

# STATEMENT

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

*Department of Administrative Law at the Faculty of Law of Sofia University "St. Kliment Ohridski",*

**Subject:** Dissertation for acquiring educational and scientific PhD degree in Social, Economic and Legal Sciences, professional field 3.6 "Law" (Administrative Law and Administrative Procedure)

**Dissertation Topic:** "Resumption of the Procedure for Issuance of Individual Administrative Acts"

**Author of the dissertation:** Lyubomir Lambov Kyuchukov

## **I. Details of the Procedure.**

By Order No. RD 38-62 of 31.01.2024 of the Rector of the Sofia University "St. Kliment Ohridski" I have been appointed as a member of the scientific jury in the procedure for the defence of the dissertation on the topic "Resumption of the Procedure for Issuance of Individual Administrative Acts", field of higher education 3. Social, economic and legal sciences, professional field 3.6 "Law" (Administrative Law and Administrative Procedure). The materials submitted by the dissertant for participation in the procedure are in accordance with the requirements of the Regulations on the Conditions and Procedure for Acquisition of Scientific Degrees and Occupation of Academic Positions at Sofia University "St. Kliment Ohridski". The procedure up to the defense of the dissertation before the departmental council has been lawfully conducted, the necessary documents for the scientific jury and for public defense have been submitted.

For his participation in the procedure, the dissertant submitted three publications related to his dissertation, namely:

1. Kyuchukov, L., 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;

2. Kyuchukov, L., 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;

3. Kyuchukov, L., Historical Development of the Resumption of the Administrative Proceedings and Future Prospects for this Legal Institution, 'De Jure' Legal Journal, Issue 2/2021.

## **II. Biographical Data About the Dissertant**

Lyubomir Kyuchukov graduated in Law at the Faculty of Law at Sofia University "St. Kliment Ohridski" in 2020. In March 2021, he became a full-time PhD student in Administrative Law and Administrative Procedure at the Faculty of Law of Sofia University "St. Kliment Ohridski". From February 2022 he was appointed as Assistant Professor in Administrative Law and Administrative Procedure at the Department of Administrative Law of the same Faculty, continuing to prepare his dissertation in part-time form. After completing his legal education, the PhD candidate gained legal experience in various law firms.

## **III. General Description of the Dissertation Content**

The dissertation is 257 pages long. The study is accompanied by a reference to the literature used, containing 104 titles, of which 88 in Cyrillic and 16 in Latin. All titles are cited in the dissertation. A total of 338 footnotes are made.

The dissertation consists of an introduction, three chapters and a conclusion. Each chapter is divided into sections, denoted by Roman numerals, and paragraphs, denoted by Arabic numerals. A table of contents, a list of abbreviations, and a list of references used are included. The structure developed corresponds to the main objectives of the study.

The dissertation is a comprehensive monographic study. The object of the scientific analysis are the administrative legal relations that arise in the resumption of proceedings for the issuance of individual and general administrative acts as a means of extraordinary control. As an

additional object of research for the purpose of tracing the historical development of the institution of resumption and comparative analysis, the legal relations in the field of administrative sanctions related to resumption under the Administrative Violations and Sanctions Act (AVSA) and other special laws are also examined. In the comparative legal aspect, the subject of the study are also legal norms concerning the resumption of administrative proceedings in foreign legal systems, some of which are adopted in the Bulgarian modern legislation.

The first paragraph of Section One of Chapter One of the dissertation deals with the concept of resumption of the procedure for the issuance of individual and general administrative acts. On the basis of this analysis, a definition of resumption is given, which is viewed as a legal institute in the administrative procedure by which a factual or legal situation already decided by a final administrative act is brought up for reconsideration. Each of the components of this scientific definition is analysed separately.

A distinction is made between resumption as a separate type of proceedings and resumption as a stage of other administrative proceedings, and a comparison is drawn with the institute of resumption in other branches of procedural law – for example in the field of criminal procedure, where this institute is also found.

The extension of the scope of the institute beyond the Administrative Procedure Code (APC) and the Administrative Violations and Sanctions Act (AVSA), into special laws, is noted and appreciated, but with the clarification that this trend should not lead to the abolition of the extraordinary nature of the resumption.

In the third paragraph of Section One of Chapter One, the institute of resumption is analysed in relation to the principles of administrative law and administrative procedure. The notion of a legal principle is examined as a general concept and the principles of substantive administrative law and administrative procedure are studied in particular. Insofar as resumption is a procedural figure, the principles envisaged in Chapter Two of the APC are chosen as a point of reference.

A historical overview of the legal framework of the resumption is provided in Section Two of Chapter One. The adoption of the first Administrative Justice Act (AJA) of 1912 is taken as the starting point and initial stage of the development of the institute. In the historical study of the legal figure of resumption, the author reaches its contemporary stage of historical development in the context of the 1991 Constitution of the Republic of Bulgaria and the APC adopted in 2006.

Section Three of Chapter One examines the institute of resumption in the legal systems of Western and Central European countries as well as in the Balkan countries.

Chapter Two analyses the resumption procedure regulated in the APC. The first paragraph deals with the resumption of the procedure for issuance of individual administrative acts and general administrative acts under Article 99 et seq. APC. In the second paragraph of Section One of Chapter Two of the dissertation, the author focuses on those administrative acts which are not subject to review under Chapter Seven of the APC after their entry into force and as an example of such acts are specified the licensing acts and revision acts regulated by special laws and subject to amendment and/or revocation after their entry into force on special grounds. In the third paragraph attention is paid to a special category of administrative acts – decisions imposing financial corrections under Article 74 of the Management of Resources from the European Funds under Shared Management Act (MREFSMA). It analyses the resumption procedure itself: its initiation, time limits for its commencement, time limits for resumption, powers of the decision-making authority. The grounds for resumption which are divided into substantive and procedural grounds, as well as the grounds falling into both groups, are also examined in detail. The decision of the legislator to allow the act imposing a financial correction to be amended only in the sense of increasing the amount of the financial correction is criticised.

Chapter Three of the dissertation deals with the resumption under Articles 70 and 83f of the AVSA: scope, grounds, initiative and time limits for resumption, powers of the deciding authority. A clarification is made regarding the prosecutor and the supervising prosecutor as subjects who are granted the powers to initiate the resumption proceedings, emphasizing that at the date of completion of the dissertation, in view of the entry into force of the Amendment and Supplementation of the Constitution of the Republic of Bulgaria Act on 26.12.2023, it is not entirely clear whether and to what extent the prosecutor will retain his powers in the resumption procedures.

Chapter Three, Section Three analyses the resumption under Article 14, para. 7 of the Agricultural Land Ownership and Use Act (ALOUA), which refers to the resumption of restitution proceedings. It analyses the subjects who have the rights to initiate the proceedings, the time limits for resumption, the competent authority and its powers.

#### **IV. Research Methodology**

In the dissertation the author uses different methods of scientific research. The general scientific methods used in the research are: observation, description, comparison, method of scientific analysis and synthesis, inductive and deductive methods. Thus, the selected and applied methodology provides an answer to the set goals and objectives of the dissertation under consideration. The methods of historical and comparative legal analysis are also used, which allow to trace the normative development of the institute of resumption, as well as the similarities and differences in the way it is regulated in Bulgaria and in other Balkan and European countries.

## **V. Evaluation of the Scientific Contributions of the Dissertation**

The dissertation analyses issues of important scientific significance and can be described as the first complete and thorough study of the different types of resumption in the administrative procedure. The current legislation on resumption is examined, pointing out the inaccuracies in the legal framework concerning the legal figure and making *de lege ferenda* proposals to overcome them. The case-law practice of the Supreme Administrative Court (SAC) and the administrative courts is examined, and proposals are made to unify the conflicting case-law.

The proposed definition of resumption as an institute of the administrative procedure by which a factual or legal situation already decided by a final administrative act is brought up for reconsideration may be pointed out as a contribution. The author draws the reasonable conclusion that, in addition to being a means of subsequent review, resumption may also be regarded as a means of prevention. Resumption not only overcomes the stability of final acts, it also helps to strengthen legality, since the grounds for resumption appear as additional criteria of legality. This view is new to legal theory and can be described as a theoretical contribution of the thesis.

A *de lege ferenda* proposal is made to refine the legal framework on resumption so that it reflects the notion of an administrative act adopted in the APC. In particular, it is proposed that two new paragraphs be created in the provision of Article 99 of the APC to systematically separate the acts subject to review and the grounds for resumption of the procedure for their issuance. This proposal is based on an analysis according to which certain types of administrative acts (e.g. administrative acts issued orally or expressed by means of consensual actions; administrative acts by which the contracting authority of a public procurement tender appoints a contractor; acts issued

by persons performing public functions and by organisations providing administrative services) remain outside the scope of Article 99 of the APC.

The dissertation critically analyses the application of resumption in relation to decisions imposing a financial correction under Article 74 of the MREFSMA. On the basis of a reasoned critique of this legislative decision, two approaches are proposed to overcome this statutory contradiction: that the legislator fully refer to Chapter Seven of the APC on resumption or create a separate procedure for amending this category of acts in the special law without referring to the APC. This proposal should be welcomed.

*A de lege ferenda* proposal is made to refine the wording of the current provision of Article 101 of the APC, which is based on the well-known distinction in legal theory between legal effect and legal force of an administrative act. The author rightly made this proposal on the basis of his conclusion that individual and general administrative acts, once they become final, have force regarding all persons who are not holders of state authority and have effect against their addressees – a certain or determinable scope of persons.

The author has made a proposal *de lege ferenda* concerning the ground for resumption under Article 99, item 3 of the APC. A proposal has been made to include in the circle of persons referred to in that provision the witnesses and experts whose testimony and, respectively, statements may also influence the decision of the administrative authority. The author argues that a crime committed by those persons may also influence the decision on the matter which is the subject of the administrative proceedings.

On the grounds under Article 99, item 5 of the APC, two proposals *de lege ferenda* have been made – on the one hand, to delete in the cited provision the specification "which contradicts it", and on the other hand – to include in Article 103, para. 5 of the APC, in addition to the unlawful act, also the incorrect act as subject to annulment, insofar as the review of its appropriateness falls within the competence of the administrative authority decision. The deletion of the words "which contradicts it" from Article 99, item 5 of the APC would help in cases where the two administrative acts do not contradict each other, but their simultaneous existence creates confusion and violates the principle of legal certainty. With regard to the addition in Article 103, para. 5 APC of the incorrect administrative acts, a reservation may be expressed regarding the cases where it concerns

the explicit competence of the administrative authority which is the author of the act. It is not permissible for the superior authority to rule on a matter falling within the express competence of the inferior authority (Article 97, para. 2 APC). Furthermore, the administrative act is lawful and as such has produced an effect which has led to changes in objective reality and there is no legal basis for their annulment.

Suggestions for improvement of the legal framework are also made in Chapter Three, which presents the resumption under the AVSA. The word "review", by which the legislator has referred to these proceedings, has been correctly identified as inaccurate, and it has therefore been proposed *de lege ferenda* to replace it by the word "reconsideration".

It is proposed *de lege ferenda* that Article 84 of the AVSA, which regulates the matters referred to the Code of Criminal Procedure (CCP), should explicitly include the evidence and means of proof in order to be able to apply this Code to them. The author justifies his proposal on the basis of the exhaustive nature of the enumeration in the provision of Article 84 of the AVSA, on the one hand, and the lack of a definition in the AVSA of "evidence" and "means of proof" and rules concerning them, on the other.

A *de lege ferenda* wording of the ground for resumption referred to in Article 70, para. 2, i. 5 of the AVSA is proposed in order to avoid violating the double prosecution for the same deed. The proposed wording is to be welcomed as it will help to respect the principle "*non bis in idem*" and to not breach the presumption of innocence.

A proposal is made for a more specific wording of the ground for resumption set out in Article 70, para. 2, i. 8 AVSA, which leaves less room for analysis of the actual intent of the legislator. The proposed wording contains a specification of the type of administrative act, the findings of which are taken into account by the sanctioning authority for the decision of the administrative penal proceedings, as well as a specification of the manner of its termination.

The existence of an active procedural initiative of the subjects whose legal sphere suffers a negative impact as a result of the adoption of a judicial act imposing an administrative penalty is assessed positively. These are the persons in respect of whom the act under Art. 70, para. 1 of the AVSA and the owner of the property which has been subject of disposition or confiscation for the

benefit of the State, when he is not the offender. In this connection, it is proposed *de lege ferenda* to limit the possibility of review of the act by the owner of the confiscated property to the part only in which his rights are affected.

## **VI. Notes and recommendations**

Some recommendations can be made to the author to improve the work.

Regarding the structure of the work, it could be suggested that the consideration of the resumption under the AVSA not be structured in a separate chapter, as it is not included in the subject and scope of the dissertation work –"Resumption of the Procedure for Issuance of Individual Administrative Acts", which suggests analysis only of the resumption of proceedings for the issuance of individual administrative acts. The resumption of administrative penalty proceedings could be included in certain places in the dissertation as a comparison with the resumption of the APC.

I would recommend the author to separate in a dedicated paragraph the subjects who may request the initiation of resumption of the procedure for issuance of administrative acts which have entered into force. He has considered them and analysed their powers, or rights, in §1 "Commencement of Resumption Proceedings. Time Limits for the Initiation of the Proceedings", which is in Section Two of Chapter Two. The scope and importance of the analysis which the author has made allows it to be set out as a separate paragraph in Section Two of Chapter Two.

The dissertation takes into account the entry into force of the Amendment and Supplementation to the Constitution of the Republic of Bulgaria Act at the end of December 2023 and the amendments that follow from it regarding the structure of the prosecution office and the powers of the prosecutor to initiate the resumption of the procedure for the issuance of administrative acts. It is concluded that this power no longer exists as the legislator limits the prosecutor's powers to challenge administrative acts only before the courts. Due to the fact that the changes in the substantive and procedural laws, which follow from the Constitution Amendment Act, have not yet been adopted, the current provisions of Chapter Seven of the APC, according to which the prosecutor is one of the subjects who may initiate the resumption of proceedings for the issuance of an administrative act, are examined and analyzed. This creates some contradiction and



could confuse the reader. Therefore, I recommend the author to edit his dissertation as soon as the relevant legal changes come into force and to do so before publishing it as a book.

I recommend that the author change the systematic place of Section Three of Chapter Three – "Resumption under Art 14, para. 7 of the Agricultural Land Ownership and Use Act (ALOUA)". This procedure contains a special order for the review of individual administrative acts listed in Art. 14 para. 1, items 1-3 ALOUA. Therefore, its systematic place could not be in Chapter Three – "Resumption under the AVSA". It would be more appropriate to include this extraordinary procedure as a separate paragraph in Chapter Two – "Resumption under the APC", by comparing it with the proceedings under Chapter Seven of the APC.

## **VII. Conclusion**

The above recommendations concerning the thesis are of a secondary nature and in no way detract from its significance. The overall reading of the dissertation work leads to the conclusion that the PhD candidate possesses in-depth theoretical knowledge in the field of administrative law and administrative procedure and the ability for independent scientific research, and the results achieved in the dissertation work represent an original contribution to Bulgarian legal science, which is why it should be given an overall positive evaluation.

In conclusion, it should be emphasized that the dissertation fully meets the requirements of Art. 6, para. 3 of the Development of the Academic Staff in the Republic of Bulgaria Act and Art. 27, para. 1 of the Regulations for its application, therefore, I confidently give an overall positive assessment of the work and propose the scientific jury to take a decision to award Lyubomir Lambov Kyuchukov the degree of Doctor of Education and Science in the professional field 3.6. Law (Administrative Law and Administrative Procedure).

**Sofia, 5 March 2024**

**Assoc. Prof. Dr. Svetla Yankulova**

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