the person the same as the one accused of being the perpetrator; assessing if the administrative criminal procedure could be defined as a penal one within the meaning of the European Convention on Human Rights. The practice of the Human Rights Court has been considered with regards to the above.

Next, it is pointed out that **a termination based on Art 24, para 1, item 8a of the Criminal Procedure Code can be carried out under three hypotheses (given the pendency of the administrative criminal proceedings for the act described in the indictment).**

First hypothesis: when **simultaneous penal and administrative criminal proceedings have been initiated against the same person for the same act, and none of these proceedings have been finalized**. In this case, the first instance court cannot terminate the penal proceedings because the administrative criminal ones have not been concluded with an effective penal decree. According to Art 4 of Protocol 7 issued by the European Convention on Human Rights and the European standards imposed by it, the existence of two parallel pending proceedings, which are of a "criminal" nature within the meaning of the Convention, have as their subject the same act, and are against the same person, do not constitute a violation of the *"ne bis in idem"* principle, insofar as none of them has ended with an effective judicial act, and the person has been neither convicted nor acquitted.

Second hypothesis: when **penal proceedings have been filed for the same act and against the same person for whom the administrative criminal proceedings have ended with an effective deed**.

If during the stage "First instance court session" the court has reached a conclusion on the existence of the preconditions for the application of the reason referred to in Art 289, para 1, in connection with Art 24, para 1, item 8a of the Criminal Procedure Code, the process could develop in two ways:

The first way is when the court concludes that the act, for which the administrative criminal proceedings have ended, constitutes a crime. Under this scenario, the court must first suspend the administrative criminal proceedings on the grounds of Art 290, para 1, in connection with Art 25, para 1, item 1 of the Criminal Procedure Code, thus giving priority to the criminal liability. This obligation stems from the rule stipulated in Art 24, para 4 of the Criminal Procedure Code, which states that criminal proceedings shall be terminated based on Art 24, para 1, item 8a of the Criminal Procedure Code only where the competent institution has failed, within a period of one month, to exercise its

power to request the reopening of the administrative criminal proceedings, or such a request has been dismissed.

The second way of developing the process is when the court has established the existence of the application prerequisites referred to in Art 289, para 1, in connection with Art 24, para 1, item 8a of the Criminal Procedure Code and has reached the conclusion that the act for which the administrative criminal proceedings had ended is actually an administrative violation. In this particular case, the criminal proceedings shall be terminated on the grounds of Art 289, para 1, in connection with Art 24, para 1, item 8a of the Criminal Procedure Code.

In order to make a comparison and clarify this issue, I have also examined **the application of the reason under Art 24, para 1, item 8a of the Criminal Procedure Code in the stage called "Reference to court and preparatory actions for case hearing in a court session".** When the proceedings are at this stage and the court has found out that in terms of the same person and the same act the administrative criminal proceedings had been concluded, the respective process could also develop in two ways:

The first way is when the court has reached the conclusion that **the act for which the administrative criminal proceedings had ended is actually an administrative violation**. In this case, the court will exercise its authority described in Art 250, para 1, item 1, in connection with Art 24, para 1, item 8a of the Criminal Procedure Code and will terminate the criminal proceedings.

The second, more complicated way, is when the court has concluded that **the act for which the administrative criminal proceedings had ended constitutes a crime.** The practice of the courts was subjected to a detailed analysis, as a result of which it was established that although Art 251, para 1 of the Criminal Procedure Code does not make reference to the provisions of Art 25, para 1, item 5 of the Criminal Procedure Code, the first instance courts close in a regulatory session the

proceedings precisely on this basis, and then, depending on the result, they either initiate termination under Art 24, para 1, item 8a, as specified in Art 24, para 4 of the Criminal Procedure Code, or continue with the criminal proceedings.

Thus, an answer was given to the following two questions: “Is the absence of an explicit reference from Art 251, para 1 of the Criminal Procedure Code to Art 25, para 1, item 5 of the Criminal Procedure Code a legislative omission?” and “Is the court panel’s prevailing practice of stopping the criminal proceedings in a regulatory session on these grounds legitimate?”. Therefore, a *de lege ferenda* proposal was made for the first instance court to have the power, in the stage called “Reference to court and preparatory actions for case hearing in a court session”, to cease the criminal proceedings pursuant to Art 251, para 1, item 1, in connection with Art 25, para 1, item 5 of the Criminal Procedure Code.

Arguments have been put forward that since the stage “Reference to court and preparatory actions for case hearing in a court session” does not provide for an authority that would enable the court to suspend the criminal proceedings on the grounds of Art 25, para 1, item 5 of the Criminal Procedure Code, then its only lawful approach would be to terminate the criminal proceedings pursuant to Art 250, para 1, item 1, in connection with Art 24, para 1, item 6 of the Criminal Procedure Code.

Finally, *the third hypothesis* **states that in the event of unfinished administrative criminal proceedings in terms of the act for which an indictment has been submitted, the first instance court may decide that this act is an administrative offence, and not a crime**. Following the changes made in 2017 (Law on the Amendments and Additions to the Criminal Procedure Code published in State Gazette № 63, effective as of 05.11.2017), the court now has the power, stipulated in Art 305, para 6, in connection with Art 301, para 4 of the Criminal Procedure Code, to recognize in its verdict the defendant as innocent and

impose an administrative penalty, provided the act is punishable under an administrative procedure in the cases specified in the Special Part of the Criminal Procedure Code, or when the act constitutes an administrative violation stipulated in a law or a decree.

The same comparison was made with the stage named **"Reference to court and preparatory actions for case hearing in a court session"**. If established in this stage that the administrative criminal proceedings in terms of the act for which an indictment has been submitted are still going on, but the first instance court has decided that the said act is actually an administrative offence, and not a crime, the proceedings shall be terminated on the special grounds referred to in Art 250, para 1, item 2 of the Criminal Procedure Code, i.e. the act described in the indictment constitutes an administrative violation.

Section Seven examines the reason stated in Art 289, para 1, in connection with Art 24, para 1, item 9 of the Criminal Procedure Code – in the cases referred to in the Special Part of the Criminal Procedure Code, the victim or the damaged legal entity shall, until the launching of a judicial investigation before the first instance court, file a request for the termination of criminal proceedings.

The necessary preconditions to terminate criminal proceedings on these grounds have been examined. The respective provision of the Criminal Procedure Code's Special Part should specify that the court case for this crime may be dismissed at the request of the victim or the damaged legal entity, with the said request being submitted prior to the start of a judicial investigation before the first instance court. Further to the second prerequisite, a discrepancy has been established between the Criminal Code and the Criminal Procedure Code – the first case deals with the issue of terminating the proceedings at the request of the victim, and in the second case – at the request of both the victim and the damaged legal entity. Therefore, a *de lege ferenda* proposal was made for the amendment of

the respective provisions of the Criminal Code (Art 343, para 2 and Art 343a, para 2 of the Criminal Code), so that the damaged legal entity be included in the list.

In this regard, some more specific theoretical and practical hypotheses were reviewed, and answers were given to questions such as: When following the termination of proceedings an unidentified victim has filed a report on the crime committed, will the proceedings be resumed or new ones will have to be opened?; In the event of inflicted moderate or severe injury to more than one person (Art 343, para 1, letter "b", in connection with para 2, in connection with Art 342 of the Criminal Code), as a result of which one of these persons has fallen into a coma for a long period of time, will the criminal proceedings be terminated pursuant to Art 24, para 1, item 9 of the Criminal Procedure Code, if some of the victims come from different regions of the country and some of the criminal proceedings have been terminated on the grounds of Art 24, para 1, item 9 of the Criminal Procedure Code; if one of the victims has suffered damages but has not be subpoenaed and interrogated as a victim; the trial took place with the victim not being aware of it, and the victim has reported the crime committed only after the closing of the trial.

Further to the discussion of these issues, a *de lege ferenda* proposal was made for para 2, Art 289 of the Criminal Procedure Code to be supplemented by inserting item 9. The provisions of Art 305, para 5 of the Criminal Procedure Code should also be amended as follows: "…in the cases referred to in Art 24, para 1, item 9, in connection with Art 289, para 2 of the Criminal Procedure Code, the court shall find the defendant guilty and shall impose a punishment".

Section Eight explores the reason regulated by Art 289, para 1, in connection with Art 24, para 1, item 10 of the Criminal Procedure Code, i.e. the transfer of criminal proceedings to another country has been allowed in relation to the person.

The legal regulations concerning the transfer of criminal proceedings (Art 478 - Article 479 of the Criminal Procedure Code) and the necessary prerequisites for the application of this reason were examined.

It is accepted that in the presence of this precondition for termination in the stage called “First instance court session”, there will be no need to examine the merits of the case because they will be analyzed and ruled on in the country where the criminal proceedings are being transferred to.

Section Nine analyzes the grounds referred to in Art 24, para 3 of the Criminal Procedure Code – terminating the criminal proceedings when the court has approved the case to be resolved by settlement.

First, an answer was given to the question if the reason stated in Art 24, para 3 of the Criminal Procedure Code will apply during the stage “First instance court session”, given the fact that Art 289 of the Criminal Procedure Code makes no reference to this text.

Next to be reviewed was the issue if the court ruling, by which the criminal procedure is terminated, is subject to appeal and protest after the approval of the settlement. The thesis shared states that this differentiated procedure should not be treated as grounds for the termination of criminal proceedings, since in its essence it represents a procedure for resolving, and not closing, the case.

Finally, in order to make a comparison and clarify this issue, I have commented on why the criminal proceedings cannot be terminated in the stage “Reference to court and preparatory actions for case hearing in a court session” pursuant to Art 24, para of the Criminal Procedure Code.

Chapter Three, Section One explores the competent authority that shall terminate the criminal proceedings in a first instance court session and the legal nature, format and contents of the deed by which the proceedings are terminated.

First to be analyzed were the issues related to the competent authority and the grounds on which the criminal proceedings could be terminated in a first instance court session.

Next, the format and contents of the relevant deed were considered. A proposal was made for a sample content of the motives behind the ruling on terminating the criminal proceedings in a first instance court session and what exactly should these motives contain depending on the reason for termination, if implemented.

Subject to review were also the issues associated with the procedure under which the court shall deliver its decision when it has failed to include in its ruling the judgement on the measures taken for procedural coercion, the measure securing the civil claim, and the material evidence attached to the case. An analysis was made of the missing power stipulated in Art 289, para 3 of the Criminal Procedure Code, by which the court shall award the judiciary expenses in the ruling on the termination of criminal proceedings. Thus, the court shall rule on this topic in separate proceedings under Art 306, para 1, item 4 of the Criminal Procedure Code. In view of the arguments presented, a *de lege ferenda* proposal was made to supplement Art 289, para 3 of the Criminal Procedure Code by taking into consideration the court's authority to award judiciary expenses in the event of terminated criminal proceedings.

In the end, there was a discussion on the legal essence of the ruling on criminal proceedings' termination and the question of the effect these types of rulings have in the first instance court session.

Chapter Three, Section Two analyzes the court's control over the termination of criminal proceedings in the first instance court session, i.e. the appellate court that exercises this control, including its competences and powers. The essential

practical problems during the implementation of this control were summarized, and relevant solutions were proposed.

The first thing to be examined was the procedure under which the rulings on criminal proceedings' termination in the first instance court session were controlled. I have indicated the legal subjects capable of challenging the ruling and the hypotheses providing legal interest in this right.

Also reviewed was the deadline until which the ruling can be challenged before the respective appellate court, including the format of the complaint or the protest. In a way similar to Art 310, para 2 of the Criminal Procedure Code, a *de lege ferenda* proposal was made in the following area: when the preparation of the motives has been postponed, the chairman shall only announce the operative part, duly signed by all members of the court panel, and the deadline for the issuance of the motives.

Next, there is a discussion on the subject matter and the immediate task of the appellate proceedings in the control of the ruling by which the criminal proceedings are terminated in the first instance court session. Further to the proper application of the material law, it has been accepted that the court shall check for errors the implementation of the preconditions for criminal proceedings' termination as provided for in the Criminal Procedure Code, along with the legal qualification under which the charges have been brought. As for the appropriate enforcement of the Criminal Procedure Code, the court will have to make sure that no major procedural violation has been committed. Three groups of serious infringements were discussed: mistakes made during the collection and verification of evidence; mistakes resulting in a restriction of the procedural rights granted to the defendant, the victim or his/her successors; mistakes made in the preparation of the termination decree.

It was generally concluded that since the practice of the first instance court does not include exploring the issues of: has the act been committed; has it been committed in a culpable manner; has it been committed by the defendant; does it constitute a crime; and what is its legal qualification, then the appellate verification of the termination ruling would be pointless.

The thesis research ends with **a conclusion** that summarizes the essential findings, proposals for changes in the legislation, and analysis of the controversial judicial practices.

IV. REFERENCE TO THE CONTRIBUTING MOMENTS IN THE THESIS

— A comprehensive study of the historical development in the institute of criminal proceedings' termination in the first instance court session for cases of general nature;

— Definition of the legal nature and consequences of criminal proceedings' termination, *especially* in the stage named "First instance court session" for cases of general nature;

— A comparison between the termination of criminal proceedings in the first instance court session and other similar legal institutes. With regards to the termination of criminal proceedings, a *de lege ferenda* proposal was made for the reasons *"the act has not been committed or it does not constitute a crime"* to be excluded from Art 24 of the Criminal Procedure Code and be only regulated as specific grounds in Art 243 of the Criminal Procedure Code;

— The explored specifics of the reasons for criminal proceedings' termination in cases of general nature, applicable in the stage called "First instance court session", and their compliance with the European requirements and standards;

— The substantiated argument that the actual lack of research into the issues of the act's authorship and the perpetrator's guilt before the criminal proceedings are terminated in the stage "First instance court session" contradicts the European standards. To this end, proposals were made for possible practical solutions;

— When examining most of the reasons for termination, a comparison was made with their implementation in the stage "Reference to court and preparatory actions for case hearing in a court session". A proposal was made to grant the first instance court the power to stop at this stage the criminal proceedings based on Art 251, para 1, item 1, in connection with Art 25, para 1, item 5 of the Criminal Procedure Code;

— The additional arguments presented in support of Interpretive Decision № 1 - 2013 adopted by the Criminal Boards' General Assembly, stating that the court must pass judgement on the civil claim accepted for joint consideration, when the criminal proceedings have been suspended due to statute of limitations, amnesty or death;

— The European standards reviewed in terms of the application of the grounds referred to in Art 289, para 1, in connection with Art 24, para. 1, item 5 of the Criminal Procedure Code. A *de lege ferenda* proposal was made here to supplement Art 101 of the Criminal Procedure Code, i.e. a special representative (lawyer) shall also be appointed for a defendant who, following the perpetration of the act, has fallen into a continuous mind disorder, except for sanity, and his interests contradict the ones of his/her guardian;

— The examination of the question if the decree by which pre-trial proceedings are rejected generates consequences for the *non (ne) bis in idem* rule.

Subsequently, a *de lege ferenda* proposal was made for the said rejection to be included in the listing under Art 24, para 1, item 6 of the Criminal Procedure Code;

— The analyzed practice of the Human Rights Court with regards to the *non (ne) bis in idem* rule. A *de lege ferenda* proposal was also made here for the wording *"unfinished criminal proceedings"* to be removed from the provisions of Art 24, para 1, item 6 of the Criminal Procedure Code;

— The analyzed practical issues related to the application of the grounds under Art 289, para 1, in connection with Art 24, para 1, item 8 of the Criminal Procedure Code. A *de lege ferenda* proposal was made for the revocation of the court's authority to terminate criminal proceedings and send the materials to the Commission for Combating Minors' Anti-Social Behavior with the aim of imposing educational measures. This is why the reference to Art 24 para 1, item 8 of the Criminal Procedure Code should be revoked in Art 289, para 1 of the Criminal Procedure Code should, and the phrase *"...or send the file for the imposition of such a measure"* shall be deleted from Art 61, para 2 of the Criminal Code.

— The answers given to certain questions raised in the doctrine and practice in terms of the grounds regulated in Art 289, para 1, in connection with Art 24, para 1, item 9 of the Criminal Procedure Code. The following proposals were made *de lege ferenda*: Art 289, para 2 of the Criminal Procedure Code shall be supplemented by including in the listing Art 24, para 1 item 9 of the Criminal Procedure Code, and Art 343, para 2 and Art 343a, para 2 of the Criminal Code shall include not only the victim but also the damaged legal entity.

— The analyzed format, content and legal essence of the ruling for the termination of criminal proceedings in the first instance court session. In this regard, a *de lege ferenda* proposal was made for Art 289, para 3 of the Criminal

Procedure Code to provide the court with the authority to award judicial expenses when terminating the criminal proceedings.

— The analyzed supervision of the rulings on criminal proceedings' termination in the first instance court session. The following proposal was made *de lege ferenda*: the rulings terminating the criminal proceedings in the first instance court session shall, similarly to the verdict stated in Art 310, para 2 of the Criminal Procedure Code, stipulate that when the preparation of motives has been postponed, the chairman shall only announce the operative part, duly signed by all members of the court panel, and the deadline for the issuance of the motives.

V. LIST OF PUBLICATIONS ON THE TOPIC OF THE THESIS

1. "Termination of criminal proceedings under a sentence delivered in cases of general nature in accordance with the Criminal Proceedings Act.", De jure, 2021, № 1.

2. "Termination of criminal proceedings by the court of first instance in cases of general nature pursuant to Art 24, para 1, item 5 of the Criminal Procedure Code, and its compliance with the legislation of the European Union.", De jure, 2021, № 2.

3. "Termination of criminal proceedings by the court of first instance in cases of general nature pursuant to Art 24, para 1, item 8a of the Criminal Procedure Code, "The 2020 reform of the administrative punishment", collection of reports, University Publishing House "St. Kliment Ohridski", C.2021.