

## OPINION STATEMENT

of Prof. Boris Vladimirov Velchev, PhD, faculty staff at Sofia University “St. Kliment Ohridski”, on the thesis paper by Lidiya Peneva-Stoilova, a PhD student in New Bulgarian University, on the topic “Crimes Against Marriage and Family” (for awarding a doctoral degree in “Criminal Law”, professional orientation: 3.6. “Law”)

Lidiya Peneva-Stoilova has graduated Law in NBU and has worked as a legal advisor and as an assistant notary public. Since 2021, she has been working as a legal secretary in Pernik Regional Court. She started her part-time PhD studies in 2017.

In addition to the thesis paper, the author also presented 12 publications on the same topic published in scientific journals. All of them are related to the PhD student’s interests in the field of criminal law and family law. She is also the author of guidelines for students in civil litigation. Three of her articles are on the same topic as the thesis paper. The numerous publications of the PhD student constitute persuasive evidence of her wide interests.

The study of the PhD student Peneva-Stoilova is significant both from academic and practical point of view. This is the first monograph study dedicated to crimes against marriage and family since the work of Prof. Hinova last published in 1995. The relevant case law has been analysed in its entirety. The doctoral candidate has made a thorough critical analysis of all offences and has proposed justified ideas *de lege ferenda*. These can be useful for the legislator during the future work on this chapter of the Criminal Code. In addition, the language used in the paper, which is light and understandable, without deviating from the scientific standards, will also make it possible for students in law to use the work.

The way the analysis has been made and the excellent knowledge of the provisions of criminal law has allowed the PhD student to not only make a creative proposal on the improvement of certain provisions, but also to recommend new ones and the decriminalisation of certain provisions.

The work of the doctoral candidate is of partially interdisciplinary nature. She has an in-depth knowledge of family law, which, combined with her excellent knowledge in criminal law, has resulted in the creation of a major research paper, which is also significant with respect to family law. It is the doctoral candidate’s good knowledge of family law that has allowed her to clarify the “blanket” provisions of the Criminal Code.

I can firmly state that the task of a doctoral thesis paper – to discuss a pertinent legal issue in its entirety, to analyse the relevant provisions and to formulate scientific and practical contributions – has been certainly fulfilled by the doctoral candidate.

The structure selected by the student has made it possible to meet the scientific objectives of the paper. This structure includes a historical overview, an analysis of the relevant provisions of criminal law and a comparative legal analysis. Even though the core of the scientific analysis is concentrated in the second chapter, the other two chapters are not just formally written – the doctoral candidate not only discusses certain historical or foreign legal solutions throughout the paper, but also outlines them critically and compares them to the current legal framework in our country.

The abstract constitutes a complete and accurate presentation of the paper. I completely agree with the author's contributions indicated therein by the student. I would like to pay particular attention to some of them.

In my opinion, the author's idea to analyse crimes against marriage and family in the draft for a new Criminal Code of 2012 is quite original. Although this draft remained just on paper, it summarised a particular stage of the development of criminal law in Bulgaria and it is a good example to be studied.

The comparison between incest and crimes against marriage (page 90) and the outlined difference in the scope of these crimes is also unique.

The critical analysis and the conclusion about the questionable applicability of the provisions under Art. 177, paragraph 3 of the Criminal Code also constitutes a contribution (page 101). This is also valid for the remaining provisions adopted recently as a result of the influence of the so-called "Istanbul Convention", which have been rightfully criticised by the student (page 102-104 and page 109).

The comparison between the provisions of Art. 178 of the Criminal Code and people trafficking under Art. 159a of the Criminal Code contains a justified and contributing scientific analysis (page 114).

The proposal on page 121 to introduce the concept of "bigamy" and to formulate an aggravated offence in Art. 179 of the Criminal Code when the deed has been committed with mercenary motives also constitutes an important contribution and needs to be supported.

The distinction between the offences under Art. 181 of the Criminal Code and the offences of exposing to danger also constitute an important contribution (page 126).

The suggestion to consider the formulation of a new offence under Art. 189 of the Criminal Code when the deed has been committed out of carelessness can be controversial,

but demonstrates a unique way of thinking and creative use of the results of the comparative legal analysis (page 135).

I would like to pay particular attention to the original reasoning of the doctoral candidate with respect of the so-called “surrogacy” (page 151 et seq.). The conclusion that there is no direct prohibition of this phenomenon under criminal law is true and well-defended through the analysis of the provisions that could be partially relevant to the problem discussed.

The arguments that led to the conclusion that “surrogacy” needs to be subject to authorisation requirements (page 164) can also be a matter of controversy, but have nevertheless been presented in a professional and convincing manner. If this becomes part of our country’s positive law, the PhD student rightfully recommends formulating protection against eventual abuse of this institute under criminal law.

The conclusion about the subject under Art. 182b, paragraph 1 of the Criminal Code and the need to also envisage the father as such a subject also constitutes a contribution (page 167).

Regarding the failure to pay alimony, I would like to pinpoint the conclusion made on page 179 about the possibility to replace criminal liability with administrative criminal liability. This proposal shows the PhD student’s mature thinking and she apparently finds that protection under criminal law should only be used when the lighter forms of remedy could not give any result.

The criticism to the concept of “immoral” under Art. 185, paragraph 2 of the Criminal Code is well-grounded (page 186). The same conclusion can also be drawn about the concept of “young child” under Art. 184, paragraph 1 of the Criminal Code.

I have no critical remarks that could reflect on my overall positive evaluation of the paper.

I believe the work of the doctoral candidate fully meets all the legal requirements for awarding a doctoral degree to the author.

My strong recommendation to the academic jury is to award a doctoral degree to our colleague Lidiya Peneva-Stoilova.

Prof. Boris Velchev, PhD