

## STATEMENT

by **Prof. Dr. Darina Zinovieva,**

*Institute for the State and the Law, Bulgarian Academy of Sciences and the  
Faculty of Law, Plovdiv University "Paisii Hilendarski"*

*concerning: the competition for*

**"Associate Professor" of Administrative Law and Administrative Process**

*at the Faculty of Law of Sofia University*

*"St. Kliment Ohridski" in the professional field 3.6. Law  
(Administrative Law and Administrative Process)*

**DEAR MEMBERS OF THE SCIENTIFIC JURY,**

According to Order no. RD-38-553 of 22.11.2021 of the Rector of Sofia University "St. Kliment Ohridski" I have been appointed as a member of the scientific jury in the above competition. Only one candidate participates in it – Chief Assistant Professor Dr. Svetla Yankulova. She has submitted the necessary documents as required by law and university regulations and meets the minimum scientometrics for admission to the competition.

Svetla Yankulova presents as a habilitation thesis **a monograph entitled Administrative Jurisdictions** (Sofia: Mont, 2021, ISBN 978-619-169-231-6). In addition, she presents a number of published articles. All publications of Svetla Yankulova are on topics other than her PhD thesis.

The monograph **Administrative Jurisdictions** has a volume of 287 pages, including the bibliography. The structure is appropriate in terms of sequence – Chapter 1 is related to the clarification of the concept of administrative adjudication, Chapter 2 is related to the concept of administrative jurisdiction, and Chapter 3 examines the types of administrative jurisdictions in our country and the peculiarities of their activities. Such a large-scale study on the subject is lacking in Bulgarian legal doctrine.

In the introduction Svetla Yankulova has presented the relevance of the topic correctly and reasonably. Briefly in the introduction she also presents the whole work systematically and in sequence of its parts. This approach should be positively assessed in view of the reader's perception of the focused presentation of the problems, which will be explored in detail in the overall paper.

Thus, in Chapter 1 of the monograph, the author examines in depth and detail what the notion of "administrative adjudication" entails and its relation to the principle of separation of powers. In the introduction she emphasizes the specificity of the constitutional framework, which makes it necessary to examine the practice of the Constitutional Court of the Republic of Bulgaria on the terms "justice" and "adjudication". A good study is made in paragraph 2, where the author compares the two concepts, having previously presented one in detail. She has correctly analyzed the theses on the two concepts expressed in our doctrine. For the purpose of the comparative analysis, Svetla Yankulova has made a very good study of the provisions in the constitutional regulation of the concept of "judicial power". She came to the conclusion that although the Constitution of Republic of Bulgaria uses both the concepts of "justice" and "adjudication", the constitutional legislator does not give them the meaning that is well established in our doctrine, which conclusion I share.

The proposal *de lege ferenda* to use in the Constitution the understanding of adjudication established in our doctrine should be positively assessed, as it reflects the adjudication by bodies that are outside the judiciary.

The author's idea to trace the practice of the Constitutional Court in the use of the term "adjudication" both historically and up to the present day is of interest. The conclusions are very accurate and well-argued and contribute to the whole of public law.

The author's idea to highlight the theoretical classifications of the adjudicative features and to point out the normative framework of each one of them, deserves a positive assessment. Svetla Yankulova correctly distinguishes six adjudicative features, which should be present cumulatively, namely - legal dispute, referral to the adjudicative authority, observation of certain adversarial proceedings in conditions of independence and autonomy of the adjudicative authority, which should not be a party to the dispute, *res judicata* effect of the judgment in the dispute. She pays special attention to the criteria for the concept of "jurisdiction" in the case law of the Court of Justice of the European Union, which are not directly applicable in the Bulgarian legislation, but *de lege ferenda* are a good reference for optimizing our legislation.

The analysis of the concept of administrative jurisdictions as a adjudicative bodies and the conclusions drawn on its basis are good. For this purpose, a historical overview has been provided, doctrinal theses have been presented, and a definition of administrative jurisdiction has been offered. Undoubtedly, the definition is a contribution to our doctrine and practice. The author has also focused on an unexplored matter - the controversial issue of whether the failure to comply with the requirement to challenge administrative jurisdiction decisions means that there is a prohibition on challenging, in view of the current incomplete general clause in Art. 120 of the Constitution. The conclusion that this norm is relevant only for administrative acts should be assessed positively, while according to the proposed definition, the decisions of the administrative jurisdiction have the legal characteristics of judicial acts. The criticism expressed by Svetla Yankulova about the lack of normative regulation on administrative jurisdictions in the Constitution should be encouraged, which makes it difficult in

practice to determine whether an administrative body is adjudicative by its nature. The recommendations to explicitly regulate this issue are very clearly justified, with strong arguments and should be appreciated. The same assessment should be given to the author's recommendation to explicitly regulate the challenge of the decisions of the administrative jurisdictions, as she clarifies and justifies the future regulation of the challenge procedure.

In Chapter 3, the author has analyzed specific cases of our legislation where a problem may arise in determining whether there is administrative jurisdiction in law enforcement. In this part of the monograph the author has analysed in detail the disputes related to public procurement in the Commission for Protection of Competition (CPC) and the disputes related to concessions. Using the already clarified criteria system, the author provides a convincing legal qualification for cases in which the administrative body cannot be defined as jurisdictional. For example, a very appropriate subject of research in this regard, is the proceedings for the examination of disputes related to the creation, protection and use of inventions and utility models in the Patent Office under the Patent and Utility Model Registration Act. The conclusions that there are no legal grounds for considering the Patent Office's Disputes Division to be an administrative jurisdiction are well reasoned and and this assessment should be shared.

In paragraph 3 of Chapter 3 the administrative sanctioning jurisdictions are analyzed separately. This part of the monograph should receive a well-deserved positive assessment, in view of its differentiation, which enables the author to make a comprehensive and in-depth study of the topic and the relevant conclusions from it. There are various theses on this issue in the doctrine, but there is no such separate studio study as the author aptly includes in her monograph.

The existing in the legal doctrine thesis on the existence of the adjudicative features in the activity of the administrative sanctioning bodies is correctly presented in the monograph by Svetla Yankulova. The analysis of the latest amendments to the Administrative Violations and Sanctions Act, coming into

force on 23.12.2021, which are large in their volume, should be assessed positively. It contributes to the relevance of the monographic study of administrative sanctioning jurisdictions. The author examines the cases in which the sanctioning body pronounces as an administrative sanctioning jurisdiction, as well as the cases in which the pronouncement of this body lacks adjudicative features, arguing its thesis.

A good assessment should be given to the qualification of the activity of the administrative sanctioning body, which the author does. In some cases the administrative sanctioning body can be determined as a jurisdiction and vice versa - in another part of the cases the activity does not allow the administrative sanctioning body to be determined as an administrative jurisdiction. Thus, Svetla Yankulova accepts that the sanctioning body rules as a jurisdiction in cases when it issues a penal decree imposing an administrative sanction, or when the administrative sanctioning proceedings end with a warning, agreement or reasoned resolution for its termination. The thesis is substantiated and should be considered a contribution to our Administrative law.

Cases where the sanctioning authority does not rule as an administrative sanctioning jurisdiction are also well founded. Thus, the author points to the decision of the administrative sanctioning authority on the existence of “evidently lesser cases” of administrative violations and “minor cases” of administrative violations within the meaning of the Administrative Violations and Sanctions Act as an example of lack of jurisdiction. Similar are the conclusions of the author when the sanctioning authority imposes a fine by electronic sanctioning ticket.

The diligence of the author to investigate the cases in our legislation in which administrative liability is implemented in deviation from the general procedure under the Administrative Violations and Sanctions Act, which reveal peculiarities due to the presence of which the relevant authorities cannot be defined as administrative sanctioning jurisdictions, such as the imposition of fines on individuals for violations regulated in the Law on Protection of Competition

and in the Law on Combating Corruption and Confiscation of Illegally Acquired Property, should also be appreciated. The conclusions regarding the Law on Protection against Discrimination, which according to the author, does not regulate administrative violations and the sanctions imposed are not administrative sanctions as they are imposed and challenged under the Administrative Procedure Code, should be assessed positively. I also welcome the *de lege ferenda* recommendations made with regard to administrative sanctioning authorities.

In her monograph Svetla Yankulova also comments on the optimization of the legal framework for the imposition of administrative sanctions by independent collective bodies and gives examples where it is not the collective body but its chairman who acts as the sanctioning authority. The chairman of the collective body is often the employer of the official who has established an administrative violation, which can lead to a distortion of the administrative sanctioning proceedings. The proposal *de lege ferenda* that the function of the sanctioning authority should be entrusted to an independent collective body and not to its chairman should be taken positively in order to avoid dependence. She rightly concludes that, in such cases, the merger of two incompatible qualities in the same body would be avoided.

The *de lege ferenda* proposal put forward by the author, namely approval by the court or the public prosecutor of the agreement which brings the administrative sanctioning proceedings to an end, should be supported.

In the additionally presented articles of Svetla Yankulova there are also appropriate conclusions on each problem. In this respect, the article on the status of the National Health Insurance Fund should be appreciated as a particularly useful contribution to doctrine and practice, insofar as the conclusions are applicable to other branches of law such as Labour and Social Security law.

In general, the academic work of Chief Assistant Professor Dr. Svetla Yankulova is on topical issues and has practical applicability. The author is distinguished by a breadth of legal knowledge, has a thorough and comprehensive approach to research. Svetla Yankulova has also has many years of teaching practice, as well as practical experience as a legal adviser in the National Assembly of the Republic of Bulgaria.

My critical remarks are related to the lack of research on another specific issue - the imposition of sanctions by the National Health Insurance Fund, where sanctioning proceedings are also implemented under both the Administrative Procedure Code and the Administrative Violations and Sanctions Act. Of course, the author cannot exhaust all the legal phenomena that may have points of contact with administrative jurisdictions, but I recommend to explore this hypothesis as well.

#### IN CONCLUSION:

I consider that Chief Assistant Dr. Svetla Yankulova has achieved valuable and contributory scientific results and meets the legal requirements. My assessment is **positive** and I recommend the scientific jury to propose to the Faculty Council of the Faculty of Law to elect Chief Assistant Professor Dr. Svetla Yankulova to the academic position of “Associate Professor” at the Sofia University "St. Kliment Ohridski” in the professional filed 3.6. (Administrative Law and Administrative Process).

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Prof. Dr. Darina Zinovieva