REVIEW

by Professor *Margarita Ivanova Chinova*, Doctor of Legal Sciences, professional area: 3.6. “Law”,
scientific major “Criminal Procedure Law”, Lecturer at Sofia University St. Kliment Ohridski, Faculty of Law, appointed by an Order of the Rector of Sofia University St. Kliment Ohridski as an external member of a scientific jury in the presentation of a thesis for the awarding of educational and scientific degree “Doctor” to the candidate ***Debora Milenova Valkova-Terzieva***, professional area: 3.6. “Law”,
scientific major “Criminal Procedure Law”

In 2017, Debora Milenova Valkova-Terzieva graduated from the Faculty of Law at Sofia University St. Kliment Ohridski. She has been a prosecutor's assistant in the Sofia City Prosecutor's Office, a junior judge in Vidin District Court, and is currently working as a judge in Sofia Regional Court. Since 2019, she has been a part-time assistant in criminal procedural law. In the same year, she was enrolled in part-time doctoral studies in the scientific major "Criminal Procedural Law", with the topic of her thesis being “Termination of Criminal Proceedings in a Court Session”.

The thesis titled ***“Termination of Criminal Proceedings in a Court Session”*** covers 185 pages, and in terms of structure, it consists of contents, preamble, three chapters, conclusion and bibliographic references. The thesis has 168 footnotes, and the bibliography includes 38 titles in Bulgarian and other languages.

The thesis examines the accessible legal literature and the judicial practice, including not only the one of the Supreme Court of Cassation, but also of the Regional, District and Appellate courts. Certain issues have been discussed and explored in consideration of the respective European standards, the practice of the European Human Rights Court and the European Union Court of Justice.

The thesis titled "Termination of Criminal Proceedings in a Court Session" is relevant and important. It is also true that a monograph dedicated to the termination of criminal proceedings has been published in the Bulgarian legal literature, but it studies the termination as a general legal instrument applicable in both phases of the criminal process. This thesis, however, analyzes the termination of proceedings only in the first instance court session. Furthermore, the monography referred to hereinabove has been published more than 15 years ago. Meanwhile, new different grounds for the dismissal of cases have been adopted, which need to be understood from theoretical point of view and properly applied in practice.

The thesis makes a skillful use of the historical and comparative-legal approach in order to distinguish the proceedings' termination in the first instance court from other similar legal instruments and outline the differences in the disposition hearing for court reference.

The paper contains several contributions to the theory, practice and legislation, and further formulates original ideas and doctrinal standpoints that are well motivated and substantiated. Conflicting authorizations are outlined for the practice, including instances of improper or illegitimate application of grounds for the termination of proceedings. Exemplary proposals are made for overcoming these practices and for the correct implementation of the law. Dozens of specific *de lege ferenda* proposals are formulated with the aim of amending and

supplementing the Criminal Procedure Code, thus improving and perfecting the existing rules.

The major ***contribution elements*** of the present thesis can be summarized in the following manner:

Chapter One contains a historical review and is focused on the legal essence of the proceedings' termination in the first instance court session.

The historical review is an analytical one, which has allowed the grounds for case dismissal under the current Criminal Procedure Code to be compared with the repealed procedural laws. A justified answer is given to the question: what reasons in the revoked Criminal Procedural Law have led to the termination of proceedings by a verdict and not by a ruling as is presently done. The trend in the development of this new instrument and its fundamental features is identified through a detailed analysis of the grounds on which cases have been closed.

The adept use of the legal science achievements in the termination of proceedings as a general statutory instrument has helped the candidate to summarize and explain the legal consequences resulting from the said termination.

From doctrinal and practical point of view, the comparative analysis between the termination of proceedings in a court session with other similar statutory instruments is important for the establishment of the unique nature of this termination, which is also compared with the suspension and termination of criminal prosecution, etc.

Chapter Two is devoted to the grounds for the termination of proceedings.

It has been accepted long ago in the Bulgarian legal literature that the reasons for the proceedings' termination in the first instance court are in their essence non-rehabilitating, and, therefore, when the court is terminating the proceedings, it should include in its motives the conclusion that the act has been committed by the defendant. In this regard, the assessment of the numerous additional arguments for

the affirmation of this understanding in the courts' practice could be regarded as a contribution.

Statute of limitations, amnesty and death are examined first as prerequisites for a case dismissal. In the event of prescription and amnesty, the proceedings shall not be terminated if the defendant has requested for them to be continued. The controversial judicial practice in relation to this request of the defendant is analyzed, and specific recommendations are given for its improvement and upgrading, along with the overcoming of contradictions. Original additional arguments are formulated in support of the interpretive practice of the Supreme Court of Appeals, stating that where proceedings are terminated due to statute of limitations, amnesty or death, the court must rule on the merits of the civil claim accepted for consideration.

Having reviewed the related European standards stipulated in a number of directives, the candidate advocates the idea that if, after committing the crime, the perpetrator has fallen into a prolonged mind disorder, except for sanity, he/she shall become a "vulnerable person" within the meaning of these standards. To this end, the thesis includes a summary of the procedural rights that shall be granted to these persons by the member-states. Practicing lawyers pay special attention to the analyzed judicial practice and the conclusion that cases shall be closed automatically with no motives, which is contrary to the European legislation and the practice of the European Union Court of Justice.

In terms of the *ne bis in idem* rule, a *de lege ferenda* proposal is made for the expression "pending criminal proceedings" to be dropped from Art 24, para 1, item 6 of the Criminal Procedure Code because within this hypothesis there is no violation of the *ne bis in idem* rule. The thesis provides a substantiated understanding that Art 24, para 1, item 6 of the Criminal Procedure Code makes reference to any prosecutor's decree for the termination of proceedings, no matter

if they have been subjected to judicial control or not. Contributory elements can be found in the answer to the question if the decree by which the opening of pre-trial proceedings is rejected generates any *ne bis in idem* consequences, despite them not being included in the listing under Art 24, para 1, item 6 of the Criminal Procedure Code. Hence, the candidate has analyzed the judicial practice and has found out that it contradicts both the issue on whether the preliminary investigation constitutes a criminal indictment within the meaning of the European standards and the issue on whether the refusal to initiate proceedings gives rise to the consequences of the *ne bis in idem* rule. Finally, this analysis makes a justifiable and convincing proposal for the decree by which the opening of pre-trial proceedings is rejected to be included in the listing under Art 24, para 1, item 6 of the Criminal Procedure Code.

Further to Art 24, para 1, item 8 of the Criminal Procedure Code, it is emphasized that in the implementation of Art 61, the court may terminate the proceedings and send the case for the imposition of an educational measure by the local commission, or it could deliver a sentence and enforce this measure itself. Therefore, an appropriate *de lege ferenda* proposal has been motivated for one of the powers to be dropped, in which case the court shall issue a verdict and personally impose an educational measure. For this purpose, a new sample version of Art 61 of the Criminal Procedure Code has been suggested.

The prerequisite for proceedings' termination as per Art 24, para 1, item 8a of the Criminal Procedure Code has been explored in detail, which can be explained with its recent introduction in the effective Criminal Procedure Code. The practice has been summarized, and the three possible hypotheses of proceedings' termination have been successfully formulated and analyzed. In this regard, the thesis is valuable because of the formulated numerous solutions and the recommendations made to the courts for the proper application of this reason for

case dismissal. Moreover, these grounds for proceedings' termination have been compared and proposed to be included in the disposition hearing for court referral. To this end, it has been suggested that the Criminal Procedure Code should be supplemented by granting the court the power to suspend proceedings upon establishing that the act, for which the administrative criminal proceedings have ended, is actually a crime.

The request filed by the victim or the damaged legal entity for the proceedings' termination pursuant to Art 24, para 1, item 9 of the Criminal Procedure Code is a separate reason. For the purpose of overcoming the legislative inconsistency, a *de lege ferenda* proposal has been made for the respective provisions of the Criminal Procedure Code to be supplemented by including the request of the damaged legal entity as a reason for the termination of proceedings. What matters here are the answers and solutions given to a number of specific practical problems such as: where the crime committed under Art 343, para 1, letter "b" of the Criminal Procedure Code has caused substantial material damages and medium or severe bodily injuries to more than one person, and one of these persons has fallen into a long coma, as a result of which he/she cannot submit a request for the termination of proceedings; where there are more victims, and more cases have been filed, but some of the proceedings have been cancelled; where one of the persons who has suffered damages has not be subpoenaed as a victim, and the proceedings have been terminated at the request of another victim, etc. For the sake of a more precise legislative approach, a proposal has been made for the provision of Art 289 of the Criminal Procedure Code to be amended by including Art 24, para 1, item 9 of the Criminal Procedure Code.

Chapter Three analyzes the order and control over the termination of proceedings in the first instance court session.

The suggested contents of the ruling by which the proceedings are terminated on respective grounds are extremely important to the practicing lawyers. Furthermore, the thesis specifies the special rules the court should observe when it has failed to rule on the measures taken for procedural coercion, the securing of the civil claim, and the return of the evidence attached to the case. To this end, an appropriate *de lege ferenda* proposal has been made for the provision of Art 283 of the Criminal Procedure Code to be supplemented by enabling the court to decide on the judiciary expenses in its ruling for the termination of proceedings.

Contributions can also be found in the detailed analysis of the various entities' legal interest to appeal or protest the ruling on the termination of proceedings in view of the various reasons for this termination, including the formulation of sample contents for these complaints and protests.

The scope of judicial control exercised by the appellate court over the termination ruling issued by the first instance court is important in terms of both theoretical and practical significance.

The thesis ends with a generalized conclusion that it could be regarded as a scientific paper which neither repeats nor summarizes the existing knowledge, but contains new scientific, practical and legislative information. Hence, the thesis meets all the requirements of the Law on the Development of Academic Staff in the Republic of Bulgaria and its implementation regulations, and proves that the PhD student has in-depth theoretical and practical knowledge in the science major "Criminal Procedure Law". The thesis is a vivid illustration that the candidate is in possession of sufficiently high qualities and skills needed for the conducting of scientific researches.

The Author's Summary consists of 30 standard pages and reflects both the contents and structure of the peer-reviewed paper. It clearly defines the thesis'

object, purpose and tasks. The contributory elements and scientific publications are accurately described.

The thesis was published in triplicate, which makes it eligible for public presentation.

It becomes evident from the reference table attached hereto that the minimum national requirements stipulated in Art 26 of the Law on the Development of Academic Staff in the Republic of Bulgaria have been complied with, and the candidate may be awarded the educational and scientific degree “Doctor”.

In view of the aforesaid, I **conclude** this review by giving a positive assessment of the thesis titled “Termination of Criminal Proceedings in a Court Session” and propose that the honorable scientific jury awards the scientific degree "Doctor " to Debora Milenova Valkova-Terzieva, professional area: 3.6. “Law”, scientific major “Criminal Procedure Law”.

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/Professor Margarita Chinova, Doctor of Legal Sciences/