

REVIEW

By Prof. Dr. Rumen Petrov Vladimirov, appointed as a member of the scientific jury by order № RD 38-199/ 23.04.2021 of the Rector of the Sofia University “St. Kliment Ohridski” in an announced competition for the academic position of “Associate Professor” at the Faculty of Law of Sofia University in the field of higher education 3. Social, economic and legal sciences, professional field 3.6 Law (Criminal Law), published in the SG, no. 22 of 16.03.2021 of the scientific works and teaching activity of Chief Assistant Professor Dr. Miroslava Borisova Manolova, a sole candidate participating in the competition

1. General presentation of the received materials.

For participation in the competition, the candidate Dr. Manolova has presented a list of a total of 7 publications (1 monograph and 6 articles), which are published in periodical collections of reports Sofia University Press, as all publications are included in the national reference list of NACID. The habilitation monograph is entitled “Why Do We Punish? Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law”, Mont Ltd., 2021, 208 p. Previous articles published are on the same topic and have content that is sufficiently expanded, enriched and creatively incorporated in the monograph. Therefore, the attention in the review will be focused primarily on the analysis of its qualities and scientific value.

2. Details of the candidate.

From the presented autobiography it is evident that Dr. Miroslava Manolova was born on August 12, 1973. Her work experience as a legal professional includes in ascending chronology realization as: Judicial candidate /1996-1997/; Investigator in the Sofia Investigation Service /1997-2000/; Chief

Legal Adviser in the Ministry of Culture /2005-2006/; Legal Adviser in the Directorate, "Legislative Activity and EU Law" in the National Assembly /2006 et seq./ Since 2000, after winning a competition, she has started working as an assistant and is currently working as a chief assistant in the Department of Criminal Law at the Faculty of Law at Sofia University. Since 2014 she has obtained the scientific and educational degree "Doctor" in Criminal Law after defense of her doctoral dissertation on the topic: "Crimes with narcotic substances and precursors." She has published a total of 2 monographs and 13 articles on various criminal law issues. In addition, in the period after 2011 she participated as a member in 5 research projects, 4 of which are international.

Dr. Manolova's personal skills and competencies are expressed in mastery /understanding, speaking and writing/ at a sufficiently high level of English and Russian, as well as in possessing the necessary computer literacy.

3. General characteristics and evaluation of the scientific production of the candidate.

In connection with the participation in the competition, the candidate has submitted in separate appendices all the necessary documents and references, including two lists of titles of her publications so far. The first list includes their total number /14/, and the second, only those of them with which she participates in the competition for associate professor /7/.

Taking into account the titles of the general list, information is obtained about the scientific research and the achieved results of the candidate. The copies of scientific works presented in the set, as well as the rest of the scientific production with which I am acquainted, testify to lasting scientific interests in the field of criminal law. Generally speaking, they can be divided into three directions - the first refers to counteraction and protection against drug crimes, the second - to the theoretical and legal problems of punishment and other problems related to

it and the third - to criminal and other restrictions in Bulgaria against persons of Jewish origin in the period 1940 - 1944.

To this must be added the statement that the scientific production of Dr. Manolova is sufficiently known in criminal law science. This is definitely evidenced by the attached reference for noticed citations of her publications in the works of other authors in our country. It is evident from the reference that so far 13 publications of Bulgarian authors are known, where one-time or multiple such references have been made.

In this regard, it can be summarized that all the scientific work of the candidate so far is well known and positively perceived by the doctrine, because it is characterized by analyticalness, depth and concentrated thought. As for the issue of the monograph related to the category "Punishment", it is generally characterized by difficulty and complexity, both because of its interdisciplinary and fundamental nature of the theoretical problems themselves. However, it should be explicitly noted that from a research point of view, on the developed topic of punishment and its objectives, as well as on other topics of scientific research, the author has done very well.

4. Characteristics and assessment of the educational and pedagogical activity of the candidate.

From the issued official reference from the set of documents and materials on the competition, it is evident that during the last three academic years Dr. Manolova has led seminars in Criminal Law - general and special part with high class load, a total of five student groups each year. In addition to the exercises, for the same three-year period she has annually delivered a series of 45 hours of lectures in Criminal Law in the master's program "Social and Criminal Psychology" at the Faculty of Philosophy at Sofia University.

It is known that the Regulations of Sofia University on the terms and conditions for obtaining scientific degrees and holding academic positions also contain additional requirements for the respective candidates related to the educational activity, including joint work with students and doctoral students in research projects and artistic projects. These additional requirements have been met with great success by Dr. Manolova, as evidenced by the attached certificates from the project organizers. Specifically, we are talking about participation as a member of the jury in competitions for resolving criminal cases, organized by ELSA - Bulgaria /2009, 2010 and 2012/; participation as a coordinator of an international project with law students on the topic of corporate criminal and regulatory liability /2016-2017/, as well as participation as a mentor of teams in competitions between law students on the transposition of EU acts into national legislation /2017-2019/.

5. Scientific and scientific-applied contributions of the candidate.

The scientific and scientific-applied contributions of the candidate can be established after a thorough and in-depth acquaintance with the presented habilitation work - the monograph entitled: “Why Do We Punish? The Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law”. It was issued in 2021 and has a volume of 208 pages, with footnotes being almost twice as many as the pages, ie. their impressive number includes a total of 397 references. Structurally, the monograph consists of an introduction, three chapters, each divided into paragraphs, and each paragraph is differentiated into points. They are entitled accordingly. Finally, it ends with a conclusion, followed by the bibliography used in Bulgarian and foreign languages, with more foreign sources.

a/ It should be immediately noted that the topic of the monographic study is permanently relevant and interesting for specialists, because it refers to the second main category of criminal law, which has determined its name - the

category of punishment. Although on the problems of punishment and its goals, in Bulgarian criminal law have written many of our scholars from the last century - until 1944, and then until 1989, as in the following decades until now, Dr. Manolova's monograph is an extremely important and useful theoretical work, as above all it has a solid foundation. It is based on the combination, firstly of the basic classical theories of the purposes of punishment and secondly, of the modern understandings (especially in the Western European countries and in the USA) of their manifestation and relation.

aa / The exposition in Chapter one of the monograph, which is basic and has not only theoretical-legal, but also philosophical-sociological character. It is dedicated to the three classical theories of the purposes of punishment, which so far, due to various objective reasons, have not been comprehensively and thoroughly interpreted in the Bulgarian criminal law doctrine.

In the first place in the study is considered the so-called utilitarian theory of punishment, aimed primarily at the future, ie. to achieve prevention of future crimes by the offender. The author first made a detailed analysis of the emergence and development of this theory more than two centuries ago, following chronologically the differences and nuances in the opinions of a large number of scientists from Western Europe and the United States. The specific effects of utilitarian views on punishment in Russia and the United States in the first half of the 20th century are then examined separately.

The second classical theory of punishment is the so-called retributive, which is directed back to the past - to the crime already committed and to the offender, who deserves retribution and must be punished, without the punishment imposed on him to aim at something else. In a separate section, the most important of the existing retributive views on punishment from antiquity to the present day are considered extensively and interestingly. One of the most used - the so-called positive retributism (for mandatory punishment of the guilty) had a decisive

impact in the United States in the second half of the 20th century. In a separate point the causes, conditions and features of the American system of punishment are discussed.

Since each of the first two theories in its pure form has both positive and negative features, their practical use would not be effective enough. Therefore, it is logical as a separate third group to generate and shape /from the middle of the 20th century/ the so-called mixed theories of the purposes of punishment, which combine and unite the positive aspects of the utilitarian theory and the retributive one, which is in principle the leading one, but is subject to some limitation. It is about creating a unity of retaliation against the offender, plus goals for correction and a threat to the convict and to other potential perpetrators of crimes. In this regard, the author has considered the theses of various scholars and found a certain influence of some theoretical views on the Model Penal Code, approved and adopted by the American Law Institute in 2017, after nearly 15 years of research and discussion. After analyzing some provisions of this Model Penal Code, rightly, given the continental legal system, the author dwells on the adopted mixed system in Germany. Its Penal Code contains certain specifics, the main one being the extended discretion of the court. It is conditioned by the dominance mainly on the principle of guilt for determining the punishment, as well as on the adopted dualistic approach for sanctioning the crimes, namely with punishments and with measures for correction and protection. In the statement and in the footnotes, these features of sanctioning are very well presented.

bb/ The in-depth theoretical analysis in Chapter One of the monograph provides an excellent opportunity in the next Chapter Two to consider the issue of the purposes of punishment in the Bulgarian criminal law and theory. And this is really well done by using an extremely interesting in-depth and critical approach. From the paragraph of the general notes it is clear that the criminal laws /including the current Penal Code of 1968/ and the Bulgarian theory of

punishment and its principles and goals were not in the necessary compliance with the classical theories. This is especially visible and understandable for the period after the establishment of the totalitarian system of social order, when the mentioned theories were denied only by their critique as bourgeois, reactionary or unscientific. Nowadays, when the socio-political conditions have changed qualitatively, as before, experts study punishment not so much as a basic category of criminal law, which has a common goal, but in view of its specific and immediate principles and goals, which contain in Art. 35 and Art. 36 of the current Penal Code.

In order to arrive at the analysis of the current statutory principles and goals of punishment, the author has made the necessary historical review of the development of both the constitutional and legal foundations and their corresponding theoretical views on the goals and principles of punishment. In connection with the analysis of the normative framework, the Constitutions of Bulgaria from 1879, 1947 and 1971 are traced, as well as the criminal laws from 1896, from 1951 and the Penal Code of 1968. Conceptions of the principles and purposes of punishment in theory are rightly divided into two groups - before and after 1989. The detailed exposition of the views of the authors from the first group is interesting, because it covers radically different socio-political periods. Although the thesis about the mixed nature of punishment in our country /with the predominance of the utilitarian theory/ is generally accepted, among the scientists from the so-called capitalist and socialist periods, fundamental and other differences in the issues under consideration related to punishment are expressed.

Concluding this chapter, the author has given a brief but synthesized description of our theoretical and normative model of the purposes of punishment. It is defined as mixed, with an emphasis on the utilitarian goals /Art. 36 of the Penal Code/, which can be achieved within the restrictive frameworks inherent to retributivism /Art. 35 of the Penal Code/. These restrictive frameworks boil down

to two principles, first, that only a person who has committed a crime is punished, and second, that his punishment must be proportionate to the gravity of the crime. This second principle of proportionality is complying with two levels - legal and judicial. In connection with this, it is substantiated that between the retributive frameworks /Art. 35 of the Penal Code/ and the utilitarian goals /Art. 36 of the Penal Code/ an insurmountable internal contradiction arises.

cc/ The established insurmountable internal contradiction in the Penal Code is incredibly increasing as a result of the changes made in it after 1989 and so far, which very often result in a voluntaristic increase in the severity of punishment for various types of crime. And this is being done despite the fact that our code is strict enough and contradicts the European tendency to humanize punishment and reduce criminal repression. The author has paid serious attention to this legislative anomalous fascination in the last chapter of the monograph, entitled: "On the inconsistency of some changes in the special part of the Penal Code with the adopted theoretical and normative model of the purposes of punishment."

The first paragraph comments on some legislative changes /and proposals for such/, which are often made on the occasion of specific cases, unreasonably aggravate the criminal regime of certain crimes in the special part of the Penal Code. Although the examples are abundant, the focus is on some of the most striking cases of the last 15 years. Specifically, it is about the crime of kidnapping /2010/; the crimes with narcotic substances and precursors /2004-2006/; the proposals regarding a change in the juvenile regime /2020/, as well as the proposals for aggravation of the criminal liability for the serious crimes against transport.

The commented changes for increasing the severity and repression in the Penal Code have no basis from the point of view of the theory. The same conclusion is confirmed by taking into account the type and amount of the penalties imposed by the court, mainly imprisonment for the mentioned and for

other types of crimes. Although the arbitrarily severe penalties provided for in the law, which contradict the requirements of proportionality between the crime and the punishment, objectively limit the court to determine an adequate and fair punishment for the specific crime committed, studies show that the minimum possible punishments are most often imposed. Nevertheless, there is no guarantee that they were the appropriate ones to achieve the purposes of the punishment under Art. 36 of the Penal Code. These and a number of other important and significant facts and circumstances are contained in the information prepared by the Unified Information System for Combating Crime for the period 2008 - 2017, which Dr. Manolova analyzes through the prism of the developed topic.

In the second and last paragraph of the monograph, an important problem is considered, which to a large extent turns out to be the leading reason for distorting the normative-theoretical model of punishment established in our country. This is the so-called "penal populism" of the executive and legislative branches, which with the motto "so want the people", constantly propose and adopt amendments to the Penal Code, drastically increasing criminal repression for various types of not only intentional but also reckless crimes.

As a negative social phenomenon, penal populism has manifested itself since antiquity, but its influence can still be seen in a number of modern countries around the world. Clarifying that this topic can be the subject of independent research, the author briefly presents the existing scientific theses on what populism is, emphasizing that it creates division and opposition of citizens in society. Examples of the consequences of this, which are expressed in demands and expectations for more and more severe punishments, are noted and pointed out, as public opinion prevails over expert knowledge in the field of criminal justice. To remove this predominance and to ensure that science, rationality and expertise will prevail over emotional and uninformed common sense in the

development of penal policy, the author makes appropriate general and specific proposals for future improvement of the criminal law process in Bulgaria.

Finally, in connection with the public expectations for justice and the model adopted in our country regarding the purposes of punishment, the question arises whether people really want more and more severe criminal repression, although the answer seems to be yes? To answer the question, the author first refers to a sociological survey from 2012 of public attitudes towards the judiciary in Bulgaria, where only 8% of the respondents answered that the sentences passed are proportional to the committed crimes.

The results of the above sociological survey differ from those arising from the research in the period 2009-2012 in five Scandinavian countries, conducted by academics and published in 2015. Specific questions were asked to differentiated groups of participants and in different methods of communication in order to study the public sense of justice in Scandinavia. The results are varied and interesting and are presented in detail in the book. From them follows the conclusion that public opinion plays a huge role in the development of the penal policy of the state and therefore should be periodically professionally surveyed. This is especially true in Bulgaria, where the last such study was conducted in totalitarism, more than 35 years ago, in the 1980s.

b/ It should be noted that in the presented habilitation work - the monograph “Why Do We Punish? The Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law” contains numerous contributions, with different weight and significance in each of the three chapters. Some of the contributions, meanwhile, have been mentioned in the previous synthesized outline of the book's contents. In the reference attached to the materials of the competition, the candidate has divided her scientific contributions into 16 points. The content in them is sufficiently complete and accurate, and the contributions mentioned are real and should definitely be highly appreciated.

But the most important and significant contribution of the author lies in the creation of the book itself for the purposes and principles of punishment and the original way of writing it. It turns out that the second main category of criminal law - punishment, is associated with serious theoretical situations, given the existence of the three classical theories of the purposes of punishment and their features and relationships. For the creation and development of the utilitarian, retributive and mixed types of theories for centuries worked mainly Western European and American scientists, whose opinions and achievements were not popularized in our country, because during the totalitarian period they were called bourgeois and reactionary, and after 1989, somehow by inertia continue the traditional interpretation of this topic. And now is the time for the candidate to be especially congratulated that on the basis of numerous studied and analyzed mainly foreign sources of dozens of classical and contemporary Western authors, objectively, accurately and clearly introduces the reader to this issue of a fundamental nature. Along with the precise clarification of the problems and their nuances, an important indicator of the huge creative work on writing the first chapter is the fact that in a presentation of less than 70 pages, the author has about 180 references, most of which contain additional explanations and references.

The dosed lexical techniques used in the book, related to asking interesting and purposeful questions and subsequent answers, giving good examples of famous scientists, etc., which fit very well in the exposition, should also be positively evaluated.

Both proposals can be highlighted as very useful for the Bulgarian legislator and the society. The first refers to the future significant changes in the Penal Code /including the punishment and its goals and principles/, which must be accompanied by a sufficient amount of scientific - criminological data, and why not with by theoretical considerations of specialists in theory and case law, what model is introduced in the work of the Constitutional Court. The second proposal

is similar, but it calls for a recent national opinion poll on criminal justice, as well as for periodic ad hoc surveys on future changes in the Penal Code or on such, after some time since the adoption of some important amendments.

6. Assessments of the personal contribution of the candidate.

It should be definitely emphasized that the monographic research works, as well as the other publications of Dr. Manolova, are the result of her personal efforts and creative potential. This is evident from the style of exposition of the criminal law matter created by her. But more importantly, it shows built capabilities for professional analysis and based on it, to justify logical and convincing conclusions and proposals for improving the system and approaches for general and specific impact on offenders, in view of the requirements of the principles and the purposes of the punishment.

7. Notes and recommendations.

It is known that critical remarks and recommendations can be made to each work. However, the content of the peer-reviewed monograph does not reveal any, even insignificant, theoretical or editorial shortcomings. However, I want to share my opinion on the title of the book. It consists of two sentences, the first of which includes the general abstract and vague question "Why do we punish?", with all its possible variants and dimensions. In contrast, the second sentence is specific and clear and unconditionally refers only to a topic of criminal law. In this connection, I consider that the connection between the two parts of the title is not sufficiently appropriate, whereby only the second sentence can remain for the title itself. Otherwise, the question "Why the state (or not the state, but the court) punishes?" would be more acceptable.

Although in general I share the proposals for a survey of public opinion on criminal law issues, I think that the author has underestimated or ignored the moment related to the specific socio - political situation in Bulgaria. I believe that

in order to obtain serious and reliable results from such studies, this situation must be relatively calm, which guarantees the expression of reason, not emotion.

I should also express my deep conviction that the monographic work would additionally, but significantly benefit, if it were made substantiated specific proposals de lege ferenda, for a change in the content of Art. 35 and 36 of the Penal Code, regarding the principles and purposes of the punishment. However, I expect this to be done later, as an inevitable part of the candidate's next creative performances.

Finally, I would like to make a general recommendation to Dr. Manolova. The research experience she has gained so far shows that she has the strongest and most graceful creative years ahead of her as a scientist. That is why I recommend that in the future it diversify its scientific interests, focusing on other areas of criminal law and topics in its research.

8. Personal impressions.

I know the candidate from the competition from 7 years ago, when I was a member of the jury for the defense of her doctoral dissertation on drug crimes. In my opinion at the time, I wrote that the dissertation, although interdisciplinary and difficult, was written in precise and clear language and was easy and fascinating to read. As a significant contribution, I have highlighted the proposals made de lege ferenda and the particularly expressed idea of rethinking the legal approach to effectively counteract these crimes. Today, from another position, in the monograph on the purposes of punishment, it is again stated that the issues of effective counteraction against drug crimes are again not satisfactorily resolved. And this shows consistency and perseverance in defending scientific positions through the prism of new arguments, which is also an indicator of accumulated theoretical knowledge and potential for in-depth analysis - something inherent in a researcher who has reached academic maturity.

9. Conclusion.

After the detailed acquaintance with the materials presented in the competition, for the research and teaching work and especially after the detailed analysis of the monograph: “Why Do We Punish? The Theoretical and Normative Model of the Purposes of Punishment in Bulgarian Criminal Law”, I give my categorically high positive assessment of the scientific works and teaching skills of the candidate. It must be explicitly stated that in this case all the requirements of Development of Academic Staff in the Republic of Bulgaria Act /and especially of its Art. 2b, regarding the scientometric indicators/, the regulations for its implementation and the additional requirements of Sofia University “St. Kliment Ohridski” to the candidates for scientific degree and for academic position are met.

Therefore, I strongly recommend to the Faculty Council of the Faculty of Law at Sofia University "St. Kliment Ohridski" to elect Ch. Assist. Dr. Miroslava Manolova for an academic position of “ASSOCIATE PROFESSOR” in the professional field 3.6 Law (Criminal Law).

14. 06. 2021

Sofia

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