

PEER REVIEW

By Assoc. Prof. Dimitar Dekov, PhD

Paisii Hilendarski University of Plovdiv

Doctoral Programme: Civil Procedure

Reason for presenting the Peer Review: appointment as member of the Dissertation Committee for the dissertation defence according to Order ПД-21-118/18.01.2024 of the Rector of Paisii Hilendarski University of Plovdiv

Author of the Dissertation: Rumen Nikolaev Georgiev

Topic of the Dissertation: “Termination and Conclusion of Enforcement Proceedings”

1. Background of the Doctoral Student

The doctoral student, Rumen Nikolaev Georgiev, was born on 23 March 1993.

In 2012, he graduated from “Plovdiv” English Language Secondary School, with English as a primary foreign language.

Later, in 2017, he completed his studies at the Department of Law at Paisii Hilendarski University of Plovdiv.

In 2019, Rumen Nikolaev Georgiev was admitted and began his studies in the Doctoral Programme of “Civil Procedure” at the Civil Law Sciences Department of Paisii Hilendarski University of Plovdiv, professional field 3.6 Law. He completed his studies and was admitted to dissertation defence according to Order No. ПД 21-565/22.03.2022 of the Rector of Paisii Hilendarski University of Plovdiv.

In 2020, the doctoral student registered with the Plovdiv Bar Association.

Subsequently, in 2022, Rumen Georgiev was appointed as a teaching assistant of Civil Procedure at the Department of Law of Paisii Hilendarski University of Plovdiv.

The research interests of the doctoral student are in the field of Civil Procedure.

His serious academic interests have been demonstrated in his five published research papers relating to the topic of the dissertation:

On Certain Issues of the Statute of Limitations in the Compulsory Enforcement Procedure Initiated with an Enforcement Order Under Art. 418 of the Civil Procedure Code – a research paper published in Spring Law Days 2020, Volume 1, 2021, Plovdiv: Paisii Hilendarski University Press.

Termination of Enforcement Proceedings According to Art. 433, Para. 1, Item 5 of CPC – a research paper from the 11th National Conference of PhD Students in Law of the Bulgarian Academy of Sciences.

On Certain Issues of the Termination of Enforcement Proceedings According to Art. 433, Para. 1, Item 1 of CPC – a research paper from “Property Relations in Law – Development and Prospects”, published in a collection, ISBN: 978-619-202-672-1;

Prescription in Enforcement Proceedings under CPC – a research paper presented at the conference “70 Years of the Obligations and Contracts Act – Achievements and Prospects”, published in a collection, ISBN: 978-619-226-224-2;

Is the Legal Effect of the Completed Enforcement Actions Retroactively Negated Upon Termination of the Enforcement Proceedings According to Art. 433, Para. 1, Item 8 of CPC? – a research paper from the 12th National Conference of PhD Students in Law of the Bulgarian Academy of Sciences.

He is proficient in English.

2. General Overview of the Dissertation

The dissertation examines the various grounds for termination and conclusion of enforcement proceedings under Art. 433 of CPC.

The relevance of the selected dissertation topic is unquestionable. To begin with, the topic holds considerable social significance, given that in recent years, a substantial portion of Bulgarian society has undergone individual enforcement proceedings. The topical nature is further confirmed by the numerous legislative amendments, as well as the equally abundant interpretative efforts of the Supreme Court of Cassation in this field.

The title is an accurate reflection of the content, which is structured around three key aspects: theoretical analysis of general issues related to the termination and conclusion of the enforcement proceedings; analysis of the positive legal regulations concerning the termination and conclusion of the enforcement proceedings; and analysis of the practical problems related to the application of the positive legal regulations, along with proposals for its improvement.

The dissertation consists of 205 standard typewritten pages, which include an introduction, exposition in four chapters, conclusion, bibliography, and a list of cited case law. Cited are a total of 32 monographs and textbooks, 19 papers/studies from journals and collections, and 99 court decisions from Bulgarian courts. There are 143 footnotes in total.

The introduction outlines the subject, relevance, the goals and objectives of the dissertation, as well as the methods of academic research employed by the author. Each chapter is composed of sections and subsections. The structure of the work is tailored to the specificity of the legal phenomenon under investigation and aims to focus on the

problems arising in practice. The chapters represent an in-depth and critical exploration of the main issues posed by the subject of investigation.

Chapter One is dedicated to the termination of the enforcement proceedings due to extinguishment of the enforceable right or the occurrence of procedural inadmissibility. Under analysis is the concept of “termination” of the enforcement proceedings. The author reviews the existing practical issues relating to the termination of the enforcement proceedings pursuant to Art. 433, Para. 1, Item 1 of CPC. The author examines the process whereby the debtor conducts an extrajudicial set-off of the creditor’s receivables under the writ of execution. Particularly contributive are both the argumentation and the *de lege ferenda* proposal itself, which I agree with. Namely, it is proposed that Art. 433, Para. 1, Item 1 of CPC be amended as to stipulate that the sole basis for terminating the proceedings shall be a payment received from the creditor. Justified next is the requirement for terminating enforcement proceedings initiated for the collection of alimony obligations when the debtor fulfils their obligation promptly and without delay. Contributory here are both the argumentation and the proposals made for issuing an interpretative decision on this matter in favour of terminating the enforcement proceedings when the debtor consistently pays alimony. I endorse the author's conclusions that a debtor having alimony obligations should not be subjected to procedural enforcement for such an extended period of time without substantive justification. Thirdly, chapter one explores the issue of the debtor's non-performance of voluntary payments due to the creditor's fault before the initiation of enforcement proceedings. I also support the author’s view regarding the requirement for implementing the provisions of Art. 78, Para. 2 of CPC in the enforcement proceedings, which would have a disciplinary effect on the parties involved. Support is also warranted for the author's stance *de lege ferenda* that the consequences of overturning a final decision of the state court and overturning an arbitral decision are to be equalized, providing that upon reconsideration of the arbitral decision formed based on the initial decision, the enforcement proceedings are halted rather than terminated. Next, in the first chapter, the practical issues regarding the application of prescription in injunctive proceedings in connection with termination under Article 433, paragraph 1, item 4 of the Civil Procedure Code are analyzed. A contribution is made both by the argumentation and by the proposals *de lege ferenda* to introduce a reasonable time limit, within which the applicant must provide evidence that they have initiated proceedings before an enforcement agent based on the enforcement orders issued in their favour under Article 418 of the Civil Procedure Code and the writ of execution. A point of interest is also the author’s stance in relation with the possibility for the enforcement order to be disputed by a negative declaratory action instead of an objection. The author concludes that it is more advantageous to formulate a provision that favours the creditors' interests by explicitly stipulating that the debtor has no legal interest in bringing a negative declaratory action if they can challenge the claim by invoking one of the objections under Articles 414 or 414a of the Civil Procedure Code. Later on, Chapter One examines the grounds for termination of the enforcement proceedings provided in Art. 433, Para. 1, Item 7 of CPC. Worthy of

attention and support is the criticism of the case law according to which the initiation of proceedings by the debtor, challenging the claim in a pending enforcement process, leads to the interruption of the prescription based on Article 116, letter "b" of the Obligations and Contracts Act.

Chapter Two examines the issue of termination of the enforcement proceedings at the request of the creditor or at the initiative of the enforcement agent. Under investigation is the question whether, when multiple creditors are involved, each of them must express a desire for the termination of the proceedings in order for it to be concluded. The author contends that the initial creditor holds dominion over the enforcement proceedings they initiate. Therefore, the progression of the proceedings is entirely contingent on their discretion, rendering the consent of other joined creditors unnecessary. This opinion appears too extreme. There are no grounds for restrictive or corrective interpretation of Article 457, paragraph 1 of the Civil Procedure Code. The expressed opinion does not align with the legitimate interests of the parties in the enforcement process, nor does it fulfil the requirements for ensuring legal security and procedural efficiency. The dissertation analyzes the provision of Article 433, paragraph 1, item 5 of the Civil Procedure Code, which envisages the termination of enforcement proceedings in cases where no sequestrable property is found with the debtor, and proposes *de lege ferenda* that this ground for termination of enforcement proceedings be abolished. The termination of enforcement proceedings based on Article 433, paragraph 1, item 6 of the Civil Procedure Code, due to non-payment of due advance fees and expenses related to enforcement, has also been examined. Following the analysis, the author has proposed a *de lege ferenda* measure, deserving support: specifically, to establish a distinct procedure for implementing Article 83, paragraph 2 of the Civil Procedure Code in enforcement proceedings, alongside aligning the scenarios addressed in Article 83, paragraph 1 of the Civil Procedure Code with those outlined in Article 81 of the Private Enforcement Agents Act.

Chapter Three analyses the termination of the enforcement proceedings on the grounds of Art. 433, Para. 1, Item 8 of CPC – on the basis of peremption. This issue often poses difficulties in legal practice, which is why the author has devoted the greatest attention to it. The essence of the concept of "peremption" as a procedural time limit has been analysed, where the expiration of which results in the termination of the pending enforcement proceedings. A due discrimination with the institute of prescription has been made through the lens of pending enforcement proceedings under the Civil Procedure Code, with its evolution being traced over the years. The parallel examination of both issues is justified not only by theoretical considerations for comparing the common elements of the two institutes but also by practical considerations. In case law, they are typically addressed together, as the respondent-debtor often exhausts their defence by raising objections regarding both prescription and peremption within the same case. The author has concluded that the two have entirely different legal consequences. Following the analysis, the doctoral student makes a *de lege ferenda* proposal for restoring the former legal text regarding peremption, and abolishing item 2 of Art. 432, Para. 1 of CPC. The discussions

by the dissertation author regarding the interruption of the time limits for both statutes, as well as the analysis of contentious issues concerning the consequences of peremption, are of significant importance.

Chapter Four examines the issue of the conclusion of the enforcement process as a desired and legally compliant outcome, towards which the process aims from its inception. A parallel is drawn between termination and conclusion of the enforcement proceedings.

The conclusion provides summarizes the conclusions made in the dissertation.

The research is profound, offering a critical discussion of the theoretical views in this field and the pertinent case law. The scholarly apparatus is rich, and the citations are accurate and conscientious. Credit should be given to the author for their conscientious approach in presenting both their own arguments and those of others.

The dissertation is dedicated to analysing the various hypotheses in the termination of enforcement proceedings. The author deserves praise for the goal set for the research – to highlight some of the most significant issues related to the conclusion and termination of enforcement proceedings under the Civil Procedure Code.

3. Assessment of the Achieved Scholarly and Practical Results

The work demonstrates the author's profound knowledge of the problem, drawing from both sources and theory. The writing is characterised by eloquence, and a clear and straightforward manner of expression. The dissertation merits commendable evaluation as it showcases the author's deep legal expertise and their capacity to subject prevailing views in legal literature and case law to comprehensive, critical, and well-argued analysis.

The primary scholarly achievement of the dissertation is the successful attainment by the author of the research goal – to highlight some of the most significant issues related to the conclusion and termination of enforcement proceedings under the Civil Procedure Code, accompanied by a thorough scholarly analysis of the concepts of termination and conclusion of the enforcement process, as well as bold and appropriate proposals for improving the legal framework.

In the dissertation, the author has skillfully integrated various methods of academic research, which is an undeniable merit.

4. Evaluation of the Scholarly and Practically Applicable Contributions

The author makes the following **contributions** of both academic and practical significance:

The dissertation is an attempt at a comprehensive study of the termination and conclusion of enforcement proceedings under the Civil Procedure Code, as well as the identification of contentious issues in legal doctrine and challenges in judicial decision-making under various termination scenarios.

A number of proposals have been made for the improvement of the legislative framework and mandatory interpretations, both regarding the termination of enforcement proceedings and in other proceedings and legal concepts.

A differentiated approach has been proposed in investigating the issue of retroactive negation of the legal consequences of enforcement actions performed prior to the termination of enforcement proceedings, suggesting different responses for different grounds.

A nuanced conclusion has been proposed regarding the nature of the rulings by enforcement agents for the termination of proceedings, making a contrast between constitutive and declaratory effects across various scenarios outlined in Article 433, paragraph 1 of the Civil Procedure Code.

The dissertation serves as a valuable starting point for further exploration and resolution of issues related to the termination of enforcement proceedings under the Civil Procedure Code, as well as specific challenges in other proceedings and regarding the institute of prescription.

The **contributions** achieved by Rumen Georgiev are both academically and practically significant, as they are correct and well-founded. There are 11 *de lege ferenda* proposal made in the dissertation, along with 4 proposals for the issuance of interpretative rulings. It is noteworthy that the dissertation does not merely adopt an approach of "recounting" normative texts; rather, it provides an in-depth practical commentary on key terms and concepts.

The contributions encompass elements of novelty and hold significance for the advancement of legal sciences.

The presented contributions are original, as deduced from the publications accompanying the dissertation.

5. Evaluation of Publications on the Dissertation Topic

As previously mentioned, the author has presented 5 research papers on the topic of the dissertation, which are, within themselves, significant and in-depth academic studies, revealing the author's scholarly expertise. These publications adequately reflect the main theoretical frameworks and new contributory aspects. I have reviewed them and positively evaluate their quality.

6. Evaluation of the Abstract

The abstract of Rumen Georgiev's dissertation repeats the structure and content of the dissertation itself. Firstly, it provides a general overview of the dissertation, explaining the necessity and relevance, the subject and methodology of the research, as well as the scope and structure of the dissertation. Next, the abstract presents the content of the dissertation

in accordance with the order and numbering of the chapters in the dissertation and its conclusion. The abstract concludes with a list of publications related to the dissertation.

7. Critical Remarks, Recommendations, and Questions

Certain recommendations to the author are also warranted for the purpose of perfecting the thesis.

1. The introduction lacks a precise definition of the author's thesis. This omission makes it challenging for readers to grasp the perspective from which the concepts of termination and conclusion of enforcement proceedings are being approached. Of course, the very structure of the dissertation, the stated objective, and the numerous proposals for legislative amendments (*de lege ferenda*) indicate the author's research thesis, namely – to define scientifically the main practical problems arising from the various scenarios of termination of enforcement proceedings, and to make suggestions for improving the legal framework.

2. The numbering of the chapters, sections, and subsections in the table of contents and the main text do not align. This is indeed confusing for the reader. For instance, Chapter Two is numbered '3', and the sections and subsections as '3.1' and '3.1.1.' respectively. The body of the text includes only the number of the section.

3. Further consideration is warranted for the question of whether, when multiple creditors are involved, each of them must express a desire for the termination of the proceedings in order for it to be concluded. The adopted stance that the initial creditor holds dominion over the enforcement proceedings they initiate, and the progression of the proceedings is entirely contingent on their discretion, while the other joined creditors are, more or less, simply "accompanying" them, and their consent is unnecessary, is too extreme. There are no grounds for restrictive or corrective interpretation of Article 457, paragraph 1 of the Civil Procedure Code. The expressed opinion does not align with the legitimate interests of the parties in the enforcement process, nor does it fulfil the requirements for ensuring legal security and procedural efficiency.

4. The conclusion does not include a summary of the main conclusions, as well as the multiple proposals of the author. It is merely state that such have been made.

5. The abstract also fails to summarize the main conclusions and various proposals of the author.

8. Conclusion

According to the According to the Act on the Development of the Academic Staff in the Republic of Bulgaria (ADASRB) and its implementing acts, including the science-metric tables for the minimum required points per groups of indicators for different academic degrees and academic positions, and the number of points per indicators in Area 3. Social, economic, and legal sciences (Appendix to Art. 1a, Para 1 of the Rules for the Application

of ADASRB), the candidates for the educational and academic degree of “Doctor” in field 3.6 Law should have submitted a dissertation and publications that accumulate the necessary science-metric points.

The author has presented five academic papers.

Therefore, the doctoral student meets the science-metric requirements for being awarded the degree of “Doctor”.

The recommendations provided above are secondary in nature and do not, in any way, diminish the significance of the dissertation. The thesis meets all the requirements of Article 6, paragraph 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria (ADASRB) – it contains scientific results that represent an original contribution to science and demonstrates that the candidate possesses in-depth theoretical knowledge in the field of civil procedure and the ability to conduct independent scientific research. Therefore, I strongly support and confidently recommend to the Dissertation Committee to approve the candidate's dissertation and to make a proposal to the Faculty Council of the Department of Law at Paisii Hilendarski University of Plovdiv to award Rumen Nikolaev Georgiev the academic degree of "Doctor" in recognition of his educational and scientific achievements.

Plovdiv, 19 March 2024.

Dimitar Dekov