

OPINION

by Prof. Emilia Parvanova Panayotova, PhD, member of the scientific jury in the competition for the academic position of Associate Professor - field of higher education 3. Social, Economic and Legal Sciences, professional field 3.6. Law, specialty "Administrative Law and Administrative Process" at the Faculty of Law of Sofia University "St. Kliment Ohridski", announced in State Gazette, no. 92 of 18 November 2022, with candidate Ch. Asst. Prof. Kapka Svetoslavova Georgieva-Atanasova, PhD

1. In the competition for Associate Professor of Administrative Law and Administrative Process at the Faculty of Law of Sofia University "St. Kliment Ohridski" Ch. Asst. Prof. Kapka Svetoslavova Georgieva-Atanasova, PhD, is the only candidate. For her participation in it she presents six scientific works. One of them is a habilitation thesis - the monograph "The Proceedings on Granting Protection to Foreigners under the Asylum and Refugees Act" (S., Nova Zvezda, 2022, 299 p.), one study in co-authorship, and the rest are articles.

2. Kapka Georgieva-Atanasova holds a Master's degree in Law from Sofia University "St. Kliment Ohridski" since 2005. Since 5.04. 2012 she has been an assistant professor, and since 7.06.2016 she has been a chief assistant professor at the Faculty of Law of Sofia University "St. Kliment Ohridski". After successfully defending in 2015 her dissertation on "The Administrative Acts of the Energy and Water Regulatory Commission in the Field of Energy", she was awarded a Doctor of Law.

Kapka Georgieva-Atanasova successfully conducts seminars for the students of the Faculty of Law on Administrative Law and Administrative Process, as well as lectures on the subjects "Administrative Law and Public Administration" and

"International Administrative Law" in the specialty "International Relations", as well as on "Refugee Law" within the Erasmus program.

It should be emphasized that Ch. Asst. Prof. Kapka Georgieva-Atanasova, PhD, successfully combines her teaching, research and practical activities. From 2017 to 2019, she has been an advisor in the political cabinet of the Deputy Prime Minister for Justice Reform and Anti-Corruption. At the same time, she has participated in numerous seminars and conferences on current issues of public law.

3. The monograph "The Proceedings on Granting Protection to Foreigners under the Asylum and Refugee Act" is the first comprehensive scientific study in the administrative law theory that examines the proceedings on granting protection to foreigners under the Bulgarian legal framework. It is characterized by a structure including an introduction, three chapters, a conclusion and a bibliography.

The work is distinguished by numerous contributions, some of which are as follows:

- An in-depth historical review of the development of the legal framework has been made, which has made it possible to highlight one of the main shortcomings of the current Bulgarian legal framework - the use of the same terms to describe different legal figures.
- Some differences in legal terms and figures between Bulgarian law on the one hand and international and EU law on the other are analysed and explained.
- The types of protection granted under Bulgarian law are clearly distinguished, and possible hypotheses in which the grounds for granting different types of protection overlap are considered.

- The "asylum" granted by the President and the "temporary protection" are the subject of a detailed analysis, which has so far been lacking in Bulgarian administrative law theory.

= With regard to "asylum", it is argued that it is necessary to regulate in the Asylum and Refugee Act (ARA) the conditions and procedure, as well as to specify the grounds for granting this type of protection by the President, as well as to regulate certain rights of foreigners applying for asylum.

= In order to clarify more fully the nature of "temporary protection", the scope and the periods for which it can be granted, the grounds for its termination are examined in detail. Emphasis is placed on the rights and obligations of persons seeking temporary protection, remedies against unlawful administrative acts issued in the proceedings, the possibility for such persons to obtain legal aid under the Legal Aid Act (LAA).

- The procedural rights of applicants for international protection and the need to complement them are discussed, as well as the lack of clear systematisation of the rights and obligations of different categories of foreigners seeking or granted protection.

- The competence of the Chairperson of the State Agency for Refugees (SAR) is thoroughly examined, a comparative analysis is made with the powers of Chairpersons of other state agencies and it is found that some of them have significant norm-setting powers, while in others there is an overlap of powers between them and the Council of Ministers. Special attention is paid to the possibility of delegation of powers by the Chairperson of the SAR to his/her deputies or to other subordinate employees, justifying the need for changes in the Rules of Procedure of the SAR in order to bring them in line with the ARA, with a view to the lawful implementation of the delegation.

Numerous de lege ferenda recommendations have been made, compliance with which would eliminate a number of practical problems in the enforcement of the ARA.

In international protection proceedings, the more important are:

- reconsider the legislative decision that applications for international protection should be made only in person;
- to clarify the content of the application for protection, as well as to clearly state in the law that the international protection procedure starts with the submission of the application and not with the registration of the alien;
- the procedural provisions of the ARA governing time limits to be reconsidered;
- to clarify the legislative regulation of the hypothesis in which an alien with discontinued international protection, which he/she had in a previous period, has reapplied for international protection, by providing that a "reapplication" is only the one following the discontinued protection, which was granted by the Bulgarian state;
- Art. 58 par. 8 of the ARA should regulate the specific situations in which an alien is presumed to have tacitly withdrawn his/her application for international protection, as the current wording of the provision violates the principle of predictability;
- amend the provision of Article 91 of the LAS which refers in the phase of the judicial challenge of the acts granting international protection to both the Code of Administrative Procedure and the Code of Civil Procedure, by removing the reference to the Code of Civil Procedure. The subsidiary application of the Code of Administrative Procedure should be extended to the first phase of the procedure - the issuing of the administrative act;

- the provision of Article 86 of the ARA, according to which individual specified acts are not subject to appeal, be abolished in its entirety or be brought into line with the relevant EU law. It is rightly argued that the prohibition to challenge certain acts adversely affecting the legal sphere of an asylum seeker is illogical and at the same time it is contrary to EU law. The time-limits within which the right to appeal against an adverse administrative act may be exercised should be harmonised;

- the provision of Art. 7, par. 8 of the ARA gives the administrative authority - party to the dispute - the possibility to assess the existence of some of the conditions for admissibility of an appeal against its act, and this should be entirely within the competence of the determining authority.

An amendment is also proposed to the provision of Article 279, par. 5 of the Penal Code: the exemption from criminal liability to apply to all foreigners who have illegally crossed the state border to seek the protection of the Bulgarian state, instead of the current exemption from criminal liability for illegal crossing of the state border only for foreigners who enter the Republic of Bulgaria to seek asylum.

Considering the outlined contributions of the habilitation thesis, it is undoubtedly concluded that it has the necessary theoretical and practical significance for clarifying and overcoming the legislative problems in the procedures for granting protection to foreigners under the Asylum and Refugee Act. The scientific value of the monograph is also conditioned by the methods used in the research. Among them, the historical and legally-logical methods of research stand out. For the achieved results of the work also contributes the detailed knowledge of the Ch. Asst. Prof. Kapka Georgieva-Atanasova, PhD, of the relevant case law of the Bulgarian courts, the Court of Justice of the European Union, as well as the Constitutional Court of the Republic of Bulgaria.

4. Chief Asst. Prof. Kapka Georgieva-Atanasova, PhD, submitted five more publications for the competition. These are: 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); 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); Judicial supervision of the operational autonomy of the administration. (In. 100 years Supreme Administrative Court, UP “St. Kliment Ohridski”, 2014, pp. 199-206); On the implementation of Article 40, paragraph 2 of the Constitution of the Republic of Bulgaria, co-authored with Ch. Asst. Prof. Nikoleta Kuzmanova, PhD, (In. “Media in Bulgaria – 30 years later, Sofia: New Bulgarian University, 2020, pp. 101-124).

These publications are devoted to current issues of administrative law and procedure. In all of them the author presents her opinion on the discussed issues in a well-reasoned manner. The articles are not only theoretical but also of practical importance. They can be used both to improve the legislation and to unify its interpretation and application.

5. In general, the scientific creativity of Ch. Asst. Prof. Kapka Georgieva-Atanasova, PhD, should be positively evaluated due to the highlighted theoretical and practical significance of her works. They are a novelty in science and are the result of her personal research work. At the same time, through her writings she demonstrates her ability to identify important social problems, to research them thoroughly and to propose convincing ways of solving them.

In conclusion, given the above mentioned regarding the teaching, practical and research activities of the Ch. Asst. Prof. Kapka Georgieva-Atanasova, PhD,

I consider that she meets all the conditions for holding the academic position of "Associate Professor" under Art. 24, par. 1 of the Law on the Development of the Academic Staff in the Republic of Bulgaria. Therefore, I recommend the scientific jury to propose to the Faculty Council of the Faculty of Law of Sofia University "St. Kliment Ohridski" to elect as Associate Professor of administrative law and administrative process Ch. Asst. Prof. Kapka Georgieva-Atanasova, PhD.

Sofia

March, 2023

Signature:

(Prof. Emilia Panayotova, PhD)