

OPINION

**by Assoc. Prof. Dr. Ivaylo Asenov Tsonkov,
appointed by Order No. RD-22-1655/15.07.2025
of the Rector of Plovdiv University "Paisii Hilendarski"
as a member of the scientific jury for public defense of a dissertation
for the acquisition of the educational and scientific degree "doctor"**

Author of the dissertation:

Gabriel Rosenov Rusev

doctoral student in part-time study

at the Department of Criminal Law Sciences

at the Faculty of Law of Plovdiv University "Paisii Hilendarski"

in the field of higher education: 3. Social, Economic and Legal Sciences,

professional field: 3.6. Law,

scientific specialty "Criminal Process"

Topic of the dissertation:

“The Preliminary Hearing under the Criminal Procedure Code”

I was appointed as a member of the scientific jury by Order RD-22-1655/15.07.2025 of the Rector of the "Paisii Hilendarski" University. At the first meeting of the jury, it was decided to prepare an opinion on the indicated dissertation (Minutes No. 1 of 25.07.2025). After familiarizing myself with the dissertation, the abstract, the publications of doctoral student and the other documents submitted in the procedure, I came to the following conclusions:

1. Biographical data about the doctoral student

Gabriel Rosenov Rusev graduated from the Faculty of Law of the University of Paisii Hilendarski in 2011. His professional career began on

September 27, 2011, having been a legal advisor for more than 3 years, and a lawyer for more than 5 years. From October 1, 2019 to June 30, 2020, he trained at the National Institute of Justice as a candidate for junior judge.

From July 1, 2020 to the present, he has been practicing law: initially as a junior judge in the District Court - Kardzhali, and from July 1, 2021 to the present - as a judge in the District Court - Plovdiv.

2. Doctoral studies data

On 01.03.2021, Gabriel Rusev was enrolled as a doctoral student in the part-time form of study at the Department of Criminal Law Sciences of the Paisii Hilendarski University in the doctoral program "Criminal Process". The topic of the dissertation is "The Preliminary Hearing under the Criminal Procedure Code", and the scientific supervisor is Assoc. Prof. Dr. Ekaterina Salkova.

During his doctoral studies, Gabriel Rusev successfully took the necessary exams. He also met the other regulatory requirements.

The documents presented in the defense procedure ***establish the compliance of the doctoral candidate with the minimum national requirements***: in this procedure, there is a dissertation, as well as four articles related to the topic of the dissertation and published in specialized legal publications (two reports – one from an international scientific conference, the other from a national scientific conference, as well as two articles in the journal "STUDIA IURIS" – issue 1/2024 and issue 1/2025).

No reports of plagiarism were received by the scientific jury and I have not found any when examining the submitted materials. The supported theses, the main arguments in their support, the conclusions and proposals made are the author's work of the dissertation.

3. General characteristics of the dissertation work

The dissertation work of Gabriel Rusev has a total ***volume of 173 pages***, contains ***191 footnotes***. The research consists of a ***title page; table of contents; introduction; four chapters; conclusion; bibliography***. Each of the chapters has separate parts, marked with Arabic numerals, which can be assessed as independent sections. In the second chapter, which is of predominant volume, 8 sections are distinguished, and in the remaining chapters - 2 sections each. This feature is objectively determined by the broad subject of chapter two - a detailed

study of the diverse and complex issues that must be resolved in the operative hearing under chapter 19 of the Code of Criminal Procedure. Some of the sections are structured in points and subpoints. The bibliographic reference of the presented work includes a ***total of 129 sources*** - mainly in Bulgarian, but also a few in Russian.

The topicality of the topic of the dissertation work is determined by the great practical importance of the transfer of the accused to court. And it is precisely in connection with this important power that the legal regulation is highly problematic, entered into force on 5.11.2017 and has been amended several times since then. This has given rise to numerous, sometimes conceptual, disagreements in theory and practice on various aspects of the transfer of the accused to court. Over the past almost 8 years since the creation of the legal regulation in question, various issues related to the transfer of the accused to court have been the subject of discussion by both judicial practice and various researchers of the Bulgarian criminal process, but - as mentioned - the opinions are often different, and sometimes radically opposite. There is a monographic study by Prof. K. Kochev on the transfer to court, but it was done more than 40 years ago, under a completely different legal framework and social reality. Another dissertation with a similar topic was recently defended, but there is no overlap between it and the present dissertation; the theses, arguments and proposals presented by the authors of the two dissertations are authentic and significantly different. That is why the dissertation under review now has its own contribution to clarifying the topic of transferring the accused to court. The relevance of the research topic, combined with reasonable proposals for improving legal regulation and refining judicial practice, can determine the **significance of the dissertation for criminal procedural theory, for legislation and for law enforcement agencies.**

In the introduction, the doctoral student justifies the choice of the topic of the dissertation work through its relevance and significance, limits the subject of the study to the operative hearing under Chapter 19 of the Code of Criminal Procedure, specifies the goals and objectives of the upcoming analysis, and also presents in a concentrated form those basic problems that determine the structure of the study and the content of the individual chapters in the dissertation.

Chapter one of the dissertation aims to build the historical and theoretical foundation of the upcoming analysis. *The first section* traces the development of the regulatory framework for the transfer of the accused to court (or the possibility

of this happening at the operative hearing) in the various criminal procedural laws in force in Bulgaria from the end of the 19th century to the present day (the version of the current Criminal Procedure Code as of October 2024). The regulatory framework shows that the open operative hearing for transfer to court does not represent some unchanging national tradition. The main differences in the regulation are outlined, with the difference (both in volume and content) in the powers of the judicial authority when (conducting a operative hearing for) transferring the accused to court being particularly important. *In the second section*, the dissertation's attention is directed to the essence of the operative hearing under Chapter 19 of the Code of Criminal Procedure, as well as to the goals of the legislator (ensuring greater speed and efficiency of criminal proceedings and their completion within a reasonable time). The means by which the legislator seeks to achieve the set goals, respectively the adequacy and effectiveness of these means, are analyzed.

In Chapter Two, the dissertation examines in detail the issues that must be resolved in the operative hearing under Chapter 19 of the Code of Criminal Procedure. The arrangement of these issues, established in paragraphs 1 and 2 of Article 248 of the Code of Criminal Procedure, has determined the structure of Chapter Two adopted by the author. In addition, a separate Section 10 has been created, which is dedicated to an in-depth analysis of the obvious factual errors in the indictment. The breadth and complexity of the subject of research clearly determine the dominant volume in the dissertation, which has chapter two. The analysis is oriented towards identifying those problems (defects) in the legal regulation that provoke different interpretations and lead to contradictory judicial practice. Legislative solutions and/or practical advice are proposed to overcome these problems. In theory and practice, it is traditionally accepted that the most significant and most controversial issue that must be resolved in the operative hearing concerns the presence of a remediable material violation of procedural rules committed during the pre-trial proceedings, which led to a restriction of the procedural rights of the accused, the victim or his heirs. That is why the author reasonably and expectedly pays special attention to this issue. Another important issue that causes disputes and contradictory judicial practice - are there grounds for considering the case under the special rules - is only highlighted in chapter two, because it is the subject of research in a separate chapter four of the dissertation.

Chapter three is devoted to the procedure under Chapter 19 of the Code of Criminal Procedure. *Section one* presents the basic powers of the judge-rapporteur, relevant to the scheduling and preparation of the operative hearing; then the procedure for conducting the operative hearing itself is examined. *Section two* is devoted to the appealability of the court ruling, which resolves the issues under Art. 249, para. 3 of the Code of Criminal Procedure.

In chapter four, the attention of the dissertationist is directed to the differentiated criminal procedures. *Section one* examines various issues. Mainly, some complications are analyzed in cases where an indictment has been filed, but in an operative hearing establishes (the possibility of) the existence of the legal prerequisites for the application of Art. 78a of the Criminal Code, respectively for the conduct of the differentiated criminal procedure under Chapter 28 of the Code of Criminal Procedure (pp. 132-138). Then, the cases in which the legislator does not provide for the conduct of an operative hearing for the transfer of the accused to court are indicated; a critical analysis of the legal framework is made, allowing for the establishment of essential procedural violations committed in the pre-trial proceedings in three of the differentiated criminal procedures (under Chapters 24, 28 and 29) (pp. 139-140). *The second section* examines some practical complications arising when establishing in an operative hearing grounds for conducting an abbreviated judicial investigation, for resolving the case by agreement and (again) for the application of the special rules of Chapter 28 of the Code of Criminal Procedure. Special attention is paid to the problems in the application of the provision of Art. 252, para. 1 of the Code of Criminal Procedure, regulating the conditions for considering the case on the merits *immediately* after the operative hearing. The author's views on resolving these complicated cases are presented.

In the conclusion, the main theses and conclusions of the dissertation research are briefly summarized, and 13 proposals for *de lege ferenda* are also formulated.

4. Assessment of scientific and scientific-applied contributions

The reviewed dissertation *demonstrates good theoretical legal knowledge of the doctoral student, including criminal procedural law*. This is combined with *the extensive practice of Mr. Gabriel Rusev as a legal advisor and lawyer, but above all - as a judge in criminal cases, who has repeatedly applied the rules of Chapter 19 of the Code of Criminal Procedure*. His practice in question

guarantees knowledge not only of the regulatory framework, but also of the specific problems arising in its application, as well as of their possible solutions, which were reflected in the acts of the Supreme Court of Cassation and other judicial instances in criminal cases.

This professional experience of the doctoral student constitutes a good basis for the comprehensive study of a topical, complex and significant topic for practice.

The historical retrospective made in the dissertation allows us to see the advantages and disadvantages of the various forms of transferring the accused to court that existed in our country. The current procedure for preparing and conducting the operative hearing is described in detail, and the appellate control over the legality of the operative hearing held and the judicial act issued therein is also presented. The subject of the operative hearing is exhaustively examined, with a separate section dedicated to each of the issues under Art. 248, para. 1 of the Code of Criminal Procedure. The emphasis is quite rightly placed on the issue of a remediable material violation of procedural rules committed during the pre-trial proceedings, which has led to a restriction of the procedural rights of the accused, the victim or his heirs. Both the criticism of Art. 249, para. 4 of the Code of Criminal Procedure (which provision claims to exhaustively list the material procedural violations in question) and the proposals for *de lege ferenda* made in connection with this criticism are correct and convincing, as is the understanding of the elimination of certain material procedural violations under Art. 248, para. 1, item 3 of the Code of Criminal Procedure at the trial stage itself, without returning the case to the prosecutor. The concept of an “obvious factual error in the indictment” has also been thoroughly studied, and reasonable proposals have been formulated for judicial practice and for the legislator.

Other complex issues of conceptual importance for the criminal procedure theory have also been analyzed, which provoke serious scientific discussions – e.g., about the authority that transfers the accused to court; about the moment at which the accessory parties in the criminal process should be constituted; about the inclusion of the operative hearing under Chapter 19 of the Code of Criminal Procedure in the period for which Art. 258 of the Code of Criminal Procedure requires the invariability of the judicial composition, etc.

Specific procedural cases have been identified and studied, which are actually possible in judicial practice, for the resolution of which there is no ready

answer in the law, but a careful and in-depth interpretation of the Code of Criminal Procedure is necessary. Such cases most often appear when, at the operative hearing, grounds are established for the application of the special rules under Chapters 27, 28 or 29 of the Code of Criminal Procedure, respectively, when the possibility of considering the case under the relevant special rules *immediately* after the conclusion of the operative hearing (Art. 252, para. 1 of the Code of Criminal Procedure) is assessed.

On all these diverse, complex, debatable issues, the dissertationist always boldly takes a categorical position, and from it he derives his proposals to the judicial practice and to the legislator. His theses are supported by arguments that the author considered relevant and appropriate.

As with any dissertation, it is possible to make comments here. For example, some positions on conceptual issues are vulnerable. The doctrine categorically prevails in the understanding that Art. 258 of the Code of Criminal Procedure does not require the immutability of the judicial composition to also cover the operative hearing. This understanding was also oriented by representatives of the judicial practice, who studied this issue in depth in their dissertations and publications (Biser Troyanov - Chairman of the Second Presidium of the Supreme Court of Cassation, Pavel Panov - judge of the Sofia District Court). On the other hand, the prevailing judicial practice actually extends the requirement for the immutability of the judicial panel to the operative hearing. Despite this deep division, the numerous arguments in support of the first position have not been given the necessary attention in the dissertation; it is accepted as an axiomatic correct understanding of the case law, and subsequently this understanding is used as a decisive argument in support of other author's theses.

The recommendation addressed to the case law seems problematic to me: the judge-rapporteur should appoint a reserve judge/reserve juror already with the order to schedule the court hearing (pp. 101-102). The current regulatory framework is clear and categorical: reserve members of the judicial panel are appointed by the judicial panel itself by a ruling - in adversarial proceedings, after hearing the parties (argument from Art. 248, para. 1, item 5 of the Criminal Procedure Code). The participation of a reserve judge/reserve juror, **appointed not in accordance with the law** but having many of the rights of a regular member of the court (Art. 260, Para. 2 of the Criminal Procedure Code), raises the question of whether the case is being heard by a “**court established in accordance with the law**” within the meaning of Art. 6 § 1 of the Convention for

the Protection of Human Rights and Fundamental Freedoms. This problem will exist as long as the court itself, by a ruling, constitutes the relevant reserve judge/reserve juror in the process.

Some of the proposals for *de lege ferenda* cannot be supported without reservation either. For example, the proposal under item 1 on pp. 159-160 unreasonably overestimates the discretion of the judge-rapporteur on issues of jurisdiction and in an unacceptable manner deprives the court of the power to rule on its competence – in adversarial proceedings and after hearing the parties (which would allow for the response to the objections of the parties, or during the discussions the court panel may notice an error by the judge-rapporteur on the issue of jurisdiction). Another example is the proposal in Art. 250, para. 4, clause 1 of the Code of Criminal Procedure to replace the word "Decision" with the word "Order" (item 8 on p. 160). This would lead to the court ruling on termination of criminal proceedings being unappealable, which does not seem acceptable.

Finally, I will note that in my opinion, all those works that are not cited even once in the text of the dissertation have no place in the bibliography.

The notes made do not change the overall assessment of the dissertation work. However, they may be useful in a future in-depth revision of this work, if the dissertationist decides to publish it as a monograph.

5. Evaluation of the dissertation publications

In the current procedure, the doctoral student presents four publications in specialized legal publications (two reports – one from an international scientific conference, the other from a national scientific conference, as well as two articles in the journal “STUDIA IURIS” – issue 1/2024 and issue 1/2025). The four publications are related to the topic of the dissertation. In this way, some of the results achieved through the doctoral student’s research efforts have been presented to the attention of the Bulgarian scientific community in a timely manner. My assessment of the publications in question is positive.

6. Evaluation of the abstract

The presented abstract has a classic structure, containing five parts: (1) General characteristics of the dissertation; (2) Volume and structure of the dissertation; (3) Content of the dissertation; (4) Contributions of the dissertation and (5) List of publications on the topic of the dissertation. The abstract objectively reflects the structure of the dissertation, the main theses of the author,

as well as the proposals, delegations and recommendations to the judicial practice. The contributions of the dissertation stated in the abstract are in accordance with the actual content of the dissertation.

7. Conclusion

In accordance with the above considerations, I express the opinion that the dissertation submitted for defense contains scientific and applied scientific results that represent an original contribution to science. The dissertation proves that Mr. Gabriel Rosenov Rusev possesses both theoretical knowledge in the field of criminal procedural law and the ability to independently conduct scientific research. **Therefore, I believe that he meets the requirements of the Act on the Development of Academic Staff in the Republic of Bulgaria (ZRASRB) and the Regulations for the Implementation of ZRASRB. Therefore, I propose to the esteemed scientific jury to award Gabriel Rosenov Rusev the educational and scientific degree "doctor" in the scientific field 3. social, economic and legal sciences; professional field 3.6. law; doctoral program "Criminal Process".**

Member of the scientific jury:

Assoc. Prof. Dr. Ivaylo Tsonkov

10.10.2025