STANDPOINT
Of

Associate Professor Doctor Ekaterina Salkova

appointed by Order № RD-38-194/24.03.2023 of the Rector of Sofia University St. Kliment Ohridski as member of a scientific jury in the public defence of a thesis for the awarding of a PhD educational and scientific degree

to

Debora Milenova Valkova-Terzieva
a part-time PhD student in the doctoral program "Criminal Procedural Law", professional area: 3.6. “Law”, scientific major “Social, economic and legal sciences", topic:

“TERMINATION OF CRIMINAL PROCEEDINGS IN A COURT SESSION”

1. PhD student’s background and information about the thesis

Debora Valkova-Terzieva has graduated from Sofia University St. Kliment Ohridski in 2017. In the period between 22.10.2018 and 30.09.2019, she has worked as assistant prosecutor in Sofia City Prosecutor's Office, and between 01.10.2019 and 30.06.2020, she has been a candidate for junior judge in the National Institute of Justice. Between 01.07.2020 and 28.11.2022, she held the position of junior judge in Vidin Regional Court, and has been a judge in Sofia Regional Court since 29.11.2022. She has been a part-time assistant in Criminal Procedural Law at Sofia University St. Kliment Ohridski since 01.10.2019.

Pursuant to Order № RD 20-33 / 07.01.2019 issued by the Rector of Sofia University St. Kliment Ohridski, Debora Valkova-Terzieva was enrolled in PhD studies (part-time) under the doctoral program "Criminal Procedure Law", and Professor, Doctor of Legal Sciences Georgi Mitov was assigned as her scientific supervisor. By Order № RD 20-701 dated 17.03.2023, she was listed as a PhD student entitled to defense as of 10.01.2023.

It becomes evident from the documents attached that the PhD student has ***complied with the minimum national requirements*** by submitting a thesis and a list of three articles on the topic of her work, two of which were published in the De Jure Magazine and one in a collection of reports printed by Publishing House "St. Kliment Ohridski".

2. General characteristics of the thesis

The thesis covers ***185 pages*** and has ***168 footnotes***. The bibliography includes ***39 sources, of which 36 are in Bulgarian, one in Russian and two in English.*** The thesis consists of title page, contents, preamble, three chapters, conclusion and bibliography. Each chapter is divided into sections and paragraphs.

I believe that the topic of criminal proceedings' termination is both **relevant and significant**, and I have justified it 20 years ago by choosing this subject for my personal thesis defended in 2006. At the same time, the broad application in recent years of this legal instrument has helped the pre-trial authorities gain experience and has enriched the court practice, the comprehensive analysis of which could serve as a basis for the drawing of major conclusions regarding its development.

In the **preamble**, the PhD student points out that the thesis includes a research only on the termination of criminal proceedings in the first instance session and only for cases of general nature, as described in the contents of individual chapters.

Chapter One of the thesis contains two sections. The first section (page 6 through page 30) is devoted to a historical review of the legal framework for the termination of criminal proceedings in the first instance hearing in cases of general nature, with separate paragraphs examining the framework of the Criminal Procedure Act under the 1952 and 1974 Criminal Procedure Code. I think that the conclusions made on page 17 regarding the court's investigation of the case merits should be more precise, for the quoted Ruling № 14 issued by the Supreme Court of Cassation in 1935 explicitly

states that the court shall deliver a verdict if the reason for termination has been established after the end of the court investigation and the closing arguments, i.e. when the process of providing evidence is over and the facts are clear. The second section briefly examines the essence of criminal proceedings' termination as a legal instrument (page 31-33) and the statutory consequences from the termination made in the first instance session, which have been compared with similar legal instruments (page 36-47). In my view, it would be appropriate to expand the research in this area or to restructure it in a way that shall highlight the PhD student's opinion on the topics discussed. Thus, already available publications or retelling of statutory texts shall be avoided. It should be clarified on page 39, the penultimate paragraph, that the conclusion made is relevant to the post 2017 legal framework, and the last sentence of the fourth paragraph on page 40 should be more precise because some of the obstacles can be eliminated (e.g. if the charges raised have not been proved, and eventually in certain cases where the provisions of Art 24, para 5, item 3 of the Criminal Procedure Code have been applied).

Chapter Two is focused on the grounds for the termination of criminal proceedings in the first instance court hearing. I approve the PhD student's support of the understanding expressed in theory and judicial practice, i.e. in the event of competing rehabilitative and non-rehabilitative grounds, the proceedings must be terminated on rehabilitative grounds. Yet, this conclusion made on page 49 is backed by a court ruling concerning two non-rehabilitative grounds, and the analysis of such a competition would be of greater interest. The PhD student should be encouraged for having voiced her own opinion that the court ought to investigate the defendant's guilt when terminating the criminal proceedings due to the defendant's established death and shall not be required to explore the issue of guilt when terminating the criminal proceedings based on statute of limitations or amnesty (page 56). At the same time, I think it would be appropriate for this standpoint to be substantiated in terms of non-rehabilitative grounds, and accordingly, the consequences of such a ruling will have to be examined. The argument that upon the establishment of statute of limitations or amnesty the defendant may ask for the case to be continued is not sufficient. It turns out that in the first example the name of the deceased person can be defamed without any problems because he/she cannot defend himself/herself (this conclusion should be clarified by also taking into consideration the conclusion stated on page 164 related to the legal interest of the deceased defendant's heirs in disputing the ruling terminating the proceedings). Another point of significance is the circumstance that such a ruling could be important for the development of certain legal relationships (for example, with regards to the

implementation of Art 3 of the Inheritance Act that could impact the legal sphere of the defendant's heirs). In my view, the PhD student has correctly promoted the opinion expressed in court practice that the law does allow the request to continue with the proceedings to be made alternative and eventual where an acquittal verdict has not been delivered (and accordingly confirmed). Insufficiently convincing arguments, however, are those behind the standpoint that even when the court has terminated the criminal proceedings in the first judicial phase, before accepting a civil claim for joint hearing, it will have to accept it for consideration in view of the fact that in principle the criminal court does not have such a jurisdiction and shall acquire it only if the civil claim is *jointly* considered with a penal pretension, in terms of which a preemptive fact has occurred. Since a joint consideration has not been initiated in this particular example, it is difficult to accept that the penal court shall have a reason to acquire jurisdiction to resolve the civil dispute within the framework of a criminal case. When exploring the perpetrator's long-term mental disorder, excluding sanity, the PhD student has focused her attention on the European Union deeds and has made a *de lege ferenda* proposal for the regulated appointment of a special representative – a defendant's lawyer – when the interests of the defendant are in conflict with the ones of his/her guardian. The said proposal, in my opinion, requires arguments because, on one hand, the special representative is a procedural figure and his/her involvement will not eliminate the conflict of interests, which will affect the out-of-process legal relationships associated with the guardian's representation, as a result of which it would be more logical for the guardian to be replaced under this hypothesis (Art 160, para 1 of the Family Code). On the other hand, given the fact that a mandatory defence attorney has already been assigned to the defendant, there emerges the issue of the ratio between the rights and duties of both procedural representatives. The consideration of the idea to include the order by which the launching of proceedings is rejected as per Art 24, para 1 item 6 of the Criminal Procedure Code is positively assessed by me, although the analysis of this part appears to be one-sided and fails to comprehensively explore the ramifications from such an instrument, taking into account the essence of this deed and its consequences, as well as the timing of its enactment - outside of pending criminal proceedings (the arguments on preliminary inspection are unconvincing, for the refusal does not need to be preceded by such an inspection). Another properly justified suggestion it to cancel the court's power to terminate criminal proceedings in the first instance hearing and send the case to the Commission for combating the anti-social behavior of minors and underage persons, which shall impose educational measures. I fully agree

with the PhD student's arguments concerning the regulation of the court's ability to enforce such educational measures on a minor defendant. The comments on the new grounds introduced in 2017 for the termination of criminal proceedings pursuant to Art 24, para 1, item 8a of the Criminal Procedure Code can be regarded as a contribution. Criminal proceedings could also be terminated based on Art 25, para 1, item 5 of the Criminal Procedure Code. It is worth supporting the *de lege ferenda* proposal to amend Art 289, para 2 and Art 305, para 5 of the Criminal Procedure Code by adding item 9 to Art 24, para 1 of the Criminal Procedure Code.

Chapter Three explains the procedure under which criminal proceedings are terminated in the first instance court session. The authority's competence and the relevant deed are also examined. A detailed analysis has been made on the need of motivating the ruling that terminates criminal proceedings on different grounds. Important issues related to the termination of criminal proceedings in the first instance hearing have also been discussed, one of them being the court's failure to rule on the measures taken for procedural enforcement, the measure securing the civil claim, and the physical evidence submitted under the case. The PhD student has justified a proposal for the amendment of Art 289, para 3 of the Criminal Procedure Code that shall regulate the court's power to rule on judicial expenses upon its termination of criminal proceedings. Other topics of deliberation include those associated with the supervision exercised over the court's decision to terminate criminal proceedings.

The main conclusions made by the PhD student as a result of the research conducted are summarized in the **conclusion**, which includes also the *de lege ferenda* proposals.

3. Assessment of the scientific and applicable contributions

I can point out the following positive moments in the thesis: the historical development of the instrument employed in the termination of criminal proceedings in the first instance session for cases of general nature, which could produce further conclusions in the comparison with current legislation; and the discussion of a number of issues that have apparently brought the attention of the PhD student during her practice as a judge. In addition to the aforementioned contributions generated by the review of the thesis' individual parts, the *de lege ferenda* proposals also deserve a special focus. I find some of them to be well justified, like for example: the proposal for the cancelation of the court's power to terminate criminal proceedings and send the materials to the respective Commission for combating the anti-social

behavior of minors and underage persons, which shall impose educational measures that should be determined by the court; the proposal to supplement Art 289, para 2 and Art 305, para 5 of the Criminal Procedure Code and the proposal that Art 343, para 2 and Art 343a, para 2 of the Criminal Procedure Code should include not only the victim but the damaged legal entity as well; and the proposal to amend Art 289, para 3 of the Criminal Procedure Code so that the court be authorized to rule on judicial expenses upon its termination of proceedings. The remaining proposals, in my opinion, need to be reconsidered and provided with additional arguments. These include: the proposal for the appointment of a special representative (lawyer) to a defendant, who, following the perpetration of the act, has fallen into a long-term mental disorder, excluding sanity, and his/her interests contradict the interests of his/her guardian; and the proposal to include in Art 24, para 1 item 6 of the Criminal Procedure Code the order by which the launching of pre-trial proceedings is rejected (especially when taking into account the conceptual difference with another proposal – the deletion of the phrase "pending criminal proceedings" from the provision of Art 24, para 1, item 6 of the Criminal Procedure Code). I, however, appreciate all the proposals as a contribution to the development of the scientific discussion, which is a prerequisite for the complex assessment of the "pros" and "cons" arguments and the adoption of the best decision.

4. Evaluation of publications made under the thesis

The PhD student has three publications on the topic of the thesis, which enable the Bulgarian scientific community to become familiar with the main concepts of the dissertation research and its results.

5. Assessment of the Author's Summary

In terms of structure, the Author's Summary contains six parts: (1) General characteristic of the thesis, including the relevance, purpose, tasks, subject, topic, methods and practical importance of the research; (2) Volume and structure; (3) The contents of the thesis; (4) Contribution reference; and (5) List of publications on the topic of the thesis. The contents of the thesis are properly reflected in the Author's Summary.

6. Critical notes, recommendations and questions

Most critical notes and recommendations are caused by omissions detected in the methodology of the thesis. First of all, the thesis title does not correspond to its contents, which has been correctly noted by the PhD student. Still, given the narrowing of the research in two directions – with regards only to the first instance court hearing and cases of general nature – the title of the thesis needs to be changed in order for it to properly match the contents. So long as the thesis is expected to demonstrate a profound theoretical knowledge of the respective subject, I consider it appropriate for the PhD student to expand the bibliographic sources, both Bulgarian and foreign, and provide a complete selection of references on the specific topic of the research. In recent years, the historical review has been increasingly singled out as a separate, structurally distinctive part, but I find this approach unsuitable for a thesis because it looks like a retelling of the laws without the possibility of generating any scientific contribution that would otherwise be available when matching the legislation in historical and legally comparative aspect within the analytical research of a specific issue. I believe the PhD student is also aware of that, for on page 8 she has stated that the essence of criminal proceedings' termination is the same, regardless of the differences between the Courts Organization Act and the Criminal Procedure Code, and it makes no sense to separately examine the nature of the legal instrument under each act that has been effective in different periods of time. Sometime this approach creates prerequisites for unnecessary repeating of whole paragraphs, like the two paragraphs on page 32-33 and page 48. In some parts of the thesis there is a general reference to the doctrine without naming a specific source. Thus, the author is not given the deserved credit (this is also applicable where the PhD student has quoted a source from recent years but not previous relevant sources in which the respective view had been expressed for the first time), and the verification and its associated guaranteeing of proper further reproduction of other researchers is impeded, as a result of which the scientific ethics requires that a reference to the source (or the original source) be included in these parts. The PhD student will have to be more precise in several expressions and thoughts, like the ones stated on pages 33 and 48 (the paragraph is repeated): "By their nature, the special reasons are in fact statutory norms stipulated in the relevant section of the Criminal Procedure Code, which regulates the respective stage, and they can also be regarded as regulations that refer to all or some of the general termination grounds." The following shall be clarified: (1) the stages are defined in chapters, and not in sections; (2) given the essence of the legal norm, the PhD should provide

arguments why the special reasons are defined as statutory norms or, where she has had something else in mind, she will have to specify the wording; (3) if the special reasons are actually regulations that refer to all or some of the general termination grounds, then the criterion for the existence of such a classification shall be questioned. The same is applicable to the conclusion that it is possible, based on certain court rulings, to express a tacit consent for the continuation of proceedings in the case of established statute of limitations or amnesty (page 60), as long as the quoted court ruling justifies the need of considering the defendant's explicit or silent *wish*. There is no doubt that the defendant's silence after receiving the notification does not mean that he/she agrees with the continuation of proceedings. On the contrary, this could be interpreted as consent for the dismissal of the case. I can hardly accept that the prosecutor's deed will seize to exist in the judicial world even when revoked (page 98). Knowing how important the discussion of these issues is, when commenting the various topics, the PhD student is advised not to limit herself by referring to only one source (be it from theory or practice), and should instead follow the respective scientific discussion and judicial practice in order to obtain an overall analysis and avoid the predominance of the compilation approach over the analytical one. It will be appropriate for certain contradictions or ambiguities in the text to be removed (e.g. it is stated on page 55 that "Unlike the first instance court hearing, in the stage called "Submission to court and preparatory actions for consideration of the case in a court session", the court cannot explore the substantive issues based on evidence collected during pre-trial proceedings. It is so because in this stage **the substantive issues** cannot be resolved under any circumstances. On the next page we find the following text: "In this situation, the court has no other option but to examine the substantive issues solely on the basis of the indictment's circumstantial part, following which it shall terminate the criminal proceedings". A few technical remarks may be made on the quoting of deeds, including the ones of the European Union: the PhD student should provide information about the deeds' publication; she must put in quotation marks texts that literally reproduce other people's opinions, court rulings or statutory regulations; and all doublings, grammatical errors, etc. will have to be removed. The structure of the thesis should be reconsidered with the aim of eliminating any major differences in the volume of individual chapters.

The purpose of these remarks is to help the PhD student in her further research activity.

7. Conclusion

The thesis presented meets the requirements of the Law on the Development of Academic Staff in the Republic of Bulgaria. Therefore, I express my positive standpoint and suggest that the members of the scientific jury vote affirmatively for the awarding of the PhD educational and science degree to Debora Milenova Valkova-Terzieva, professional area: 3.6. "Law", doctoral program "Criminal Procedural Law".

Member of the scientific jury:
Associate Professor Doctor Ekaterina Salkova