OPINION

by Assoc. Prof. Konstantin Vasilev Pehlivanov Ph.D., Field of Higher Education 3. Social, Economic and Legal Sciences, professional field 3.6 Law, scientific specialty Administrative Law and Administrative Procedure at the Faculty of Law of Plovdiv University “Paisii Hilendarski”, Department of Public Law - external member of the scientific jury

on a procedure for obtaining a doctoral degree in the Field of Higher Education 3. Social, Economic and Legal Sciences, professional field 3.6 Law, doctoral programme Administrative Law and Administrative Procedure at the Faculty of Law of Sofia University "St. Kliment Ohridski", Department of Administrative Law
with candidate Lyubomir Lambov Kyuchukov, who submitted a dissertation entitled "Reopening of the Proceedings for Issuance of Individual Administrative Acts" and scientific supervisor prof. Prof. Tsvetan Georgiev Sivkov DSc.

I submit this opinion as a member of the scientific jury appointed by the Order of the Rector of Sofia University No. RD 38-62/31.01.2024, after I have been entrusted to prepare an opinion by the decision of the scientific jury, Protocol No. 1 of 02.02.2024.

On the eligibility of the procedure: the candidate Lyubomir Lambov Kyuchukov has submitted the due set of documents under the Promotion of Academic Staff in Republic of Bulgaria Act, the Regulations on its implementation and the respective Regulations of Sofia University "St. Kliment Ohridski". The candidate meets the minimum national requirements, which was established by Protocol No. 1 of the Scientific Jury, the abstract is correctly formatted. I find the submitted dissertation admissible for consideration on its merits.

Conclusions on the merits of the dissertation: the PhD candidate Lyubomir Kyuchukov, under the supervision of Prof. Tsvetan Sivkov DSc. has focused on the study of a specific and difficult problem, which is generally neglected in our doctrine. Considerations on the reopening of proceedings for the issue of an administrative act (now Article 99 et seq. of the Administrative Procedure Code, hereinafter APC; formerly Article 32 of the Administrative Procedure Act) is necessarily described in every course of study, but I was not aware of a detailed and thorough study of the topic until now. The study is further hampered by the scarce case law on this proceeding. The dissertation itself, with its topic, is a contribution.

The dissertation follows the classical structure and is divided into an introduction, three chapters and a conclusion. In the introduction the author rightly notes that "The social relations that arise when individual and general administrative acts are issued and come into force are key to administrative substantive and procedural law", insofar as the legality of these acts is the basis of the law enforcement activity of the administration, and through stable administrative acts rights and obligations are created for legal subjects. I disagree with the assertion that those acts enjoy presumptive legality, although I have often encountered that assertion in our doctrine, as I have never seen a statutory reference from which such a presumption follows and do not find it justifiable in practice either; from the formal legal effect (non-appealability) and from the subordinate character of the activities of the administration no presumption of conformity of its acts with the requirements of the law may follow in my opinion, but I recognize the right of the author to follow the postulates of his school.

Chapter One, named “Concept of Reopening. Regulatory framework. Historical Development” makes an introduction to the subject and sets out the general theoretical basis of the institute as well as its development in positive Bulgarian law. The general theoretical genesis of the concept is traced, attention is paid to the division of proceedings in terms of process in a broad and narrow sense adopted in the doctrine, and a distinction is aptly made from the reopening of suspended proceedings (p. 14), as long as it is an extraordinary means of control (p. 20). The legal meaning of the institute is quite correctly defined - "in the case of reopening there is always a review of a situation already established by a final act" (p. 15) with an analysis of the relationship between legal certainty and the principles of legality and veracity. The applicable meaning of the institute - to overcome the formal legal force of the administrative act which has entered into force - is set out, tracing the meaning of this concept as derived in administrative law doctrine. An analysis is made of the relationship between the concepts of 'control' and 'supervision' from the point of view of the body exercising the power to examine the challenge to the act, as well as from the point of view of the verification of implementation. The author associates the concept of 'enforcement review' with the so-called 'review proceedings', which I believe covers only part of the cases of these proceedings. It is pointed out that the effect of seizure does not occur here, as in the case of a judicial appeal, where the matter leaves the sphere of the executive and is transferred to the judiciary, i.e. there is an administrative proceeding in the strict sense of the term (p. 24 and p. 26). Throughout, a parallel and useful analysis is conducted with the institute of reopening in the Administrative Offences and Penalties Act (hereinafter AOPA). I find the comparison with the institute in the Ownership and Use of Agricultural Land Act useful in

practice, where the activity of the Minister of Agriculture in different situations may be defined as both control and supervision. In general, the author devotes much attention to the distinction between control and supervision, including entering into nuances of similar proceedings.

Methodologically correct and justified in the context of the work is the derivation of the sources of the institute from the main principles (Chapter I, § 3). The analysis begins with the founding Administration Act (Art. 2) and moves on to the principles in the Administrative Procedure Code. The concept of legal principle is analysed and the different views in theory are reflected. By deduction, it is concluded that the institution of reopening primarily reflects the basic principles of legality and veracity and the relevant norms in the Administrative Procedure Code are traced. Due attention is paid to the principle of consistency and predictability (Article 13 APC, Article 2(1)(6) APC). It is my personal opinion that they do not overlap and have different content, insofar as the prototype of Article 13 APC is Article 6 of the Limiting Administrative Regulation and Control over Economic Activities Act (hereinafter LARCEAA), and the addition of the principles of administrative activity in Article 2 of the Administration Act occurred only in 2006 (the Act itself was adopted in 1998) without a clear vision of the meaning of their normative establishment. The author conducts a good analysis of the concept of "legal certainty", exploring the scope of this concept in the legal order and, through it, in society. A parallel useful analysis of principles in administrative punishment is also conducted.
A historical analysis of the views on resumption in our law is made, with a meticulous examination of the views in doctrine and legislative amendments, indicating a serious scholarly approach. A major problem of our administrative law, not yet overcome, is noted - too frequent subsidiary reference to the Civil Procedure Code, which leads to the inevitable problems in subsidiary application and sometimes confusion of administrative (in a narrow sense) and judicial institutions. The impact of the supervisory review on administrative penal acts as a particular type of extraordinary proceedings is noted. An analysis of similar institutes in Europe has also been carried out, covering as many countries as possible.

Chapter Two, named “Reopening under the APC” is the core of the dissertation and I find it the most contributory. The author begins with exploring the concepts of individual and general administrative act to which the institute of reopening of proceedings is applicable, the possible author of the administrative act is clarified, since under the APC this can be both an administrative authority or persons performing public functions and organizations providing public services (after the 2018 amendments; the author follows the legal definitions that were in the Administration Act, but since 2023 they passed to the Electronic Government Act).

A study is made of the cases where this procedure is inapplicable with the private case of review of the act by its author, under the rule of Article 99 APC, analysing examples from special legislation. The author expresses his attitude to these special cases and considers that the institute of reopening should not be applied extensively, since "the situation described would be dangerous for legal certainty, since the exercise of human rights activity in administrative law and administrative procedure as one of the forms of executive-regulatory activity is the prerogative of the executive authorities only. Persons and organisations outside the system of that authority, even if in isolated cases they may be regarded as equivalent to administrative authorities, cannot and should not always be understood as such. I support his opinion, I personally find that the amendment to APC in 2018 was not well designed in this regard. A precise analysis of the notions of public functions and public powers was carried out with clarification of the practical implications of this theoretical distinction.

The special cases of an oral or conclusive act, where by their very nature it is impossible to apply the institute of reopening, are taken into account. The author draws the general conclusion that from the applicability of the proceedings "automatically fall those acts which issuance is not preceded by procedural acts" (p. 89); with that I can agree. I again find the references and the comparison with the AOPA after the 2020 amendments useful, it may serve as a prototype for future improvement of the matter. On p. 86, a precise attempt is made for a future revision of the rule of Article 99 APC, which I consider a contribution of the work.

Attention is paid to the particular and difficult to analyse matter of the general administrative act with the applicability of the reopening proceedings to it and the meaning of Article 73 APC (general administrative act issued in urgent cases) as a negative legal prerequisite excluding this method of review.

A strength of the dissertation is, in examining the special cases, the reflections on the licensing act under the LARCEAA and laws related to economics, as well as the Tax-Insurance Procedure Code and the Management of EU Funds under Shared Management Act. Of particular value to me are the reflections on the legal nature of the 'financial correction (pp. 94 et seq.), on which I have observed controversy in practice. I find justified the criticism of Article 74 of the MEUFSMA and the analysis of this concept.

The reopening procedure is accurately and in-depth described, and the recent amendments to the Constitution of the Republic of Bulgaria with a change in the role of the prosecutor are reflected and analysed. The literature on the subject is also examined. The criticism is accurate and the proposal to amend Article 103 (2) of the APC is justified. The role

of the Ombudsman is thoroughly examined. Consideration could have been given to the question whether the public mediator elected by the municipal council should not have such a power and whether he should not be given any role at all in proceedings under the APC. The power of a third party affected by the administrative act is precisely analysed. With regard to the only possible judicial intervention under Article 197 in conjunction with Article 103(1) APC. The relevant case-law is also traced. I also fully support the criticism of Article 105 of the APC (p. 120).

The grounds for a motion to reopen are examined in detail in their logical order. I was impressed by the analysis concerning the correlation between inappropriateness and inconsistency with the purpose of the law, but I do not agree that the latter is a special case of substantive unlawfulness (p. 133). The knowledge of foreign legal systems and the skill with which the dissertator carries out comparative analysis is impressive. The analysis of the case-law on the hypothesis that an act is based on an act of a court or other public authority which has subsequently been annulled is useful and I found it interesting to read (pp. 139 ff.). Detailed and at a high level is the casuistic enumeration of hypotheses of an admittedly criminal act, and the possibility of an incidental declaratory action under the Civil Procedure Code is not omitted. It is noteworthy that the offence must have affected the determination of the issue - the subject of the administrative proceedings - and not the content of the act, but I find that this is too broad an interpretation and will lead to difficulties in practice.

With regard to the ECtHR pronouncement as a ground for reopening, important case law of the court has been collected which will be useful to the reader should this thesis be published.

Chapter Three, entitled "Reopening under the AOPA. Other Reopening Proceedings" systematically complements the author's analysis of the scope of the institute in bordering branches of administrative law and has its importance for the construction of the overall scientific picture, and, I hope, for better informing the reader when publishing the work with a view to its practical applicability.

The changes to the institution of reopening have historically been introduced most recently in the AOPA (2020) and it is reasonable to believe that the experience gained has been most fully reflected in this Act.

The author has extensively researched the history of administrative punishment, including the history of administrative jurisdictions and the current variety of acts related to administrative punishment. All possible relevant literature on the subject has been collected. I find the suggestion to reconsider the role of the agreement, which is subject to reopening under the AOPA but not under the APC a contribution of the thesis, and the author is correct in his suggestion at p. 179.

The difference in principle between the APC and the AOPA is noted, with the latter statute reviewing judicial acts, but an analysis of the grounds under the AOPA may always provide grounds for reflection, especially since many of the acts subject to reopening under that statute are issued as a result of the activities of a body, systematically located in the executive branch, which in its practical day-to-day activities issues both administrative acts and acts in a position of penal jurisdiction.

The statement on the notion of "evidence" within the meaning of the Criminal Procedure Code (p. 184 et seq.) is reasoned and contributory. Analogies with Article 99 of APC are to be found in the sequential analysis of the grounds under Article 70 of the Code of Criminal Procedure, and parallel follow-up is always practical.

The analysis to clarify the grounds related to "non bis in idem", which is theoretically difficult and requires collecting and rethinking of a large amount of case law, including the ECtHR`s one, and legal literature, is detailed and contributory.

The analysis of Article 70(2)(8) of AOPA with an analysis of the possible interpretations of the term "administrative act" is practically important, as the hypothesis shows a close intertwining of the administrative and the administrative-penal process; I support the proposal de lege ferenda on pp. 205-206. The texts have been carefully analysed and even take into account the terminological inaccuracies introduced by the amendment of the AOPA (the terms 'request' and 'proposal' remain in the initiation of proceedings'). The proposal to amend the legislation on p. 212, which would clarify the statutory meaning, is also justified. The classification of the grounds for a request for reopening, made in relation to the grounds for reopening, which is made on p. 213 et seq. is practically useful, especially for didactic purposes, given that the author is also a lecturer at the Faculty of Law of Sofia University. Accurate is also the observation, motivated by case-law, about the absence of a limitation period under Article 70(2)(5) of the Criminal Code.

The author discusses extensively the special proceedings under Article 83f of the Criminal Code, which is a contribution of the dissertation, this procedure is considered relatively

rarely in our legal literature. The relevant case law and the contradictions between it and the ECtHR are reflected. The criticism of the legislation on pp. 228-229 is justified.

Practically useful are the observations on the special proceedings under the Land Law, which concludes the last chapter of the work.

The conclusion summarises the work and briefly systematises the contributions and proposals for legislative change.

The articles attached in the set of documents reflect different parts of the dissertation and demonstrate the growth of the PhD student, presenting the achievements in the process of his studies.

In summary: I find that the presented dissertation has a high scientific and scientific-practical level, and through the detailed research and systematization - didactic significance. I have no critical remarks, I would like to see the dissertation published.

I have found no evidence of plagiarism or use of other people's scientific contributions in a way not regulated by law.

I find that with the presented dissertation entitled "Reopening of the Proceedings on Issue of Individual Administrative Acts" the author Lyubomir Lambov Kyuchukov deserves to be awarded the degree of Doctor in the Field of Higher Education 3. Social, economic and legal sciences, professional field 3.6 Law, doctoral program Administrative Law and Administrative Procedure

Prepared the opinion
(Assoc. Prof. Konstantin Pehlivanov Ph.D.)

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Plovdiv