

REVIEW

By Assoc. Prof. Dr. IVAN HRISTOV RANCHEV, Faculty of Law of the Paisiy
Hilendarski University

member of the Scientific Jury in the procedure for acquiring the educational and scientific degree "Doctor", in the field of higher education 3. Social, economic and legal sciences, professional field 3.6. Law, field of higher education, announced at the Paisiy Hilendarski University with part-time doctoral student Gabriel Rosenov Rusev at the Department of Criminal Law, with scientific supervisor Assoc. Prof. Dr. Ekaterina Salkova,

RELATING to the dissertation on the topic: “The Preliminary Hearing under
the Criminal Procedure Code”

1. General presentation of the procedure and the candidate.

By Order No. RD-22-1655/15.07.2025 of the Rector of the P. Hilendarski University, I have been appointed as a member of the scientific jury of the above-mentioned competition.

Gabriel Rusev graduated from the Faculty of Law of the P. Hilendarski University in 2011. After that, he worked as a legal advisor and lawyer for 8 years. From 01.07.2020 to 01.07.2021, he was a junior judge in the District Court - Kardzhali, and subsequently, until now, he is a judge in the District Court - Plovdiv.

He was enrolled as a part-time doctoral student in the doctoral program "Criminal Process" at the Department of Criminal Law of the Faculty of Law at the P. Hilendarski University on 01.03.2021 with a study period of 4 years until 01.03.2025. He has been discharged with the right to defend, effective from 16.12.2024.

The doctoral student submits the necessary documents related to the procedure in accordance with Art. 36 of the Regulations for the Development of the Academic Staff of the University of Plovdiv. He has also submitted 4 publications in connection with the dissertation.

The topic has been developed to date and is aimed at public defense in accordance with the procedure provided for in the laws and by-laws.

The scientific supervision of the doctoral student throughout the four-year period was carried out by Assoc. Prof. Dr. Ekaterina Salkova. The practical experience of the doctoral student in the chosen issue is evident, who has also been a judge for about 5 years. In this regard, despite his additional commitment, he has managed to cope with the necessary publications and the completion of his dissertation work.

2. General about the habilitation work and its obvious merits.

The title of the dissertation is “The Preliminary Hearing under the Criminal Procedure Code” and it is 156 printed pages long.

Despite the small volume of the dissertation, the topic under discussion is related not only to Bulgarian substantive and procedural criminal law, but also to a number of international and European legal acts, as well as case law. This is a sign of the author's ambition, because the issue is too specific to be fully covered within the framework of such a scientific study.

The topic is particularly relevant for several reasons. On the one hand, the matter is relatively new, because it concerns the restoration of this institute in 2017. On the other hand, there are numerous articles arising from the contradictions in case law, and this allows the author to leave his mark, not only as a personal opinion of a serving criminal judge, but also to make proposals for legislative improvement.

The work of the doctoral student Rusev is divided into an introduction, an exposition divided into four chapters, with separate points and a conclusion. The scientific literature used is duly reflected - titles in Bulgarian and Russian. The

references below the author's line are 191 in number, and are based on the legal literature used, including 120 sources in Bulgarian and 7 sources in foreign languages, numerous normative acts and case law, which is why his exposition has not only a scientific but also a cognitive character, i.e. it is aimed at a wider audience of practicing lawyers. A total of 13 proposals for amendments to the legislation have also been made.

3. Analysis and evaluation of the dissertation work.

The structure of the work is logically consistent. The title well reflects the author's idea to conduct a comprehensive scientific study of the initial part of the judicial phase of the criminal trial, related to the injunctive hearing as an element of the preparatory actions for the consideration of the case in a court session in the Republic of Bulgaria.

The first chapter of the dissertation work - Historical review and legal essence of the injunctive hearing is divided into two main points.

The first point provides a historical review of the injunctive hearing of the first instance in cases of a general nature in Bulgaria under the Civil Procedure Code of 1897, the Code of Criminal Procedure of 1952 and the Code of Criminal Procedure of 1975. The author has drawn a parallel between the currently valid Code of Criminal Procedure of 2005 /before the changes in 2017/ with the previous one from 1975 for the reserved possibilities for the return of the case to the prosecutor by the court at the individual stages of the judicial phase of the trial.

Here it would be good, if the doctoral student has the ambition to publish his work, to discuss the modern legal models for referral to court in the countries that have the modern appearance of the institute, such as France, Germany, Austria, Russia, England and the USA, which would enrich the study.

The second point is devoted to the legal essence of the injunctive court hearing of the first instance in cases of a general nature. It draws attention in a relatively more general way to the need to restore this institute and the goals set

by the legislator for disciplining the parties and checking in a public court hearing for the presence of a remediable material procedural violation and limiting the possibility of returning the case to the previous procedural phase again.

I find it incorrect to include this point in the first chapter, because its place should be in the next second chapter, as an element of the stage - Referral to court and preparatory actions for considering the case in a court hearing and chronologically follow a discussion of the issues envisaged for the injunctive court hearing.

The second chapter of the dissertation includes the issues that are discussed in the dispositive court session.

The first point examines the assessment of the jurisdiction of the court under Art. 248, para. 1, item 1 of the Code of Criminal Procedure, respectively for the generic and local jurisdiction.

The second point is devoted to the detailed assessment by the court of the presence of the grounds for termination or suspension of the criminal proceedings under Art. 248, para. 1, item 2 of the Code of Criminal Procedure.

The third point emphasizes the assessment of a remediable material violation of the procedural rules committed in the pre-trial proceedings, which led to a restriction of the procedural rights of the accused, the victim or his heirs under Art. 248, para. 1, item 3 of the Code of Criminal Procedure.

Reasonably remediable procedural violations are distinguished into those that concern the accused under item 3.1. and the victim and his heirs - item 3.2. However, the author incorrectly, in the first subparagraph, when assessing the partial termination of the criminal proceedings on p.73 and discussing the procedural grounds under Art.248, Para.4, Item 1 of the Code of Criminal Procedure, concerning the accused, has entered into the limitation of the procedural rights of the victim. Also, on p. 75-76, regarding the presentation of the decree for the attraction and interrogation of the accused, he enters into

alleged reasoning for the limitation of his rights under Art.55 of the Code of Criminal Procedure, due to his lack of familiarization with them, since he may be without a defense attorney.

Guarantees in this regard were provided for a long time ago, as the forms of the summons and the interrogation protocol of the accused provide in several places an explanation of the rights of the accused with a space for signature, i.e. without fulfilling this requirement, it would be difficult for the supervising prosecutor to allow the indictment to be submitted with the case to the court. It is also difficult to share the author's thesis of limiting the rights of the victim, his heirs or the injured legal entity, if they have been searched once at the addresses indicated by them and have not been found, by referring to the provision of Article 247d, paragraph 3 of the Code of Criminal Procedure, which would require conducting a thorough search and overcoming it by submitting a proposal for legislative amendment. Such a view, in the modern conditions of constant migration of the population and change of place of residence without changing the address registration /not only in the Republic of Bulgaria/, is difficult to implement and would greatly delay the procedural course of the judicial proceedings.

The fourth point is assigned to the assessment of the grounds for examining the case under the special rules under Art. 248, para. 1, item 4 of the Code of Civil Procedure.

The fifth and eighth points concern the compliance with the organizational requirements of Art. 248, para. 1, items 5 and 8 of the Code of Civil Procedure.

The sixth point is related to the assessment of the adequacy of the measures taken for procedural coercion under Art. 248, para. 1, item 6 of the Code of Civil Procedure.

The seventh point concerns the discussion of the requests for the collection of new evidence under Art. 248, para. 1, item 7 of the Code of Civil Procedure.

The ninth point includes a discussion of the requests received and rulings for the constitution of the parties in the court proceedings under Art. 248, para. 2 of the Code of Civil Procedure.

The tenth point is quite reasonably allocated to discussing the assessment of the presence of an obvious factual error, in accordance with the provisions of Art. 248a, para. 1 - 3 of the Code of Civil Procedure and Art. 249, para. 3 of the Code of Civil Procedure, taking into account the views of the representatives of the doctrine and judicial practice. Here I find the practical problems that arise in the absence of a clearly defined definition of what constitutes the presence of an obvious factual error to be very well outlined, and the corresponding view of the author is also argued.

The third chapter of the dissertation - Procedure for conducting the injunctive court hearing of the first instance in cases of a general nature and control would be better to be part of the second chapter. This is because their volume is very different - the second chapter includes nearly 80 pages, and the third chapter only 6 pages. Separately, they are implicitly linked, and it is pointless to separate them in this artificial way. Regarding the two points regarding the order of conducting the injunction court hearing and I have no comments on the appellate control conducted.

The fourth chapter is devoted to the limitation of the scope of the injunction court hearing, due to the existence of the conditions for conducting the differentiated procedures under the Code of Criminal Procedure.

This chapter aroused my interest because it reveals the rich practical experience of the doctoral student as an acting first-instance judge, and the relevant contributions are also visible.

The first point discusses various hypotheses in judicial practice, in which the injunction court hearing acquires a different character, in view of the assessment of the presence of any of the differentiated procedures, the possible complications in its conduct and the relevant hypotheses.

The second point examines the conduct of the differentiated procedures after the injunction court hearing. It would be good if these procedures were subsequently not in separate points, but designated as sub-points, because their significance is confused – 2.1. for the summary judicial investigation, 2.2. for release from criminal liability with the imposition of an administrative penalty, 2.3. for resolving the case by agreement.

The author's views in the final part of the dissertation are interesting, as I am inclined to partially accept the proposals for *de lege ferenda* with regard to points 5, 6, 7, 9 and 13.

The proposals indicated in points 1 and 2 for a change in the assessment of jurisdiction already when the judge-rapporteur schedules the injunctive court hearing and including the existence of grounds for recusal in their place for discussion, are not by chance referred to in the general rules of the procedural code, and cannot lead to ignoring the parties' opinions.

With regard to the proposal under point 3 for the amendment of Art. 247d, para. 3 of the Code of Civil Procedure by providing for a thorough search for the victim or his heirs, I have already taken a categorical position on why it cannot be adopted. Here I rather find it important to explicitly include in Art. 247d, para. 1 of the Code of Civil Procedure as participants the injured party or his heirs or the injured legal entity, as well as their trustee, especially because they may not have a permanent address at the place of residence, in view of the profession practiced or discontinued activity.

On points 4, 8, 10, 11, 12 I find the views of the dissertationist insufficiently substantiated, but there is no obstacle to their being subject to discussion among colleagues.

In conclusion, the materials presented by doctoral student Gabriel Rusev meet the requirements of the Law on Academic and Research Qualifications of the Republic of Bulgaria, the Regulations for its implementation and the Regulations on the terms and procedures for acquiring scientific degrees and titles and for occupying academic positions at the P. Hilendarski University.

Regardless of the shortcomings found in Gabriel Rusev's dissertation work, I can express my positive assessment of its scientific and practical merits.

My opinion is that the required scientific work in terms of volume and depth has been presented, as well as the required four publications in scientific journals, which prove the doctoral student's research abilities, contribute to achieving the goals of the dissertation and are the author's personal work.

The work contains some original scientific and applied contributions, and in this sense, the necessary good scientific qualification of doctoral student Rusev is present.

On this occasion, after having familiarized myself with and analyzed the presented dissertation, I give my positive assessment and recommend to the Scientific Jury to vote for awarding the candidate the educational and scientific degree of "doctor".

09. 09. 2025

City of Plovdiv

PREPARED BY:

/Assoc. Prof. Dr. Ivan Ranchev/