

## OPINION

by Assoc. Prof. Svetla Ivanova Yankulova, PhD

**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 in State Gazette, no. 92 of 2022 for the needs of Sofia University "St. Kliment Ohridski", Faculty of Law**

By Order No. RD - 38-664/20.12.2022 of the Rector of Sofia University "St. Kliment Ohridski" I have been appointed as a member of the scientific jury for the announced competition. The only candidate in the competition for the academic post of Associate Professor in the field 3.6. Law (Administrative Law and Administrative Process) is Kapka Svetoslavova Georgieva-Atanasova, PhD in Law. In accordance with the requirements of the Law on Development of the Academic Staff in the Republic of Bulgaria (ADASRB), the Regulations for Implementation of the ADASRB and the Regulations on the Conditions and Procedures for the Acquisition of Scientific Degrees and Academic Positions at Sofia University "St. Kliment Ohridski" (RCPASDAPSU), the applicant has enclosed a complete set of competition documents. All legal requirements were complied with when the competition was launched.

Kapka Georgieva-Atanasova graduated from the Faculty of Law of Sofia University in 2006 with a Master's degree in Law. In 2012 she joined the Faculty of Law of Sofia University as an assistant professor in the Department of Administrative Law after she successfully won a competition for an assistant professorship in Administrative Law and Administrative Process. I have known Kapka Georgieva since she joined the Faculty of Law and I believe that she has faithfully performed her duties as a lecturer and is perceived by her fellow lecturers and students as a dedicated lawyer with in-depth professional knowledge.

Kapka Georgieva's scholarly work is distinguished by her choice to study clearly outlined problems in the development of administrative law. Based on her scientific contributions, in 2015 she successfully defended her dissertation on "The Administrative Acts of the Energy and Water Regulatory Commission in the Field of Energy" for the award of the degree of Doctor of Law. Due to the importance of her conclusions, her scientific works are cited in a positive light in the Bulgarian legal literature (evident from the attached references).

Prior to taking up the position of Assistant Professor at the Department of Administrative Law of the Faculty of Law of Sofia University "St. Kliment Ohridski" Kapka Georgieva worked as an inspector-lawyer at the Directorate "Forfeiture in favour of the State" of the Commission for Forfeiture of Illegally Acquired Assets from 2006 to 2012. Alongside her teaching and research activities, Kapka Georgieva held the position of advisor in the cabinet of the Deputy Prime Minister for Justice Reform and

Ant-Corruption from 2017 to 2019. The practical experience gathered while holding these positions is of great help in Kapka Georgieva's research, while her scientific knowledge is of great help in the performance of these positions.

For participation in the competition and in compliance with the requirements of Art. 24, para. 1, item 3 of the Law on the Development of the Academic Staff in the Republic of Bulgaria (ADASRB), Kapka Georgieva has submitted scientific works that do not repeat those submitted for the acquisition of the educational and scientific degree "Doctor" and are only part of her scientific publications:

- **published monographic work:** *“The Proceedings for Granting Protection to Foreigners under the Asylum and Refugees Act”*, Sofia: Nova Zvezda, 2022, 300 pages (including references);

- **four articles:** *The possibility to impose administrative penalties by individual administrative act. In. Proceedings of the conference “50 Years of the Law on Administrative Offences and Penalties – History, Traditions, Future”*, Sofia, UP “St. Kliment Ohridski”, 2020, pp. 241-251. ISBN 978- 954-07-4975-4.; *On the issue of the legal aid to persons displaced from the Republic of Ukraine. In: Administrative Justice*, 2022 (2), pp. 5-14; *The principles of administrative law according to the Tarnovo Constitution and their content today. In. 135 years since the adoption of the Tarnovo Constitution*, Sofia: Sibi, 2014, pp. 391-403, ISBN 978-954-730-891-6; *Judicial supervision of the operational autonomy of the administration. In. 100 years Supreme Administrative Court*, UP “St. Kliment Ohridski”, 2014, pp. 199-206. ISBN 978-954-07-3794-2.

- **one study:** *On the implementation of Article 40, paragraph 2 of the Constitution of the Republic of Bulgaria, (co-authored). In. “Media in Bulgaria – 30 years later)*, Sofia: New Bulgarian University, 2020, pp. 101-124, ISBN 978-619-233-143-6, published at <https://law.nbu.bg/bg/publikacii/mediite-vbylgariq-30-godini-pokysno-nacionalna-nauchnoprakticheska-konferenciq>.

The monographic work “The Proceedings for Granting Protection to Foreigners under the Asylum and Refugee Act” is distinguished by its relevance in the contemporary legal framework. In this scientific study, the procedures for granting protection to foreigners under Bulgarian legislation are examined, analysing the international and European legal framework. The work is distinguished by numerous contributions, some of which are highlighted in this opinion.

The main part of the scientific work is devoted to the procedural rules under which protection is granted to foreigners, but a number of substantive issues are also analysed, without which the procedural issues could not be clarified. The different types of protection granted to foreigners under Bulgarian law are distinguished. The main principles in the field of protection of foreigners are outlined, which are recognised and established both in the international legal order and in the legal order of the European Union, as well as in our domestic law. Particular attention is paid to the prohibition of

forced return (non-refoulement), as it is determinative of the entire procedure for granting protection and determines the interpretation and application of many specific rules.

The monographic work discusses in detail the legal status of the Chairperson of the State Agency for Refugees. It does not neglect the deviations in relation to the requirements for this position, which are observed when comparing the special Asylum and Refugee Act and the general Law on Administration (for example, the requirement of work experience provided for in the Asylum and Refugee Act, which differs from the general law, which provides for 'experience in the field' as a condition).

The powers of the Chairperson of the State Agency for Refugees to decide whether and what protection to grant are examined through the prism of the general theoretical notion of the exercise of the powers of the administrative authorities in the conditions of operational autonomy and bound competence. The scientific analysis focuses on the power of the Chairperson of the State Agency for Refugees to grant international protection, justifying the view that the legislator has not expressed its will in a clear and unambiguous way, which is why it has to be interpreted, and a justified conclusion is made that this is a prerequisite for the formation of contradictory case law on the issue. The author justifies the view that the competent authority should issue its acts in the context of bound competence.

It analyses the grounds for the granting of asylum by the President provided for in the Constitution, as well as the additional grounds provided for in the Asylum and Refugee Act. A precise legal analysis of the presidential acts granting asylum is made. These types of decrees are defined as non-normative constitutional acts, which are unmotivated, non-appealable and come into force immediately. Substantiated *de lege ferenda* proposals have also been made in the Asylum and Refugee Act to clarify the grounds for the granting of asylum by the President in order to avoid confusion about the type of protection an alien may seek and the proceedings in which it should be granted.

The monograph also examines hypotheses in which the grounds for granting different types of protection overlap. The author defends the view that such mixing is inadmissible and creates legal uncertainty as it may lead to ambiguity as to the competent authority and the procedure to be followed. It is argued that the conflation of the concepts of “asylum” and “protection of foreigners”, which are often accepted as synonyms, has repercussions in other branches of law. In this regard, attention is drawn to the provision of Art. 279, para. 5 of the Penal Code, which provides for exemption from criminal liability for illegal crossing of the state border by foreigners who enter the Republic of Bulgaria to seek asylum. It is proposed that the provision be amended and that the exemption from criminal liability be applied to all foreigners who have illegally crossed the state border to seek the protection of the Bulgarian state, which will contribute to achieving compliance with international and EU law, as well as to eliminating the contradictory case law of the criminal courts.

In the monographic work is analysed the normative framework not only of the special matter, but also such that belongs to the general part of the administrative law. Particular attention is paid to the concepts of "administrative authority", "authority of state management" and "executive authority". The author pays special attention to the bodies of the executive power and, in particular, to the chairpersons of state agencies. Their legal position under Article 19 (4) of the Law on Administration is analysed, with attention paid to the deviations from the general provision, contained in special laws. A *de lege ferenda* proposal is made to amend the provision of Art. 19, para. 9 of the Law on Administration to be supplemented by providing for the possibility for these bodies to issue general administrative acts. This proposal should be welcomed, as at present these executive authorities can only issue individual administrative acts. At the same time, when carrying out the necessary comparative analysis between the powers of the body competent to grant international protection - the Chairperson of the State Agency for Refugees, with other chairpersons of state agencies, it is taken into account that some of them have normative competence, while the powers of others overlap with those of the Council of Ministers.

One of the merits of the monographic work is the analysis of temporary protection and asylum procedures. In this part, the research is supported by an analysis of the case-law in challenging the issued acts, highlighting the current trends in the case-law and discussing certain imperfections in the legislation, making justified proposals for amending the legal provisions.

Of practical value are the considerations on the requisites of the application which initiates the international protection procedure. The examination of the above-mentioned proceedings reveals the absence of any particulars of the application for protection, including an indication of the specific type of protection sought by the foreigner. The difficulties that arise in this respect, both for the asylum seeker himself and for the law enforcement and judicial authorities, are noted. The author has made a proposal on the requisites to be contained in the application for protection. This proposal is to be highly appreciated, as they have an important practical meaning and do not make it difficult for persons who do not know Bulgarian, such as asylum seekers.

Various problems have been identified in relation to the formulation and determination of time limits in the proceedings. For example, a discrepancy has been noted between the time limit granted to the competent authorities under Art. 61a, para. 1 of the Asylum and Refugee Act for the registration of the alien and the similar time limit provided for in the relevant provisions of European Union law. Criticism has been made of the way the provision governing the extension of the time limit for the international protection proceedings is formulated, and an amendment to Article 74 (2) of the Asylum and Refugees Act has been proposed, which would indicate in a non-contradictory way that this possibility may be applied by the authority once. The applicable time limits in the international protection procedure as a whole have been skilfully compared and analysed. In summary of the analysis, the author makes a

reasoned proposal for unification of the starting point from which the time limits begin to run, recommending that the time limit should begin to run from the initiation of the proceedings. It also proposes the introduction of explicit grounds for extending the time limit where such an extension is permissible, and the obligation for the determining authority to notify the person concerned when an extension is granted.

Interesting is the analysis of the possibility of tacit withdrawal of the application for international protection provided for in the law, in which the author takes into account the considerable uncertainty that this act of consent may create in the legal reality, affecting to a significant extent the rights and interests of the person concerned. In this regard, reasoned proposals *de lege ferenda* are made, namely: the possibility of tacit withdrawal should be abolished altogether or, if the legislator considers that it may still remain, clear criteria should be laid down to determine which acts and omissions are deemed to constitute tacit withdrawal of the application, and the competent authority should be obliged to indicate in the written information provided to the person in which cases tacit consent will be presumed. It is reasoned that this safeguards the rights of the seeker of international protection and avoids the possibility of the determining authority acting in bad faith or incorrectly.

In the area of supervision of international protection decisions, the author proposes four main changes. The first of them is related to the extension of the subsidiary application of the Administrative Procedure Code, both in the contestation phase and in the phase of issuing the administrative act. The second proposed change concerns the possibility of exercising administrative control where possible. It is proposed that the acts of the interviewer and the deciding authority be subject to administrative appeal before the immediately superior authority, such as the Chairperson of the State Agency for Refugees. Thirdly, the provision of Article 86 of the Asylum and Refugees Act, which provides for a prohibition of appeals against the acts referred to therein, is subject to criticism in the monograph. The illogical prohibition of appeal of some of the acts that adversely affect the legal sphere of the asylum seeker, which is contrary to EU law (Directive 2013/32/EU), is justified. It is proposed that either the provision should be repealed entirely or it should be brought into line with the relevant European Union law. The different time limits within which the right to appeal against an unfavourable administrative act may be exercised are also examined and their unification is proposed. In this way, according to the author, all time limits for challenges under the Asylum and Refugee Act will be aligned, which facilitates the right to a remedy and is in line with the requirements of EU law.

The four articles and one study (co-authored) submitted for participation in the competition have original scientific contributions to the topics they investigate, correctly indicated in the reference for scientific contributions. They are distinguished by a clear outline of the topic discussed, the problems accompanying the legal framework and proposals for their solution.

On the basis of the documents and scientific works submitted for the competition, I consider that the requirements of the ADASRB and the RCPASDAPSU for the academic position of Associate Professor have been met. *Kapka Georgieva-Atanasova has acquired the educational and scientific degree "Doctor" in scientific field 3.6. Law (Art. 24, para. 1, item 1 of the ADASRB). She has held for more than two years the academic post of Ch. Asst. Prof. (Art. 24, para. 1, item 2 (a) of the ADASRB) and is a proven practitioner (Art. 24, para. 1, item 2 (d) of the ADASRB). She has submitted a published monographic work and other scientific publications in the field of the competition, which do not repeat those submitted for the award of the educational and scientific degree of Doctor (Art. 24, para. 1, item 3 of the ADASRB). The scientific and teaching activity of Kapka Georgieva-Atanasova complies with the minimum national requirements under Art. 2b, para. 2 and para. 3, respectively with the requirements under Art. 2b, para. 5 of the ADASRB and the provisions of the Regulations for the Implementation of the ADASRB (Art. 24, para. 1, item 4 DASRB). No plagiarism has been proven in the scientific works submitted for the competition in accordance with the statutory procedure (Art. 24, para. 1, item 5 ADASRB). Thus, the requirements of Art. 105, par. 1 of the RCPASDAPSU are fulfilled.*

On the basis of my opinion, I express a positive assessment of the results of the scientific and teaching activity of Kapka Georgieva-Atanasova, presented for participation in the competition. The positive evaluation gives me a reason to **vote "FOR"** her nomination for election by the Faculty Council of the Faculty of Law at Sofia University "St. Kliment Ohridski" for the academic position of "Associate Professor in the professional field 3.6. Law (Administrative Law and Administrative Process)".

**22.02.2023**

**Assoc. Prof. Svetla Yankulova, PhD**

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