

**TO THE MEMBERS OF THE
SCIENTIFIC DEFENSE JURY ON
DISSERTATION**

R E V I E W

By Dr. Ralitsa Yankova Ilkova Petkova, Associate Professor of Criminal Law at the Sofia University "St. Kliment Ohridski", Faculty of Law - member of the scientific jury for the public defense of the dissertation thesis of Gergana Ivanova Ivanova, PhD student - external form of study in the Department of "Criminal Sciences" at Sofia University "St. Kliment Ohridski", Faculty of Law, on the topic "Video recordings as evidence in the criminal proceedings", for awarding the educational and scientific degree "doctor" in the professional direction "3.6 Law", scientific specialty "Criminal Procedural Law"

HONORABLE MEMBERS OF THE SCIENTIFIC JURY,

By Order No. RD - 38 - 587/14.10.2022 issued by Prof. Anastas Gerdzhikov - Rector of Sofia University "St. Kliment Ohridski", I have been appointed as an internal member of the scientific jury in the procedure for the defense of the dissertation work of Gergana Ivanova Ivanova for the acquisition of the educational and scientific degree "doctor" in the field of higher education: 3 "Social, economic and legal sciences", professional direction: 3.6 "Law", scientific specialty "Criminal Procedural Law". In this capacity, I provide the following review.

I. Brief presentation of the PhD student and the dissertation thesis itself

Gergana Ivanova Ivanova was born on June 10, 1993 in Stara Zagora. In 2018, she has graduated from Sofia University "St. Kliment Ohridski", Faculty of Law, with excellent grades in the state exams. In the same year 2018, she was enrolled as an external PhD student in the Department of Criminal Law at

the Faculty of Law of Sofia University "St. Kliment Ohridski" in the field of higher education: 3 "Social, economic and legal sciences", professional direction: 3.6 "Law", scientific specialty "Criminal procedural law", with the topic of the dissertation "Video recordings as evidence in the criminal proceedings". Since 2019, she has been a part-time lecturer in Criminal Procedural Law at the Sofia University "St. Kliment Ohridski".

The dissertant began his professional career in 2017 as a legal associate at "Jingov, Guginski, Kyuchukov and Velichkov" law firm, successively working as a junior legal consultant at "Stoychev, Dr. Valkov and Co." law firm, legal consultant at "Denborov and Kostadinov" law firm ", and as a lawyer at "Vasilev and Chisuse" law firm. She currently practises as a lawyer at "Zherkov & Partners" law firm. In 2019, Gergana Ivanova was admitted to the Sofia Bar Association. The dissertant speaks English and German.

The doctoral student's interests are primarily in the field of criminal law and process, but also in the field of legal representation and comprehensive legal services for commercial companies. She took part in a number of scientific forums. The scientific supervisor of the doctoral student Gergana Ivanova is Prof. Doctor of Legal Sciences, Georgi Mitov.

According to the topic of the dissertation work, the PhD student has four publications, as follows: "Admission of video recordings as evidence in criminal proceedings in the absence of knowledge of the recorded persons or despite their express disagreement according to Art. 32, para. 2 of the Constitution of the Republic of Bulgaria" - In: Norma, 2021, No. 2; "Legal nature of private video recordings as evidence in criminal proceedings" - In: De Jure, 2021, Volume No. 12, Vol. No. 1; "Expertise as a way to collect and verify private video recordings in criminal proceedings" - In: Norma, 2022, No. 5; "Standards in the application of the European Convention for the Protection of Human Rights in the inclusion of private video recordings in criminal proceedings" (in press) - In: De Jure, 2022, volume no. 13, vol. No. 2.

The topic of the the dissertation work is "Video recordings as evidence in the criminal proceedings" and represents a thorough and systematic study, which has not only scientific, but also a marked scientific-practical significance. The subject matter of the candidate's scientific analysis is the regulation of video recordings as evidence in the Criminal Procedure Code

(CPC), as well as their regulation in other European countries and the response of the jurisprudence

The subject of the scientific research is the private video recordings as a source of evidence in the criminal proceedings. The research is oriented towards presenting an unified concept regarding private records, when the latter are valued as evidence in the proceedings, and the proposal for their explicit positive legal regulation in the CPC.

The purposes set by the PhD student are: clarifying the nature of private records as evidence in the process and defining the concept through the prism of so-called "electronic evidence"; distinguishing private records from similar legal figures; clarification of basic procedural issues in relation to their admission, collection, verification and assessment in the overall evidence activity both during the pre-trial proceedings and in the judicial phase of the trial; critical analysis of Bulgarian and European case law, with a view to clarifying the standards imposed by law enforcement authorities.

The research is characterized by a structure including an introduction, three chapters and a conclusion.

In the first chapter, entitled "Historical development and comparative legal analysis of video recordings", the PhD student has examined in detail and in depth the genesis of video recordings as evidence in criminal proceedings, focusing on the regulation of this type of evidentiary sources under the CPC of 1974, and according to the current one. The dissertant has made a comparative legal review of the regulation of video recordings as evidence sources in German, Romanian, Serbian and Russian legislation and jurisprudence. There also has been clarification of the standards established by the ECHR when using video recordings as evidence.

In chapter two of the dissertation, entitled "The Nature of Video Recordings. Distinction from other legal figures", the author has concentrated his efforts to clarify the nature of private records in detail and in depth, offering a definition of the concept and clarifying their nature and meaning as material evidence, non-material evidence and as a source of computer information data. It has consistently summarized the criteria for admissibility of private video recordings from the point of view of the case law of national

courts. The dissertant has drawn a distinction between so-called "accidental records" and records that are made under the immediate control of a particular person. The PhD student has clarified in depth and with the necessary precision the relationship between private recordings and other legal figures: from video recordings according to the Art. 125 of the CPC; from the video recording of the interrogation of an accused and a witness; and the video recording of a court session; from the video conference; from the special intelligence means; from the written evidence.

Chapter three of the dissertation work of the PhD student Gergana Ivanova is dedicated to the admission, collection, verification and evaluation of video recordings as evidence in criminal proceedings. The standards for admissibility of private records as evidence have been consistently clarified; the methods of proof in which private records are included in criminal proceedings; the main means of verifying private records as evidentiary sources; the evaluation of private records, with a view to the classification of evidence in the doctrine. The subject of an independent scientific analysis is the admission, collection, verification and evaluation of the video recordings as evidence before the appellate and cassation instance. In the monographic work two key ECHR judgments are analyzed, namely: *D. v. Finland*, 2009, ECHR, and *Maksim Savov v. Bulgarie*, 2020, ECHR, whose principle grounds permits judicial authorities to be challenged to request and include such records at the earliest possible stage of the "investigation", with a view to the accused person being able to challenge such a record before at least two instances.

The study consisted of 285 pages, including table of contents, list of abbreviations used and list of literature; the reference to literary sources contains a total of 70 titles, both in Cyrillic and Latin; the footnotes are a total of 308 in number. Citations are correct.

II. Evaluation of the scientific and scientific-applied results and contributions of the dissertation work

The dissertation is an indisputable contribution to criminal procedural theory. The following should be outlined as the main contributing points of the author.

The PhD student has made a serious effort to research and analyze comprehensively the issues of private records as evidence in criminal proceedings. Proposed a definition of the term "private records" and clarified the relationship between the latter and other similar legal figures and concepts. The dissertant argued the thesis that it is necessary for the legal practitioners to draw a strict distinction between the so-called "accidental recordings", which are made with a recording device previously placed in a public place or on private property, and "tendential" ("deliberate") recordings, which are carried out under the immediate control of a certain person. This is the first comprehensive monographic study in criminal procedural doctrine that focuses on clarifying these issues.

Of particular importance not only to the development of criminal procedural theory, but also to jurisprudence, are the author's efforts to answer the questions that arise in connection with the admission, collection, examination and evaluation of video recordings as evidence at the various stages of the judicial phase of the criminal process. In this direction, not only the legal regulations of the relevant institutes, but also the relevant jurisprudence of the national courts and the ECHR, have been analyzed, which makes the work particularly significant and valuable.

The work has not only a theoretical, but also a marked theoretical-practical importance, as it would be particularly useful for the courts and for the persons who take part in the judicial phase of the criminal proceedings, as participants or parties. The main controversies relating to the admissibility of private records in criminal proceedings, which have troubled the judicial authorities, have been clarified with the necessary thoroughness and good faith. Undoubtedly, the dissertant's work as a legal representative (lawyer) has had a positive impact on his scientific research as well, allowing him to highlight the issues that are on the agenda for judicial authorities in relation to private records as evidence in criminal proceedings, and his in-depth theoretical knowledge - to give a justified and scientifically sound answer to these questions.

According to the study, the comparative legal analysis of judicial control over pre-trial proceedings in other countries – Germany, Russia, Serbia – as well as the clarification of the relevant standards established in the practice of the ECHR impresses with depth and precision. In this part, the work could be useful not only to judicial authorities and legal representatives, but also to the legislator.

It can be confidently asserted that the dissertant has concentrated his scientific research in the area of today's particularly relevant issue of the admissibility of private records as evidence in the criminal process. Hence the conclusion that the research is particularly relevant and could significantly contribute to the development of legislation - not only criminal procedure, but also jurisprudence.

The PhD student has a valuable contribution in formulating recommendations *de lege ferenda*. Of course, not all of them can be unconditionally supported, but they deserve to be put on a wider public discussion. The latter would be useful for the formulation of rational proposals for the amendment of criminal procedural legislation.

III. Critical notes and recommendations

The analyzed monographic work is characterized by numerous and indisputable points of contribution, but some **critical remarks** should also be made.

Some of the questions have been clarified too comprehensively, without this being required by the bona fide scientific analysis and for the needs of the research on the given problem. For example, in chapter three, the author has devoted excessive attention to clarifying the concepts of "admissibility", "relevance" and "necessity" of evidential means of proof, although the same are clarified in the theory and are not the subject of his scientific research.

It may be recommended that the specifics in relation to the admission, collection, verification and evaluation of video recordings as evidence before the appellate and cassation instance be considered separately.

The work would be greatly enriched if, at the appropriate systematic place in the exposition, when clarifying the issues concerning the nature and meaning of private records, the legislation and judicial practice in other EU

member states were examined, and on this basis the author singled out good European practices and made relevant proposals for amendments to the current legislation.

The critical comments made, however, do not affect the overall positive evaluation of the dissertation work. They do not alter the unconditional conclusion that the scientific work was written as a result of hard work and good faith efforts of the author in the field of scientific analysis.

The scientific work of the dissertant unequivocally indicates that the PhD student Gergana Ivanova Ivanova is distinguished by her ability to comprehensively and thoroughly investigate criminal procedural issues; has rich theoretical knowledge in the field of criminal procedure; demonstrates that it can work with large bodies of information from which it is able to formulate relevant scientific conclusions.

IV. Conclusion

In conclusion, bearing in mind the considerations stated above, I express my positive assessment that the dissertation submitted for defense on the topic "Video recordings as evidence in the criminal process" meets the requirements of Art. 6, para. 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria (ZRASRB) and on Art. 27, para. 2 of the Regulations for the Implementation of the ZRASRB for obtaining the educational and scientific degree "doctor", which is why I propose to award the educational and scientific degree "doctor" in the professional direction "3.6 Law", scientific specialty "Criminal Procedural Law" to Gergana Ivanova Ivanova.

Member of the scientific jury:

(Associate Professor Dr. Ralitsa Ilkova)

Sofia, November 14, 2022