

# OPINION

prepared by prof. Rumen Iliev Markov, D.J.S. – University of National and World economy, professional field 3.6 Law (Criminal law)

on the scientific papers presented for participation in a competition for the academic position

„Associate professor” - professional field 3.6. Law (Criminal Law and EU Criminal Law) at the New Bulgarian University, announced in State Gazette No 83/2019

Applicant: Dr. Ralitsa Svetlozarova Kostadinova, Chief Assistant Professor at the same university

## I. Assessment of compliance with the minimum national requirements and the requirements of New Bulgarian University

Dr. Ralitsa Svetlozarova Kostadinova fulfills all minimum national requirements under art. 2b of the Academic Staff Development Act of the Republic of Bulgaria (ASDARB) and the requirements of the New Bulgarian University for the occupation of the academic position "Associate Professor".

## II. Research work and results

1. Chief assistant professor Dr. Ralitsa Svetlozarova Kostadinova is the only participant in the competition for associate professor in criminal law at the New Bulgarian University.

She submitted the habilitation book “Suspended sentence” (S.: NBU, 2019, 280 pages; the publication is reviewed by Prof. Anton Girginov, D.J.S., and Prof. Dr. Veselin Vuchkov), one study and twenty six scientific articles and reports published after the defense of her doctoral dissertation.

2. From the presented scientific papers, I select and will give opinion on the monograph "Suspended sentence", the study "Formation of the Bulgarian Criminal Law in the Post-Ottoman Period", 2015 (in English) and ten scientific articles and reports - № 2,3,8,9,12,13,14,15,18,22 from the list of publications made after the doctoral thesis defense.

In general, the other articles and reports from the list are part of the doctoral thesis and the published thesis “Traffic road Crimes” (S.: Ciela, 2012), revised and supplemented.

3. Dr. Ralitsa Kostadinova has expert knowledge of the national, international, EU law, legal scholarship and case law in the area of suspended sentence. For this reason she successfully builds a correct and logical structure in the monograph, which comprehensively covers the topic of research.

The publication consists of 280 pages, including 7 Appendixes, bibliography, summary and content in English. The work is organized into an introduction, four chapters and conclusion.

Chapter one deals with the emergence and historical development of the suspended sentence institute in Europe and Bulgaria, and its legal nature. Suspended sentence is understood as delayed execution of the entire period of a sentence of imprisonment with the sentenced person being placed in a suspended sentence or trial regime for the duration of the probationary period. In this chapter suspended sentence is also compared with other similar legal institutions.

Chapter two examines the requirements for imposing suspended sentence. They are analyzed not only pursuant to the existing Bulgarian criminal law, but also from the perspective of legal history and comparative law.

Chapter three introduces the term "suspended sentence regime". It is argued that this term refers to the specific rights and obligations of the sentenced person and of the State, arising from the verdict imposing the suspended sentence. The relationship related to the performance of the regime is considered auxiliary to the criminal relationship resulting from the crime committed.

All possible hypotheses for the development of the specific legal relationship depending on the compliance or violation of the suspended sentence regime are consistently examined.

Chapter four deals with the transfer of probation measures during the probationary period in the European Union.

4. In terms of volume, structure, content, as well as in the light of interpreted case law, the depth of scientific analyzes, conclusions and reasoning, the habilitation paper fully meets the requirements as a monograph.

The research topic is discussed at a high scientific level. Creatively making use of the achievements of criminal law scholarship and the abundance of case law, the candidate presents convincing arguments to support her views and to refute the opinions she challenged with an appropriate tone of scientific argument.

The numerous comparative legal and historical excursions are not an end in itself. They are properly used for the successful accomplishment of the goal set - a comprehensive study of the theoretical and practical issues related to suspended sentence. The work is written in a clear and exciting way.

5. The monograph is the first in Bulgarian criminal law theory comprehensive and systematic study of suspended sentence as a specific criminal law way to achieve the aims of punishment and to protect the public from criminal offences. The contributions of the monograph are:

a) it is a full and in-depth study of the historical development of the suspended sentence institute in our country and in Europe with successful comparative law excursions;

b) the institute of suspended sentence is clearly distinguished from and compared with similar criminal law;

c) it makes a detailed analysis of the requirements for imposing suspended sentence and the grounds for revocation of the conditional release from serving the imposed sentence;

d) it introduces a new term "suspended sentence regime" and analysis of the "relationship resulting from the suspended sentence performance";

e) it clarifies the main characteristics of the probation period;

f) it demonstrates the legal possibility that the State of a sentenced person can enforce the judgement of another Member State imposing suspended sentence with probation measures; introduction of the term „transfer of probation measures”;

g) it gives reasonable particular proposals for amendments to be made in the Criminal Code. Well-founded are the proposals *de lege ferenda* to amend the provisions of art. 1, para.1, art. 43b, p.1 and art. 67, para. 3 of the Criminal code, to cancel art. 383, para. 4 of the Criminal procedure code and to supplement art. 68, para. 2 of the Criminal code.

6. As with any other research work, some critical remarks may be made to the present study, which may possibly help improve the future work on this topic, if accepted by the author.

The legal nature of suspended sentence is understood as "delaying the serving of the sentence imposed". However "delaying" is inherently temporary in nature and means only a temporary suspension of the execution of the sentence. Thus, on the one hand, the definition emphasizes the expectation of an almost inevitable violation of the suspended sentencing regime, and on the other hand introduces an internal contradiction in the institute, insofar as the court's anticipation and the goals pursued by the legislature are exactly for the opposite, i.e. that the defendant would refrain from committing a new crime. In my view, the true interpretation of the legal nature of the institute corresponds to its definition as "conditional release from execution of the imposed punishment", which covers the two main alternative possible types of defendant's behavior, and corresponds to the title of Chapter VII of the General part of the Criminal Code.

It seems exaggerated and unfounded to see the rules of suspended sentence as encouraging norms. Without going into the issue, I will simply mention here that the suspended sentence does in fact "stimulate the subsequent lawful conduct of the offender" (p. 69), but make this under the threat of actual execution of the punishment imposed. The compelling effect of suspended sentence is similar to the classic general preventive effect of Criminal law, based on the fear of punishment laid down in the provisions of the Special part of the Criminal code with which the institute interacts. Even if we can speak of "encouragement", though quite conditionally, it occurs only after the termination of the suspended sentence, not only because of the proper subsequent behavior of the sentenced person, but also because of the expiry of the probationary period.

It is not correct to claim that "delaying" "means impossibility to enforce the punishment imposed" (p. 63,66, 69, etc.). In fact, the "possibility" for serving the punishment exists (p. 70), and it is precisely that possibility that creates the encouraging effect of the institute, but the realization of that possibility or its turning into "reality" is placed under the suspensive condition that no crime is committed or no other violation of the regime is done. The "impossibility" occurs only after the end of the probationary period.

Needless, and seemingly inappropriate, is the repeated use of the term "revocation" and its derivatives.

Finally, once again, I would like to point out that the critical remarks made cannot in any way affect the excellent impression of the monograph and the high evaluation it deserves.

7. The other scientific papers, apart from the monograph, selected for evaluation in this opinion, namely studies, ten articles and scientific reports indicate the diverse scientific interests of Dr. Kostadinova - criminal policy, the concept of "significant property damage", Bulgarian customary criminal law, criminal justice from the media's point of view, criminal law protection of national security, counter-terrorism and more.

These scientific achievements reinforce the impression that Dr. Kostadinova has gained a worthy place in Bulgarian criminal law scholarship.

### **III. Educational and teaching work**

1. Dr. Kostadinova has been teaching criminal law courses since 2001. She was appointed as senior assistant in 2004. Since 2012 she has been on the position of chief assistant.

It is noteworthy that the applicant initiated and teaches a large number of new courses in various subjects at NBU, including a well-developed Moodle-based teaching (LAWN705 Criminal Law training course).

Chief assistant Kostadinova works actively with students. She has been leading the criminal law students' circle since March 2019. She was coach of the two NBU teams participating in the National Criminal Law Moot Court Competitions in 2018 and 2019.

The average grade of student satisfaction amounts to 4.55.

### **IV. Administrative and social work**

1. During the period 2004-2013, Dr. Kostadinova was Director of the Law Program.

2. She took part in the working groups preparing the accreditation of the Doctoral Program in Criminal Law at NBU in 2009 and 2015.

3. She is editor-in-chief of Law Journal of NBU - since 2018.

She is a member of the editorial board of Studies in the Field of Law and Politics. Miscellanies', an edition of the Faculty of Law, Administration and Economics of Kujawy and Pomorze University in Bydgoszcz – since 2017.

4. She is a member of the Bulgarian Association of Criminology and the International Criminal Law Association.

5. She is chief assistant of the Commission for control of security services, the implementation and use of special intelligence means and the access to data under the Electronic Communications Act at the National Assembly.

Bases on the above said I can confidently make the following

### **C O N C L U S I O N**

The applicant fulfills all the requirements for occupation of the academic position "Associate Professor", set out for in Art. 24 of the Academic Staff Development Act of the Republic of Bulgaria and Art. 53 of the Regulation for the Act's implementation. Therefore, in view of the overall assessment of her research and teaching work, and pursuant to Art. 26, para. 3 of ASDARB, I give a positive assessment of the academic activity of the candidate of Dr. Ralitsa Svetlozarova Kostadinova and make a proposal for her admission to election by the Academic Council of the New Bulgarian University for occupation of an academic position of "Associate Professor" in professional field 3.6. Law (Criminal Law and Criminal Law of the European Union) at New Bulgarian University.

3 February 2020

Opinion given by:

(prof. R. Markov, D.J.S.)