PEER REVIEW

by Dr. Grigor Naydenov Grigorov, professor of Civil and Family Law at the Department of Law at Paisii Hilendarski University of Plovdiv

On the dissertation of Rumen Nikolaev Georgiev – a full-time doctoral student at the Department of Law at Paisii Hilendarski University of Plovdiv, Civil Law Sciences Department, on the topic: "**Termination and Conclusion of Enforcement Proceedings**" for the award of the education and academic degree of "Doctor" in the higher education field of 3. Social, economic, and legal sciences, professional field 3.6. Law. Doctoral Programme: Civil Procedure.

Dear members of the Dissertation Committee,

In accordance with Order № РД–21–118, dated 18.01.2024, issued by the Rector of Paisii Hilendarski University of Plovdiv, I have been appointed as an internal member of the Dissertation Committee participating in the dissertation defence of of doctoral student R. Georgiev. At the first session of the Dissertation Committee, I was tasked with preparing a peer review for the dissertation.

1. Background of the Doctoral Student.

Rumen Georgiev holds a Master of Law degree from Paisii Hilendarski University of Plovdiv. In 2019, he enrolled as a full-time doctoral student at the Department of Law at Plovdiv University, working under the guidance of thesis advisor Prof. S. Chernev, with a planned duration of study spanning three years. In 2022, he completed his studies and was admitted to dissertation defence. Since that same year, Rumen Georgiev has served as a professor assistant in Civil Procedure at the Department of Law at Paisii Hilendarski University of Plovdiv. He is a practising attorney at the Plovdiv Bar Association.

2. General Overview of the Dissertation.

The dissertation examines the issues of termination and conclusion of enforcement proceedings under Art. 433 of CPC. The volume consists of 205 pages, structurally divided into a title page, table of contents, introduction, four chapters, conclusion, author's declaration, bibliography, and references to cited case law. The bibliography includes 51 papers, two of which are by foreign authors.

The dissertation represents the first-ever comprehensive study in the country on the issues of termination and conclusion of enforcement proceedings. Its relevance is rooted in the multitude of controversial issues in the practice of applying Art. 433 of CPC.

The doctoral candidate has outlined the objectives and research methodology. The study has a pronounced practical nature, aiming to facilitate a better interpretation and application of the law by scrutinizing the issues in the existing case law.

The first three chapters of the dissertation are dedicated to the grounds for termination of enforcement proceedings, and the last focuses on their conclusion. Compiling them, the author analyses and critically examines the contentious and contradictory views on the researched topic, examines relevant case law, and makes a series of proposals for improving the legal framework.

The dissertation is analytical, with clear, concise, and well-founded theses presented by the author on the researched issues. The doctoral student employs precise legal language and correct academic terminology.

3. Assessment of the Achieved Scholarly and Practical Results and Contributions.

Deserving of support is the interpretation of Art. 433(1)(1) of CPC, according to which the enforcement proceedings are terminated when the debtor has paid the amount due to the creditor prior to initiation of the enforcement procedure, irrespective of whether this amount has been received or not, *whereby non-fulfilment is due to the refusal of the creditor* (p. 28). I support the conclusion that Art. 433(1)(1) of CPC should be applied to the enforcement proceedings initiated for the collection of child support claims. In addition, I endorse the *de lege ferenda* proposal, made based on this conclusion, for the specified provision to be supplemented (p. 35). Convincing is also the conclusion that termination of the proceedings at the creditor's request according to Art. 433(1)(2) of CPC does not retroactively negate the legal effect of the enforcement actions already taken in the case (p. 92). I uphold the critical analysis of the provision of Art. 433(1)(5) of CPC and the conclusion made by the doctoral candidate that this provision should be repealed (p. 100). In the analysis of the varying views on the fate of the legal actions undertaken prior to the termination of the enforcement proceedings in accordance with Art. 433(1)(8) of CPC, a persuasive and well-founded proposition is made – namely that the stance adopted in both the doctrine and practice, wherein the legal effect of the enforcement actions carried out until the termination of the proceedings is retroactively negated, should be reconsidered. In this regard, the doctoral candidate's other conclusions relating to the analysis of the concept of peremption (p. 170—171) are also deserving of support, along with the final conclusion (p. 172) that this institute should be altogether abolished. The reason is that prescription already envisages sufficient sanctioning consequences for creditors in case of their inactivity in collecting their claims from debtors.

Backed up by sufficient arguments, these conclusions, along with the *de lege ferenda* proposals derived from them, enrich the existing legal literature and contribute to an enhanced understanding, correct interpretation, and precise application of the law. Furthermore, a great many of them will inevitably lead to a continuing academic discussion or, alternatively, incite a brand-new academic discussion on the issues they pertain to. At the same time, the analysis of the provisions of Art. 433 of CPC, concerning the termination and conclusion of enforcement proceedings, are a testament to the doctoral candidate's profound theoretical knowledge in the field of Civil Law and Civil Procedure, as well his ability to carry out independent academic research.

4. Evaluation of Publications on the Dissertation Topic.

The doctoral candidate has published 5 papers on the dissertation topic, which have been incorporated in the dissertation. My evaluation of this dissertation applies to them fully as well.

5. Evaluation of the Abstract.

The abstract of the dissertation consists of 32 pages. It accurately summarizes the key points and the overall content of the dissertation.

7. Critical remarks, Recommendations, and Questions.

The dissertation is open to certain critical remarks. The main ones are the following:

Firstly, the structure of the dissertation is not well-balanced, and its framework needs correcting. Chapter 4 should be removed as its volume of 3 pages is insufficient to justify its designation as a separate chapter. Contrastingly, I believe that Chapter 3 places too much emphasis on the issues pertaining to peremption, considering the author's proposal for the institute of peremption to be abolished. Lastly, the numbering of the headings and subheadings in the individual chapters, as indicated in the table of contents, does not correspond to the numbering in the individual chapters. The inconsistency should be addressed during the preparation of the dissertation for publication.

Secondly, the doctoral student has examined, on his own accord (sometimes in excessive detail), matters which fall outside the scope of the dissertation or are too loosely connected to it. Such are, for instance, the matters relating to the application of prescription when considering a claim under Art. 422 of CPC (p. 45), which are not relevant to clarifying the grounds for termination of the enforcement proceedings under Art. 433(1)(4) of CPC. Given the topic of the dissertation, such an extensive discussion of prescription as an institute (pp. 112—123) is redundant, and so is the analysis of the suspension of the running prescription period (pp. 126 et seq.). Furthermore, on p. 131, despite the title of 1.3.3., it is only the suspension of the running prescription period that is discussed, and not that of peremption.

Thirdly, in analyzing whether the decision to terminate the enforcement proceedings based on Article 433, paragraph 1, items 1, 3, 4, and 7 of CPC has a declaratory or constitutive effect (pp. 74 et seq.), the doctoral candidate proposes an unconvincing conclusion. According to the him, in some of these grounds, the decision to terminate has a declarative effect. Such a conclusion cannot be drawn *de lege lata*, regardless of the existing differing opinions in both doctrine and practice. Also incorrect is the criterion employed by the candidate to determine whether the decision for termination has one of the two effects, basing it on whether the enforcement agent has the right to decide to terminate the proceedings or not. The only correct criterion in this regard is whether the decision for termination represents a part of the factual composition of the termination of the enforcement proceedings or merely acknowledges the existence of such a factual composition.

Fourthly, it is unacceptable to conclude that the time limit under Art. 433(1)(8) of the Commercial Act starts running on "the date of filing the application for initiation (commencement of forcible collection – rev. mine: Gr. Gr.) to the enforcement agent" (p. 125). This conclusion cannot be supported *de lege lata* based on the text of item 8. According to item 8, the enforcement proceedings are terminated if the creditor *fails to request enforcement actions* within two years. It is in the particulars of the claim within the application under Art. 426(1) of CPC for initiation of enforcement proceedings that the creditor *specifies the enforcement actions* to be taken by the enforcement agent for the collection of the debt from the debtor. The candidate acknowledges this circumstance on p. 136, asserting that specifying the method of enforcement constitutes a mandatory requisite in the application under Art.

426(2) of CPC. In this respect, the author accurately notes that the enforcement action is among the obligatory components incorporated into the application.

Fifth, in some instances, the candidate refers to theoretical concepts without citing the source (p. 127).

8. Conclusion.

The critical remarks presented do not diminish the merits of the dissertation, which I commend with a positive evaluation. It stands as a comprehensive academic work, having successfully attained its specified objectives and yielding significant outcomes in both academic knowledge and practical applications. The latter constitute an original contribution to legal scholarship and attest to the doctoral candidate's profound theoretical knowledge in the field of Civil Substantive and Procedural Law, as well his ability to carry out independent academic research. In addition, the candidate has a Master's degree, therefore, satisfying the minimal national requirements according to Art. 2б, paragraphs 2 and 3 of the Act on Development of the Academic Staff in the Republic of Bulgaria (ADASRB) with reference to Appendix to Art. 1a, para. 1 of 122 ПМС/2018 amending and supplementing the Rules on the Application of ADASRB (RAADASRB) for the award of an educational and academic degree "Doctor" in the field of: Social, economic, and legal sciences according to RAADASRB. Therefore, the conditions of Article 6 of ADASRB, Article 24, paragraph 1, in conjunction with Article 1a, paragraph 1 of RAADASRB, and the Appendix to Article 1a, paragraph 1 of RAADASRB, adopted by Decree of the Council of Ministers No. 122 of June 29, 2018, amending and supplementing RAADASRB, Article 27 of RAADASRB, as well as the conditions of Articles 29—32 of the Rules for the Development of the Academic Staff of P. Hilendarski University of Plovdiv for awarding the educational and academic degree of "Doctor" to full-time doctoral student Rumen Georgiev are present.

In light of the aforementioned and while upholding my *positive assessment* of the conducted research and the attained academic and practical results, ***I hereby propose to the esteemed committee to confer upon*** *Rumen Nikolaev Georgiev – a full-time doctoral candidate at the Department of Law of Paisii Hilendarski University of Plovdiv –* ***the educational and academic degree of "Doctor"*** in the following field of higher education: 3. Economic, social, and legal sciences, professional field 3.6. Law. Doctoral Programme "Civil Procedure".

26 February 2024, Sofia

Prepared by:

Prof. Grigor Naydenov Grigorov