

## REVIEW

of dissertation for the award of the educational and scientific PhD degree  
Scientific area: 3. Social, economic and legal sciences  
Professional field: 3.6. Law  
(Administrative Law and Administrative Procedure)  
Sofia University "St. Kliment Ohridski"  
Faculty of Law, Department of Administrative Law  
on "Resumption of the Procedure for the Issuance of Individual Administrative Acts"  
of the candidate Lyubomir Lambov Kyuchukov

### **1. Data About the Dissertant**

Lyubomir Kyuchukov graduated from the First English Language School in Sofia. He has a Cambridge Certificate of Proficiency in English and Legal English. He has a Master's degree from Sofia University "St. Kliment Ohridski" since 2020.

In the period 2.01.2020 - 4.11.2021 he is a junior associate/legal assistant at "Tsvetkova, Bebov & Partners".

In the period 28.02.2022 – 22.12.2023 he is a legal advisor/attorney-at-law assistant in the law partnership "Arsov, Nachev, Ganeva".

He is an assistant professor at the Faculty of Law of Sofia University "St. Kliment Ohridski", in the specialty "Law" ("Administrative Law and Procedure") from 10.02.2022 to the present moment.

### **2. Information on the PhD Candidate Program**

Lyubomir Kyuchukov is enrolled for a part-time PhD program in professional field 3.6. Law (Administrative Law and Administrative Procedure) at the Department of Administrative Law at the Faculty of Law of Sofia University "St. Kliment Ohridski" by order of the Rector of Sofia University "St. Kliment Ohridski". The period of study of the PhD candidate is from 1.03.2021 to 16.01.2024. The individual plan of Lyubomir Kyuchukov was approved by the Faculty Council of the Faculty of Law, and the topic of the dissertation is "Resumption of the Procedure for Issuance of Individual Administrative Acts". During his PhD Lyubomir Kyuchukov has successfully passed the examinations in foreign language – English and PhD minimum in "Administrative Law and Administrative Procedure". He has been allowed the right to defence on the basis of the decision of the Faculty Council of the Faculty of Law of Sofia University "St. Kliment Ohridski" and on the basis of the report of the Dean of the Faculty.

The Sofia University "St. Kliment Ohridski" opens a procedure for the defence of the dissertation of Lyubomir Kyuchukov for the award of the educational and scientific PhD degree with the topic "Resumption of the Procedure for Issuance of Individual Administrative Acts". By Order No. RD – 38-62/31.01.2024 of the Rector of Sofia University "St. Kliment Ohridski", Prof. Georgi Valchev, PhD, on the basis of the provisions of the legislation in force and the Decision of the Faculty Council of the Faculty of Law, adopted by Protocol No. 5 of 16.01.2024, the composition of the scientific jury was established.

At the meeting of the jury held on 02.02.2024, on the basis of the submitted reference for the minimum national requirements met by the PhD candidate, it was found that Lyubomir Lambov Kyuchukov meets the set regulatory requirements, there is no evidence of plagiarism and therefore is admitted to the defence for the acquisition of the educational and scientific PhD degree.

At the same meeting I was appointed as a reviewer of the dissertation. I found that there were no violations in its realization. It fully complies with the requirements of the

Development of the Academic Staff in the Republic of Bulgaria Act, the Regulations for the Implementation of the Act and the Regulations for the Conditions and Procedure for the Acquisition of Scientific Degrees and Academic Positions at the Sofia University "St. Kliment Ohridski".

### 3. Dissertation and Abstract Data

The scientific work "Resumption of the Procedure for Issuance of Individual Administrative Acts" has 257 standard pages (248 printed pages). Structurally, it consists of an introduction, three chapters and a conclusion. The chapters contain three sections each. The chapters are indicated by subject headings and structured in paragraphs indicated by Arabic numerals. A table of contents, a list of abbreviations used and a list of references used are included. A substantial bibliography is appended to the scientific work, including 111 titles, of which 97 monographs, studies and articles in Bulgarian, 8 in English, 5 in Polish and 1 in Serbian. For the purposes of the study, a rich and varied case-law of the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU), case-law of the Supreme Administrative Court (SAC) and administrative courts, as well as acts of the Commission for Protection of Competition (CPC) were used. A total of 338 footnotes are made.

The object of the scientific analysis are the administrative legal relations that arise in the resumption of the procedure for issuance of individual administrative acts and of general administrative acts as a means of extraordinary control. As an additional object of study for the purpose of tracing the historical development of the institute and comparative analysis are used the legal relations in the field of administrative sanctions, related to the resumption under the Administrative Violations and Sanctions Act (AVSA) and other special laws. The subject of the study are the provisions of the Administrative Procedure Code (APC), the Administrative Violations and Sanctions Act (AVSA) and the special laws that regulate resumption, the exhaustively regulated grounds for initiating the procedure, the time limits, the subjects in the procedure, their rights and obligations, as well as the legal consequences of conducting the latter. Its aim is to examine the nature and character of resumption as a procedural legal figure, as well as its interaction with the principles of administrative substantive law and administrative procedure.

The content of the work and the conclusions made correspond to the main tasks set in the study, namely:

1. analysis of the concept of individual and general administrative acts, the legal force and legal effect of the individual administrative acts and general administrative acts that have entered into force;
2. determining the scope of the resumption under the APC;
3. analysis of the grounds for resumption of the administrative proceedings under the APC;
3. systematizing the grounds into three groups – substantive, procedural and those having features of both the previous categories;
4. outlining the similarities and differences in the grounds under the APC and the AVSA, as well as the impact of other procedural regulations on the resumption – the Code of Civil Procedure (CCP), the Code of Penal Procedure (CPP) and the Code of Tax and Social Security Procedure (CTSSP);
5. study of the main problems and contradictions in the regulation of the resumption;
6. suggesting interpretations and possible solutions to overcome specific problems;
7. making proposals *de lege ferenda* for amendments and improvements to legislation.

The methodology in producing the scientific study contains the characteristic methods of significant scientific research. The conclusions reached by the PhD candidate are the result of the general scientific methods used: observation, description, comparison, scientific analysis and synthesis, inductive and deductive methods, historical and comparative analysis

of scientific research. The joint application of the scientific methods, as well as the achievements of the doctrine together with the practice of the ECtHR, the ECJ, the SAC, the administrative courts, as well as the CPC contribute in a definitive way to the achievement of the objectives of the scientific research.

The introduction justifies the actuality of the topic in terms of the observance of the rule of law in the exercise of state power, indicates the subject of the study and the tasks that the author sets. The questions to which answers are sought in the dissertation are outlined, its structure is presented.

*Chapter One* is entitled "Concept of Resumption. Regulatory Framework. Historical Development". It introduces the concept of resumption, the applicable legal framework and the historical development of the institute. The first section examines the nature of the concept and its interaction with the basic principles of administrative law and administrative procedure. The second section traces the normative origins of resumption and its evolution from the post-Liberation period to the present day in three socio-political periods – under the period of effectiveness of the Tarnovo Constitution, under the period of effectiveness of the 1947 and 1971 Constitutional Acts of the People's Republic of Bulgaria and after the adoption of the 1991 Constitution of the Republic of Bulgaria. The third section is devoted to a comparative legal analysis between the Bulgarian and other legal systems (German, Italian, Spanish, Polish, Greek, Serbian) in terms of the resumption.

*Chapter Two* is entitled "Resumption Under the APC". It examines the resumption of the procedure for the issuance of individual and general administrative acts. Its first section clarifies the scope of the institute. The second deals with the resumption procedure – the subjects on whose initiative it may be initiated, the time limits in the procedure and the powers of the decision-making authority. Separate attention is paid in the third section to the grounds for resumption and their division into three groups – substantive grounds, procedural grounds and grounds that are attributed to both groups. In this part of the work, the hypotheses in which a special law refers to the grounds under Article 99 of the APC for review of an administrative act which has entered into force are also commented.

*Chapter Three* is entitled "Resumption under the AVSA". It focuses on the resumption under other Acts and their similarities and differences with the resumption of proceedings for the issuance of individual and general administrative acts. Particular attention, because of its practical importance, is given to the Administrative Violations and Sanctions Act. Section one describes the resumption of administrative penal proceedings following the extensive amendments to the AVSA, effective from 23.12.2021. The second section deals with the special procedure for the resumption of administrative penal procedures in the event of the realization of liability of legal persons for enrichment from criminal activity. The subject of study in the third section is the proceedings under Article 14, para. 7 of the Agricultural Land Ownership and Use Act (ALOUA) as an example of resumption of proceedings on the issuance of an individual administrative act, regulated outside the APC, in a special Act.

The conclusion summarizes the main issues discussed in the study. The interpretation and clarification in the final part of the thesis testify to a very good level of applied scientific analysis and generalizations, which adds more relevance and practical applicability to the study.

After the brief description of the dissertation, I would like to give the following assessment of its theoretical and practical qualities:

The originality of the work submitted for review "Resumption of the Procedure for Issuance of Individual Administrative Acts" is undisputed. We have to admit that it is very rare in modern scientific activity that young colleagues take up such a difficult challenge as to study a complex issue and an important institute of administrative procedural law, analyzed

by Lyubomir Kyuchukov extremely comprehensively and thoroughly in view of the historical dimensions and achievements of scientific doctrine, modern legislation and case-law.

The actuality of the topic is present, insofar as the resumption as a procedural legal phenomenon is found in the legislation not only in relation to individual administrative acts, but also in general administrative acts, as well as in proceedings under special laws and in administrative penal procedure under the AVSA. It is commendable that the dissertant has tried to characterize this institute of administrative procedural law as a powerful tool and guarantee for the protection of fundamental human rights and freedoms in such a multifaceted way – in theoretical terms, but also with the help of abundantly cited case-law of the ECtHR, the ECJ, the Supreme Administrative Court and the administrative courts (Administrative Court-Montana, Administrative Court-Plovdiv, Administrative Court-Ruse, Administrative Court-Sofia City, Administrative Court-Stara Zagora). We share the opinion that the possibility of monetary compensation under the Act on the Liability for Damage Incurred by the State and the Municipalities is not accepted by the ECtHR case-law as an effective remedy due to the impossibility to oblige the administrative body to take the necessary actions. But the scientific work does not only contain findings. Lyubomir Kyuchukov makes a complex comparative study on the issue of the application of the institute in other procedural branches – criminal procedure and civil procedure (p. 168).

The author thoroughly examines the resumption as an extraordinary means of protecting the rights of citizens, when an individual or general administrative act that has entered into force and is not challenged before a court may be revoked or amended by the immediately superior administrative authority, and if the act was not subject to administrative challenge – by the authority that issued it, in case of an established violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. It points out the advantage of the Bulgarian model of establishing the institute and notes its absence from the Italian legislation. The dissertant is particularly conscientious in examining the court decisions on cases before the ECtHR against Bulgaria (*Kirilova and Others v. Bulgaria*, No. 42908/98, 44038/98, 44816/98 and 7319/02, § 116, 9 June 2005; *Basarba Ltd. v. Bulgaria*, No. 77660/01, § 32, 7 January 2010; *Stoyanov and Tabakov v. Bulgaria*, No. 34130/04, § 79, 26 November 2013); *Popnikolov v. Bulgaria*, No. 30388/02, § 29, 25.03.2010; *Singartiyski and Others v. Bulgaria*, No. 48284/07, § 84, 18.01.2012; *Bratanova v. Bulgaria*, No. 44497/06, 09.06.2015; *Guseva v. Bulgaria*, No. 6987/07, 06.07.2015; *Ivanova and Cherkezov v. Bulgaria*, No. 46577/15, 21.04.2016; *Yagnina v. Bulgaria*, No. 18238/06, 27.01.2015, § 41), as well as other cases on the subject (*Bączkowski and Others v. Poland*, No. 1543/06, § 83, 3 May 2007, and *Alekseyev v. Russia*, No. 4916/07, 25924/08 and 14599/09, § 99, 21 October 2010) which are relevant to the topic.

The dissertation thoroughly and fully discusses all the grounds for resumption of the administrative penal proceedings under Article 70 of the AVSA (pp. 172-210), and in parallel compares the scope of the procedural institute in the APC and the AVSA. Again, the practice of the ECtHR is commented in accordance with the theoretical issues raised (*Tsonyo Tsonev v. Bulgaria*, 2376/03, Judgment of the ECtHR, Fifth Section of 14.01.2010, which became final on 14.04.2010; *Velkov v. Bulgaria*, No. 34503/10, Judgment of the Fourth Section of the ECtHR of 21.07.2020, which became final on 21.10.2020). Cited case-law of the ECJ to this effect: *Van Esbroeck C-436/04* (Judgment of 9 March 2006), *Gasparini and others C-467/04* (Judgment of 28 September 2006), *Jean Leon Van Straaten C-150/05* (Judgment of 28 September 2006), *Gozutok and Brugge, Joined Cases C-187/01 and C-385/01* (Judgment of 11 February 2003), etc. (p. 196). The author is also motivated by the jurisprudence of the district courts in Burgas, Varna, Sandanski, Shumen and the courts of appeal in Burgas and Sofia, when he discusses at great length the grounds for resumption of the proceedings under Article 83f of the AVSA. He gives very relevant and well-founded numerous *de lege ferenda* recommendations on this occasion, which are not made just as an end in themselves. Lyubomir Kyuchukov is to be congratulated on the reasoned defence of his detailed doctrinal thesis.

The overall content of the theoretical study rests on a serious, grounded and systematic analysis. Lyubomir Kyuchukov demonstrates a high level of preparedness on the subject. He develops the issue under study without isolating it solely within the framework of administrative procedural law. On the contrary, he comments on an impressive volume of doctrinal achievements of an interdisciplinary nature (international public law, European Union law, civil procedural law, criminal procedural law), thus enriching modern Bulgarian legal theory. It is precisely in this multifaceted nature of the study that the particular value of the presented scientific work lies. In the theoretical work, competence, skill, and awareness of each issue under consideration stand out, comprehended in a thorough and complete way. The dissertation by its very nature is a precise and excellently structured scientific work. The exposition, while dealing with complex subject-matter, is presented in an engaging manner. There is a smooth and logical transition between the different parts. The linguistic quality of the development is excellent. The dissertation fully satisfies the requirement of no spelling errors. The style of exposition is concise, organized, clear, precise.

The work submitted for review was prepared independently. The results and contributions in the scientific work are original and are not borrowed from research and publications in which Lyubomir Kyuchukov has no participation. Pursuant to Article 27, paragraph 2 of the Regulations for the Implementation of the Development of the Academic Staff in the Republic of Bulgaria Act, a declaration of originality of the dissertation "Resumption of the Procedure for Issuance of Individual Administrative Acts" has been submitted. References to other authors are made by means of correct citation within the meaning of the Copyright and Related Rights Act and by means of a bibliography.

In conclusion of this part of my review I will point out that the dissertation meets the requirements of Article 66 of the Regulations for the Conditions and Procedure for the Acquisition of Scientific Degrees and Academic Positions at Sofia University "St. Kliment Ohridski".

I recommend that the study "Resumption of the Procedure for Issuance of Individual Administrative Acts" be published as it has high theoretical and scientific-applied merits. Moreover, it is a very interestingly written work and a significant doctrinal achievement in its own right.

The abstract contains all the necessary details. It gives a general description of the thesis. Its relevance is motivated. The object, subject and tasks of the research, the methodology used, the volume and structure of the scientific work, the bibliography are indicated. The content of the scientific paper is briefly presented. A separate place is given to the contribution points. Publications related to the dissertation are described. The abstract is correctly formatted and corresponds to the topic and content of the PhD thesis.

#### **4. Scientific Contributions**

The dissertation thoroughly discusses a number of significant issues related to the resumption of proceedings for the issuance of individual administrative acts, among which the following are of a distinctly contributory nature for the science of administrative law:

4.1. The creation of the first scientific work of its kind in the administrative law doctrine, which discusses the institute of the resumption of proceedings for issuance of individual administrative acts, enriches the theory in the field of administrative procedural law.

4.2 The detailed analysis of the grounds for resumption of proceedings for the issuance of individual administrative acts and their classification into substantive and procedural law may be considered of a contributory nature.

4.3. Of significance for the administrative procedural law is the in-depth study of the different hypotheses of Article 99 of the APC and the indication of cases of imprecision in the wording of certain provisions.

4.4. Contribution to the theory is the PhD candidate's presentation of the contradictions and problems that arise in the case-law in the application of resumption as a form of extraordinary exercise of control.

4.5 Essential for the scientific theory and practice are the specific proposals *de lege ferenda* for amending the legal framework in relation to the identified problems and the proposed solutions for improving the legislation in this sense.

I will take the liberty to mention other contributions that the PhD candidate, probably due to modesty, has not mentioned.

4.6. It is a contribution to the administrative law of citizens through the remarkable theoretical and applied analysis of the ECtHR case-law in the part dedicated to the possibility under the procedure of the APC for an individual or general administrative act to be revoked or amended by the immediately superior administrative authority, and if the act was not subject to administrative challenge – by the authority that issued it, in case of an established violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4.7. The exhaustive, complete and thorough discussion of the grounds for resumption of the administrative penal proceedings under the AVSA is an impressive achievement, which gave Lyubomir Kyuchukov an occasion to make a recommendation for improvement of the administrative penal procedure law *de lege ferenda* with very strong arguments drawn from practice.

## **5. Publications and Participation in Scientific Forums**

Lyubomir Kyuchukov's publications on the topic from his participation in scientific forums are sufficient both in volume and thematic scope. Their value for the administrative legal science and practice is great, because the content of the theoretical studies testifies to the aspiration of the PhD candidate to discuss within the scientific circles the legal institute of the resumption of proceedings with the necessary attention, depth and comprehensiveness. The articles demonstrate Lyubomir Kyuchukov's considerable interest in the matter under discussion:

5.1. Resumption of the Administrative Penalty Proceedings after the 2020 Amendments in the Administrative Violations and Sanctions Act in: 'The Reform in the Administrative Sanctioning from 2020', University Press 'Kliment Ohridski', Sofia, 2021. ISBN 978-954-07-5359-1;

5.2. The Resumption of the Administrative Proceedings and the Principles of Administrative Law and Administrative Procedure, in: Collection of Scientific Studies from the Jubilee International Scientific Conference, 'Development of Modern Law: Between the Established Traditions and the Desired Future Reality', Vol. 2, University Press 'St. St. Cyril and Methodius', 2023, ISBN: 978-619-208-360-1;

5.3. Historical Development of the Resumption of the Administrative Proceedings and Future Prospects for this Legal Institution, 'De Jure' Legal Journal, Issue 2/2021. ISSN: 2367-8410.

## **6. Conclusion**

The dissertation "Resumption of the Procedure for Issuance of Individual Administrative Acts" by Lyubomir Kyuchukov is presented in a form and volume corresponding to the specific requirements of the Department of Administrative Law of the

Faculty of Law of the Sofia University "St. Kliment Ohridski". It contains numerous theoretical generalizations and solutions to important doctrinal and scientifically applicable problems in the field of administrative procedure and represents a significant and original contribution to legal science. Lyubomir Kyuchukov possesses in-depth theoretical knowledge and professional skills in the scientific specialty of Law and in particular in the field of administrative law and administrative procedure, demonstrating the qualities and ability to independently conduct an important scientific composition.

Due to the foregoing, I hereby confidently give my positive assessment on the conducted research, presented by the above-reviewed dissertation, abstract, achieved results and contributions, and *definitively* propose that the honorable scientific jury award the educational and scientific PhD degree to *Lyubomir Lambov Kyuchukov* in the scientific field 3.6 Law (Administrative Law and Administrative Procedure).

1.03.2024 г.

Reviewer:

Prof. Raina Nikolova, PhD,  
Lecturer at NBU