

## STATEMENT

**by Prof. Dr. Dimitar Iliev Kostov,**

*Member of the Scientific Jury in the competition for the academic position of “Associate Professor” in the professional field 3.6. Law (Administrative law and administrative process), announced by the Sofia University "St. Kliment Ohridski", and published in the State Gazette, issue 87 of 19 October 2021*

***with candidate: Chief Assistant Professor Dr. Svetla Yankulova***

I. The competition is announced for the needs of the Department of “Administrative law sciences” at the Faculty of Law of the Sofia University "St. Kliment Ohridski". Only one candidate – Chief Assistant Professor Dr. Svetla Ivanova Yankulova, participates in the competition.

Svetla Yankulova was born on 10.11.1976 in Velingrad. She graduated from the Faculty of Law of the Sofia University "St. Kliment Ohridski" in 2000, after which in the period 2001-2003 she worked at the Ministry of interior affairs. Then she joined and worked as an Assistant Professor, Senior Assistant Professor, and since 2010 as a Chief Assistant Professor at the Faculty of Law of the Sofia University.

It is evident from the submitted documents that the candidate meets all the requirements of the Act on the Development of the Academic Staff in the Republic of Bulgaria (Art. 24) and the Rules for its application (Art. 53). She has obtained the educational and scientific degree “PhD” in the professional field 3.6. Law (Administrative law and administrative process) in 2014. She currently holds the

academic position of Chief Assistant Professor at the Faculty of Law of the Sofia University. For her participation in the competition she has submitted 8 (eight) scientific publications, including one monograph.

According to the submitted reference, the candidate is author of a total of 17 scientific publications, including her dissertation. She is also co-author of textbooks on Administrative law - Special part and participates in a number of scientific projects and scientific conferences. She is also actively involved in teaching Administrative law and administrative process at the Faculty of Law by conducting seminars and giving lectures. At the same time, through her work in the Legislative Activity and European Union Law Directorate of the National Assembly of the Republic of Bulgaria, she provides expert support to the legislative process.

Svetla Yankulova is a well-established lecturer at the Faculty of Law, with a good theoretical background and active teaching, research and practical activities.

II. The limitations in the scope of the opinion are expressed in the comprehensive indication of the merits of a scientific production, which is why in this case I will allow myself to note some of the significant contributions of the candidate. As such, they are contained mostly in her monograph "Administrative jurisdictions", Sofia: Mont, 2021.

The problems of administrative jurisdictions have so far been the subject of attention in our administrative law theory. In this regard, this monograph is a new comprehensive and in-depth scientific study of the nature, the activity and the significance of the administrative jurisdictions. Thus, it takes its place in the legal theory and should be assessed as an independent theoretical contribution of the author.

As it is known, The Constitution of the Republic of Bulgaria does not provide for jurisdictions as subjects of administrative adjudication. Therefore, as an important basis for the consideration of the jurisdictions the author accepts Decision

№ 6 of 11.11.2008 of the Constitutional Court of the Republic of Bulgaria. It identifies the nature and content of an activity, rather than the body that carries it out, as the guiding principle for defining an activity as adjudicative. The author notes that in this way the Constitutional Court actually allows "non-judicial bodies to resolve administrative disputes" (p. 9). Of course, with guaranteed independence of the adjudicatory body and judicial control over its decisions.

On this basis, the monograph provides an in-depth analysis of the adjudicative features necessary to define an activity as adjudication. Different views on the basic characteristics of adjudication as well as their "indicia" (additional indications) presented in the legal theory are also carefully examined. The analysis has allowed the author to identify six main adjudicative features, which in their cumulativeness allow in each case to determine that there is an adjudicative authority, including administrative jurisdiction. There are six distinct adjudicative features: the existence of a legal dispute, referral, adversarial proceedings, the authority not being a party to the dispute, being independent and autonomous in its decision-making and legal force *res judicata* of its decisions. Each one of these features is analysed separately and in detail and its relevance to the administrative jurisdiction is discussed.

I would particularly highlight the analysis on the adjudicative feature of independence and autonomy in decision-making. Proceeding from the fact that the two elements are interrelated and are considered in unity as one adjudicative feature, the candidate identifies two different dimensions of it, which are limited, on the one hand, to the organizational position of the adjudicative body, and on the other hand, to the settlement of the legal dispute. With regard to the organizational status of the adjudicative body, it is clarified that independence and autonomy are best guaranteed when the adjudicative function is assigned to so-called "independent commissions". They are a relatively new type of collective state bodies with special competence in various areas of state government. Along with managerial functions, the legislator

also assigns them adjudicative functions. In connection with the management functions, these commissions exercise regulatory, licensing and control powers. As such bodies are indicated: the Commission for Protection of Competition, the Financial Supervision Commission, the Council for Electronic Media, the Communications Regulation Commission and others. The way the commissions are set up shows that they are independent of the executive power and do not fall under the control of the Council of Ministers. They are established in whole or in part by the National Assembly, and the President and the Council of Ministers may also take part in their establishment. It is clarified that their adjudicative function has two manifestations - the imposition of administrative sanctions and the resolving of other legal disputes. Their independence and autonomy in the settlement of the legal dispute is also well clarified through the procedural guarantees outlined, the institute of recusal with a view to impartiality in the settlement, the absence of hierarchical subordination to the superior instance, etc. The considered aspect of the judicial features has its theoretical value and enriches the theoretical-cognitive significance of the monograph.

A comparison between the control of the administrative jurisdictions and the administrative control is also appropriately made in the paper. Although there are certain similarities between them - an administrative law dispute is being resolved, referral to the adjudicative body, adversarial proceedings, etc., administrative control, as it is rightly pointed out, does not reveal the presence of all the basic features of the adjudicative activity. Two significant differences are pointed out in this respect. In administrative control proceedings, in contrast to adjudicative proceedings, the contestation has a wider scope. It can be both for legal conformity and for expediency, which is an element of the executive activity and can be controlled only within the executive power. The criteria in this regard are set by the administration itself. On the contrary, adjudicative control is only for legal

conformity, the criteria for which are established by law. The other significant difference concerns the decision of the superior administrative authority - it does not have the force of *res judicata* with the resulting consequences. There is a lack of finality and stability in resolving the dispute.

The candidate's attempt to build a definition of administrative jurisdiction on the basis of the subject-matter and subjective criteria is also successful (p. 125), as she connects it with the possibility in each case to determine the activity of one body as an administrative jurisdiction.

The distinction made between types of administrative jurisdictions has its theoretical value. On the basis of the above-mentioned criteria, administrative jurisdictions are divided into two types - administrative law enforcement jurisdictions and administrative sanctioning jurisdictions. In the first case, disputes concerning the legal conformity of certain administrative acts are decided, and in the second case – disputes concerning the commission of administrative violations. In this regard, the author makes the caveat that due to the dynamic nature of the legislation, it is not possible to present an exhaustive list of administrative jurisdictions in law enforcement, analysing and presenting individual examples. Examples of bodies which have similarities with administrative jurisdictions, but cannot be defined as such due to the absence of some of the basic adjudicative features in their activity, are also given. What is specific about law enforcement jurisdictions, as the author notes, "is that they do not have general adjudicatory power to adjudicate administrative law disputes. They can adjudicate only those disputes that are assigned to them for adjudication by law" (p.149). In other words, they have a well-defined subject matter and act on the basis of the special clause in the administrative process. The case of the Commission for Protection of Competition is typical in this respect. A thorough analysis of its activity has been made, which shows that it fully meets the characteristics of an administrative jurisdiction through the

powers conferred on it to adjudicate disputes relating to public procurement and concessions. At the same time, an example is given where, because of the absence of some of the basic adjudicative features, the body concerned cannot be characterised as an administrative jurisdiction. The “Disputes” department of the Patent Office is cited as an example in this regard. As regards the second type, administrative sanctioning jurisdictions, the monograph also contains a good analysis, in line with the new amendments to the Administrative Violations and Sanctions Act of December 2021. The author's arguments are convincing here that, in addition to issuing penal decrees, they also act as administrative sanctioning jurisdictions when issuing 'warnings', 'agreements' and 'resolutions for termination of administrative sanctioning proceedings'. “Evidently lesser cases” and “minor cases” of administrative violations are also examined where, although imposing sanctions, the relevant authorities do not act in their capacity as administrative jurisdictions.

Without burdening my opinion, I could point out that the habilitation thesis also contains other interesting points of a theoretical nature such as the comparisons between the concepts of administrative justice and administrative adjudication, administrative and special jurisdictions, it also contains rich case law, including that of the Constitutional Court.

The merits of the habilitation thesis are also some justified criticisms of the legal framework and the proposals *de lege ferenda* made in this respect.

The other publications presented by the candidate also have their theoretical value. I would point out the articles "Participation of the prosecutor in the administrative process under Bulgarian legislation" (2016), "Administrative jurisdictions as adjudicative bodies"(2021), "Adjudication of the administrative sanctioning body with an agreement"(2021), etc.

Finally, given the author's capabilities and theoretical background, I would allow myself a recommendation - that in the future she should present us with a

comprehensive scientific study and coverage of the bodies that act as administrative jurisdictions. This will undoubtedly have its theoretical and practical significance.

## CONCLUSION

On the basis of the findings set out above, I assess the candidate's teaching and research work as "POSITIVE". I consider that she meets the requirements of the Act on Development of the Academic Staff in the Republic of Bulgaria and the by-laws on its application for holding the academic position of "Associate Professor" and I **propose** the honorable scientific jury to prepare a report to the Faculty Council of the Faculty of Law at the Sofia University "St. Kliment Ohridski" for the election of Svetla Ivanova Yankulova to the academic position of "ASSOCIATE PROFESSOR" in the professional field 3.6. Law (Administrative law and administrative process).

Sofia, February 8<sup>th</sup>, 2022

Prof. Dr. D. Kostov