REVIEW

of the academic work of Dr. Nikoleta Kirilova Kuzmanova, an applicant for the academic position "Associate professor" in Criminal Law at the Department of Criminal Law Studies at the Faculty of Law at Sofia University "St. Kliment Ohridski" provided by Dr Yuliyana Mladenova Mateeva, an Assistant professor at Varna Free University "Chernorizec Hrabar" and at South-West University "Neofit Rolski" - a member of the academic panel.

By virtue of Order 38-255/23.05.2022 issued by the Rector of Sofia University "St. Kliment Ohridski" I was appointed member of the academic panel of judges in a competition called for assuming the academic position "Associate professor" in professional field 3.6. Law (Criminal Law) for the needs of the Faculty of Law, Department of Criminal Law Studies – State Gazette, issue 30 of 15 April 2022. I have prepared this review in compliance with the order quoted above.

The only applicant for assuming the position is Dr Nikoleta Kirilova Kuzmanova.

She graduated in Law from the Faculty of Law at SU "St. Kliment Ohridski" in 1999. In 2014, having successfully defended her doctoral dissertation, she was awarded the academic and scientific degree "Doctor" in Criminal Law at the same university. Since 1999 Dr Kuzmanova has successively held the position of "assistant" and "chief assistant" at the Department of "Criminal Law" at the Academy of the Ministry of Interior and at the Faculty of Law at SU "St. Kliment Ohridski". The applicant has over 20 years teaching experience. She conducts seminars in "Criminal Law" at the Faculty of Law at SU, which provides the needed academic hours. Dr Kuzmanova also participates in compiling collective publications. The citation reference testifies about 24 citations of her works. It should be pointed out that along with the teaching activity, Dr Kuzmanova performs a varied administrative, organizational and public activity – as senior expert associate at the Committee on Legal Affairs at the National Assembly, state expert at the Directorate „Council of Legislation " to the Ministry of Justice; head of the political cabinet of the minister of interior and others. It should also be pointed out that Nikoleta Kuzmanova has held the administrative academic position "Scientific secretary" at the Faculty of Law at SU and is currently a secretary on accreditation issues.

The general reference with her publications includes two monographs, one of which is the defended dissertation thesis, two chapters in a monograph, eleven articles and four studies. With view of meeting the minimal national requirements under art. 26, para. 2 and art. 4, para. 1 of the Law on the Development of Academic Staff of the Republic of Bulgaria she has submitted nine publications: one monograph which is her habilitation thesis in the current procedure, four articles and four studies. I agree to review them all except the study *Object and System of the Legal Protection of Religion* since it contains formulations which are key to the habilitation work. It makes a positive impression that 'the academic works submitted by Dr Kuzmanova illustrate

her wide-scope searches in the area of criminal law and the issues considered are not related only to issues concerning the freedom of religion.

The quality and quantity of the scientific work of the applicant justify the conclusion that it meets and even exceeds the minimal national requirements in line with the LDAS of the Republic of Bulgaria and the Regulation for its Implementation.

The habilitation work submitted for participation in the competition is the first monographic study in our country dedicated to the freedom of religion in the light of criminal law. The author deserves acclaim both for the choice of the topic and for the undoubtedly creative approach adopted for the theoretical presentation of the topic. The monograph *Freedom of Religion and Criminal Law* has 252 pages and its structure includes an introduction, three chapters and a conclusion. The scholarly apparatus includes references in Bulgarian and English. There are 463 footnotes. A large volume of legal and interpretative practice has been researched. The body of the thesis is thorough but concise, the language – clear, with no need for editing, the overall impression is perfect. The approach is interdisciplinary: along with the legal aspects of the freedom of religion, the author has analysed the constitutional, historical and philosophical aspects as well. The exceptional accuracy of the paper deserves mention. The varied administrative and organizational activity of the author, especially in relation to the law-making process, has undoubtedly had impact on her style.

Chapter one of the monograph studies the constitutional formulations related to the freedom of religion as one of the main rights and freedoms. Another interesting point is the historical overview of this regulation in the light of the relations between the state and the religious institutions. Extremely thorough analysis is made of the constitutional concepts “faith”, “religion”, “creed”, “denomination” and their derivatives as much as their interpretation is relevant to the accurate perception and enforcement of the constituent elements of the respective crimes. The legal content of the freedom of speech is clarified as a right to choice of religion whose manifestation is the choice of denomination and of religious beliefs. An important conclusion is made about faith being the internal human conviction and therefore it cannot be regulated by law. Law can regulate only the behavior which embodies the choice of a particular religion – that man can believe in god or other supernatural forces. Freedom of religion is considered in the light of comparable international and European acts - The International Covenant on Civil and Political Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms. Further in the paper the ways for exercising the freedom of religion are examined – individually or collectively, publicly or privately. The first chapter ends with an outline of the limits of the legal regulation of the freedom of religion.

The second chapter is dedicated to the legal protection of the freedom of religion which guarantees the natural way of exercising of this freedom. It encompasses both the protection of the free choice of religion and the external behavior which is an embodiment of this choice. Similar to the scope of the constitutional regulation of the freedom of religion, its legal protection is impacted by historically dynamic relations between the state and the religious institutions. I am extremely impressed by the parallel description of crimes committed during different historical stages which deserves a high assessment - an approach which differs from the widely accepted

way of separating the historical overview from the current regulatory framework. This approach is unconventional and makes it possible for crimes to be presented in their dynamics or to put it differently, almost three-dimensionally. Crimes against freedom of religion are classified in two groups – real and quasi, which on their part are divided into two types – the first concern only public relations involving the freedom of religion, and in the other group these relations are part of their complex object. Some specific practical questions like the one about the victim in a crime against freedom of religion – an individual and a religious association, are of particular interest. Special attention is paid to the criminality of crimes against freedom of religion, considered through the same approach of parallels drawn in history. Based on the analysis, specific de lege ferenda suggestion are made which would contribute to the improvement of the legal protection of the freedom of religion. A comprehensive model for the improvement of crimes against the freedom of religion is formulated, which can be used by the legislative power for future amendments to and changes in the Criminal Code.

The third chapter focuses on the legal mechanisms used to guarantee the compliance with bans and restrictions related to the freedom of religion. They are first analysed at a constitutional level using the method of interpreting law in different historical periods by outlining the development of the regulatory network starting with the state-religion unity outlined in the Tarnovo Constitution and then moving to the secular nature of the state in the following three constitutions. Attention is paid to both the universal ban on not allowing religious beliefs to serve as a reason for denial to fulfill legally established obligations and the ban concerning the religion of the family of the monarch. The latter is adequately defined by the author as an unacceptable intervention of the state in the private affairs of the knyaz and his posterity, which can only limit the external manifestation of a religion practised by him which is different from the one imposed on him by the state. When discussing the later constitutions, a lot of attention is paid to the ban on organizing political parties on religious basis. A thorough analysis is made of the alternatively formulated limitations of the freedom of religion in the Constitution of Bulgaria and I believe that the right conclusion is made stating that the national security is the broadest notion which is grounds for such restrictions related to freedom of religion – formulating constituent elements of crimes, implementing the existing constituent elements of such, as a whole realizing some kind of legal liability of the individual or obstructing his ability to exercise his right to association, whereas if the addressee of the ban is a legal entity – the legal consequence for violating the bans and restrictions is its termination. Finally, the procedure for declaring a political party unconstitutional on the basis of decisions of the Constitutional Court is outlined. The third chapter ends with an analysis of crimes which violate the bans or restrictions related to freedom of religion. It is concluded that initially the approach adopted argues against creating special constituent elements for violating these bans or restrictions but rather use the general ones while their specificity is reflected only on the individualization of the penalty. The exceptions from the rule are outlined as well as the constituent elements of the individual restrictions and bans related to the freedom of religion and not the violation of the constitutional bans and restrictions.

The conclusion presents concisely the most important conclusions made on the basis of the analysis of the legal framework of the freedom of religion in the light of criminal law.

The article *Trends in the Interpretative Activity of the General Assembly of the Criminal Bar Association of the Supreme Court of Cassation after 1991* outlines some of the main trends of the interpretative activity – disregarding the positive legal network and the ensuing broader interpretation, the substantial number of dissenting opinions, which intensify the controversial practice and others. Surely, the positive tendencies such as increasing the activity of the supreme court instance with respect to laying down interpretative acts and actively referring to the doctrine set out in them, combining issues relative to the material and the procedural criminal law in the claims for interpretation etc.

Quite relevant questions are posed in the article *About the Principles of Criminal Law in Interpretative Decision 3/2015 of the General Assembly of the Criminal Bar Association of the Supreme Court of Cassation* dedicated to the implementation of this interpretative act – the impossibility to implement criminal liability for a committed crime on the basis of a decision of the law-enforcement authority. Dr.Kuzmanova has quite reasonably pointed out that the issue concerning the ratio between criminal and administrative liability should not be resolved by the Supreme Court of Cassation and the need for its intervention is a consequence of the inappropriately formulated legislative decisions (identical constituent elements of administrative violations and crimes) or from incorrectly classified crimes –the intervention in both hypotheses through the interpretative act strengthens rather than removes the controversial practice.

The contribution of the article *Principles of Lawfulness and Administrative Penalty "Detention at a Division of the MoI,* focusing on the issue concerning the lack of this administrative penalty under art. 13 of the Administrative Penalty Law, should be acknowledged.

The article *About Some Crimes in the Criminal Code* examines the issue concerning the lack of common language approach of the legislator when formulating the crimes in one or different constituent elements by using synonyms. The genesis of this phenomenon is illustrated, which turns out to be a tendency and the most typical examples of this phenomenon are pointed out in the special part of the Criminal Code.

The study *About the Implementation of art. 40, para. 2 of the Constitution of the Republic of Bulgaria,* which Dr. Kuzmanova has written in co-authorship, studies the nature of the regulatory act and its scope, as well as the issues related to its possible implementation. A conclusion, focusing on the impossibility of such implementation without legislative amendments which could specify the constitutional text, is drawn.

The study *Reasons for Administrative Penalty in the Special Part of the Criminal Code (discussion questions)* examines the historical aspect of their emergence; contains the contribution classification of the constituent elements in the special part which are subject to administrative penalty. Suggestions are made for overcoming the difficulties that ensue from their existence depending on the type of constituent elements – decriminalization of some of them, removal of the overlapping constituent elements of crimes and administrative penalties and preserving some privileged constituent elements which envisage the imposition of administrative penalties as long as their removal in case of possible decriminalization will lead to lack of legal protection (in case there is no protection using the means of administrative law) due to the fact

that there is no law which can envisage the respective constituent elements of administrative crimes.

The study *Scope of the Legal Protection of the Financial System* explains the concept " financial system", the connection between the concept and the object of the legal regulation of financial law and its importance for criminal law considering the object of the crimes against the financial system. Suggestions are made aiming at optimizing the legal protection of the financial system.

The academic works of the applicant involve a great number of original scientific and practice-oriented contributions, accurately included in the reference form required by law. I am firmly convinced that all these works are the result of her personal academic searches.

I have excellent impressions of Dr Nikoleta Kuzmanova which confirm my final positive conclusion about her academic works and the conviction that she has the qualities for assuming the position "Associate professor".

In conclusion, I believe that the scientific work submitted by the applicant completely meets the requirements of the LDAS of the Republic of Bulgaria and the Regulation of its Implementation and therefore I believe that the academic panel, whose member I am, should decide in favour of senior assistant Dr. Nikoleta Kirilova Kuzmanova assuming the academic position " Associate professor" in Criminal Law at the Department of Criminal Law Studies at the Faculty of Law at Sofia University " St. Kliment Ohridski".

14 July 2022 Reviewer:

Varna /Assoc. prof. Yuliana Mateeva/