

OPINION

by Ass. Prof. Dr. Ekaterina Salkova,
determined by Order No. RD-38-587/14.10.2022 of the Rector of Sofia
University "St. Kliment Ohridski" for a member of the scientific jury for the
public defense of a dissertation for the acquisition of the educational and
scientific degree "doctor"
on

Gergana Ivanova Ivanova – PhD student in external form of study
in the doctoral program "Criminal Procedural Law", professional
direction 3.6. Law, scientific field "Social, economic and legal
sciences", on the topic:

"Video recordings as evidence in criminal proceedings"

1. Biographical data for the PhD student and data on the doctoral program

Gergana Ivanova graduated from the University of Sofia "St. Kliment Ohridski" in 2018. In the period 2017 - 2021, she worked successively as a legal associate, junior legal advisor, legal advisor and lawyer.

Gergana Ivanova was enrolled in doctoral studies (in external form of study) in the doctoral program "Criminal Procedural Law" with Order No. RD 20-1404 of September 27, 2018 of the Rector of Sofia University, with a scientific supervisor appointed Prof., Doctor of law studies, Georgi Mitov. By Order No. RD 20-1-885 of October 14, 2022, she was dismissed as a PhD student with the right to defense as of September 16, 2022.

From the attached documents, compliance of the dissertation candidate with the minimum national requirements is established - a dissertation work and a list of four publications on the subject of the dissertation (one of which is in print) published in the journals "Norma" and "De Jure" are presented.

2. General characteristics of the dissertation work

The dissertation consists of 290 pages and contains 309 footnotes. The bibliographic reference includes 70 sources, 50 of which are in Bulgarian and 20 in Russian, English, German and Romanian. The dissertation contains a title page; content; list of abbreviations used; introduction; three chapters; conclusion and bibliography. The content of each of the chapters is structured by distinguishing individual points and sub-points. A declaration of originality of the conducted research is presented.

I believe that the topic is significant, given the increasingly widespread use of recording devices, as a natural result of the development of criminal procedural theory, there is a lack of a comprehensive study of the issues related to the use of video recordings made outside of pending criminal proceedings, for the purposes of criminal procedural evidence .

In the *introduction*, the doctoral student motivates the choice of the topic and justifies its importance.

Chapter one of the dissertation contains an overview of the historical development and a comparative legal review of the videos. The regulation of video recordings as material source of evidence in the Criminal Procedure Code from 1974 and from 2005 was traced. The practice of the German Constitutional Court regarding the admissibility of using video recordings produced as a result of video surveillance for the purposes of criminal procedural evidence was examined. The possibilities for using video recordings that were prepared outside the criminal proceedings in Romania, Serbia and the Russian Federation are briefly presented. The relevant rules of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court of Human Rights in relation to their application, are examined.

Chapter two is dedicated to clarifying the nature of video recordings and distinguishing them from other legal figures. Emphasis is placed on the role of technology development and the growing importance of video surveillance. The PhD student offers its view on defining the concept of "private records" and after defining the same as "objects of reality that have the property of reflectivity, i.e. they are able to interact with other objects, preserving the changes brought about by this interaction" (p. 46), gives the following definition: *"Private records are electronic evidence that have not been prepared according to the rules and regulations of the Code of Criminal Procedure, and represent a digital charge of factual data stored in electronic form and representing material carriers of information from the subject of evidence, on which the crime has left traces. The need to transform this information into a form that can be perceived by the participants in the criminal proceedings and to include it on a magnetic or laser carrier for the purposes of the process is done through the methods of proof provided for in the Code of Criminal Procedure. Depending on the method of inclusion of the recording, it can be considered both as material evidence according to Art. 109 of the Civil Code, as well as as a carrier of "computer information data" according to Art. 163 of the Civil Code"* (p. 48-49). The effort of the PhD student to define concepts is to be encouraged, but it should not be forgotten that any definition is dangerous. I believe that it is necessary to refine the proposed definition, first clarifying the essence of the records, without mixing the concepts of "evidence" and "source of evidence" (a conclusion of mixing also follows from what was stated on p. 47: "In connection with viewing private recordings as electronic evidence, I believe that a new concept of the "collection" of such video recordings as carriers of "computer information data" should be adopted. Hence, their inclusion in the process as "physical evidence" does not impose a priori the need for an additional verification of their credibility and the absence of manipulations when they are recorded on magnetic or laser media." (*my italics - E.S.*)). In principle, it is also necessary to consider whether the concept of "private recording" is the most accurate, in view of the focus of the research in this part primarily on video surveillance, which is applied by state authorities, and not on "accidental" or "tendential" recordings made from private legal entities that are further affected by the research. In this part of the thesis, distinctions are made with similar legal figures (as such, the video recordings prepared under the

order of the Criminal Procedure Code, the video conference, special intelligence means and written evidence are included).

Chapter three is devoted to the peculiarities of admission, collection, verification and evaluation of video recordings as evidence in criminal proceedings. Here, when clarifying the distinction between the concepts of "admissibility", the concepts of "evidence" and "source of evidence" are once again confused, insofar as admissibility is a property of the source of evidence, not of the evidence (this conclusion is forced by the formulated title of item 1.1. - "Essence and problems of the admissibility of video recordings as evidence in the criminal trial", as well as from what is indicated on p. 100: "... some terminological clarifications in relation to which evidence is admissible, relevant and necessary in the trial" (italics mine – E.S.).

Various aspects of the criminal procedural activity of collection, verification and evaluation of "private records" are considered. It is proposed to supplement Art. 144, para. 2 of the CPC with the following texts: "*Expertise may also be appointed in cases where there is doubt about the authenticity of an audio or video recording that has not been included as material evidence, as well as when establishing images in a video recording where a person can be identified.*" and "*Expertise can also be appointed in cases where an audio or video recording contains traces of voice information (speech)*". Unfortunately, I cannot share the doctoral student's view, which is evident from a number of comments elsewhere in the dissertation, about the need for a casuistic approach in rulemaking. It must be borne in mind that a code cannot regulate the activity of checking every possible piece of evidence that is collected in criminal proceedings, and the more casuistic the regulation, the more cases will be left out of it, especially since the evidence they are as much as the crime creates them.

The Code cannot include within itself the achievements of all theory and judicial practice, it is necessary only for the implementing authorities to have this knowledge. This part of the dissertation concludes with an analysis of the evaluation of the "private records", and various procedural violations admitted in practice in connection with the presentation of the records, as well as the practice of the ECHR in connection with providing the opportunity for the accused to challenge the credibility, are traced of a video recording that was not prepared in accordance with the CPC and in relation to the possibility that the appellate court could pass a conviction based on a re-evaluation of an aggregated "private recording" without conducting a judicial investigation in the appellate instance.

In the **conclusion**, the main consequences of the dissertation, made as a result of the conducted research, are summarized and the contributing points are brought out.

3. Evaluation of scientific and scientific-applied contributions

Admittedly, it takes a lot of courage and "scientific audacity" for a novice scientist to undertake the development of a dissertation topic. The in-depth and complex study of these issues is by no means an easy task, because it implies the clarification of a number of issues that have been underestimated in the Bulgarian criminal procedural theory in recent decades. In the abstract, the points of contribution that can generally be shared are presented: an attempt was made to define the concept of "private records", concepts such as "accidental records" and "tendential (intentional) records" were clarified, the hypotheses of recording were clarified of persons in the

absence of knowledge or in case of explicit opposition, de lege ferenda proposals were made, which despite their debatable nature contribute to the development of the scientific discussion, the possibility of collecting the "private records" in the course of the appellate judicial investigation was analyzed, in view of the need from providing a sufficient opportunity for the accused to challenge the credibility of a video recording that was not prepared in accordance with the rules and regulations of the Criminal Procedure Code.

4. Evaluation of dissertation publications

The PhD student has four publications on the topic of the dissertation, one of which is in print. The publications provided an opportunity to acquaint the scientific community in Bulgaria with the main theses of the dissertation research and to test its results.

5. Evaluation of the Abstract

The prepared abstract structurally contains six parts: (1) Relevance of the research; (2) Subject, objectives and methodology of the dissertation work; (3) Volume and structure; (4) Main theses in the dissertation work, (5) Main contributing points of the monographic study and (6) Publications in connection with the dissertation work. The abstract correctly briefly reflects the content of the study.

6. Critical notes, recommendations and questions

As with any work, some critical remarks can be made to the presented one.

I find it appropriate to avoid the use of expressions that have indeed gained widespread popularity but are not appropriate to the level of scientific research, for example "the normative framework", "my boldness", "written", "exploitation", "leitmotif" and etc. It is also necessary to clarify some expressions and statements, for example on p. 24: "*However, private records can be the subject of a criminal investigation not only when they are prepared for the purposes of the procedural law...*" (my italics - E.S.), on p. 30: "*... video recordings, which are not prepared on purpose for the purposes of the trial, fall expressly within the scope of the so-called "other documents" according to the CPC of the Russian Federation*", on p. 32: "*... they can only act as indirect evidence and in this connection must also be recognized as relative*" (my italics - E.S.), on p. 39: "*Problematics of private video recordings in view of the development of the technique*" (my italics - E.S.), etc.). I am not a supporter of the strict balancing of the volume of the individual structurally separated parts in the dissertations, but the huge imbalance that is noticeable in this dissertation (Chapter one - p. 10-38, Chapter two - p. 39-91 and Chapter three - p. 92-270) is indicative of the need to rethink the adopted structure. I find it unnecessary to present the historical and comparative legal reviews separately, since, on the one hand, the inclusion of such information in the relevant places where the specific issues are addressed gives a more analytical look to the study, and on the other hand, their separate presentation would be useful on the condition that it is done in detail and analytically, that is, if the jurisprudence in different periods and theoretical studies (including in individual countries, which must be selected for clear reasons) were examined in detail, and not only the legislation and partly some solutions that do not give the full picture and are therefore difficult to serve as generalizations.

It seems to me that the too small number of used sources that are on the topic of the dissertation (some of the titles included in the bibliography are not, although they have a touch with certain issues of the criminal process), also affected the possibility of achieving a -complete result, as far as there is a lot of rich foreign literature on the subject, the inclusion of which could contribute to greater depth of the analysis and, accordingly, more significant conclusions.

The notes made are intended to assist the dissertation student in further research.

7. Conclusion

In conclusion, the dissertation submitted for defense meets the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria, therefore I express my positive opinion and propose to the members of the scientific jury to vote positively for the acquisition of the educational and scientific degree "doctor" from Gergana Ivanova Ivanova in professional direction 3.6. Law, doctoral program "Criminal Procedural Law".

**Member of the Scientific Jury:
Associate Professor Ekaterina Salkova, Ph.D**