

To the Scientific Jury
of the Procedure for Associate Professor
in Administrative Law and Administrative Process
at the Faculty of Law of Sofia University
"St. Kliment Ohridski"

OPINION

in a competition for the academic position of Associate Professor, announced for the needs of the Faculty of Law of Sofia University "Kliment Ohridski" (SG 92 of 2022) in the scientific specialty Administrative Law and Administrative Process, field of higher education Social, Economic and Legal Sciences (3.), professional field Law (3.6.)

Candidate: **Ch. Asst. Prof. Kapka Svetoslavova Georgieva – Atanasova, Ph**

Prepared the opinion: **Prof. Plamen Kirov, PhD**

Distinguished members of the Scientific Jury,

By Order No. RD-38-664/20.12.2022 of the Rector of Sofia University I have been appointed as a member of the Scientific Jury for the competition for "Associate Professor" in Administrative Law and Administrative Process for the needs of the Faculty of Law of Sofia University "Kliment Ohridski". At the first meeting of the scientific jury I was commissioned to prepare an opinion.

The only candidate in the competition for associate professor is Ch. Asst. Prof. Kapka Svetoslavova Georgieva – Atanasova, PhD. She is a long-time lecturer at the Faculty of Law of Sofia University "Kliment Ohridski".

In accordance with the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria and its implementing regulations, the candidate has attached a complete set of documents for participation in the competition. All the legal requirements have been complied with in the announcement of the competition.

Kapka Georgieva - Atanasova graduated from the Faculty of Law of Sofia University in 2006 with a Master's degree in Law. In 2015, she obtained a Doctor of Law degree in administrative law and administrative process at the Faculty of Law of Sofia University "Kliment Ohridski" after successfully defended her dissertation on "Administrative Acts of the Energy and Water Regulatory Commission in the field of energy".

Since 2012 she has held the academic position of Assistant Professor at the Faculty of Law. The candidate is a conscientious teacher, perceived by her fellow faculty members and students as a dedicated lawyer with a thorough professional knowledge and at the same time is a thorough researcher.

Kapka Georgieva - Atanasova's professional legal experience is related to holding various expert and managerial positions in administrative structures – inspector-lawyer in the Directorate "Forfeiture in favour of the State" at the

Commission for Illegally Acquired Assets from 2006 to 2012 and Advisor in the Political Cabinet of the Deputy Prime Minister for Justice Reform and Anti-Corruption from 2017 to 2019. The practical experience gained from the above positions has had a beneficial impact on the conduct of Kapka Georgieva - Atanasova's research, while at the same time her in-depth legal knowledge has been of great benefit in the performance of the above positions. Kapka Georgieva - Atanasova is a serious and thorough author with interests in the field of little explored scientific areas such as: media law, administrative punishment, legal aid for persons with special status, constitutional foundations of administrative law, judicial oversight of the operational independence of administrative bodies.

She participated in the current competition with a solid quality scientific production of 6 scientific publications: a monograph, a study and scientific articles developed and published after obtaining the PhD degree. All of them have been published in established legal publishers and specialized collections. The presented works do not repeat those developed in the procedure for obtaining the degree of Doctor of Law.

It is evident from the attached reference that the publications of Assistant Professor Kapka Georgieva - Atanasova have been cited by numerous authoritative researchers in the field of law.

In the competition an independent monographic work on the topic "The Proceedings on granting protection to foreigners under the Asylum and Refugee Act" was submitted. The monograph offers a comprehensive conceptual and functional analysis of the administrative procedures and administrative protection in the context of the humane treatment of foreigners seeking protection from the Republic of Bulgaria.

The paper analyses the most important aspects of the current legislation and draws conclusions on the problem areas. The paper focuses on the

relevance of the contemporary regulation of the institution of administrative protection under the Asylum and Refugee Act. The monograph examines the procedures for granting protection to foreigners under the Bulgarian legislation and simultaneously analyses the international and European legal framework. The work contains many valuable contributions and is generally distinguished by the depth and analytical nature of the research.

The monograph focuses on the procedural rules under which protection is granted to foreigners, but also analyses a number of substantive issues 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, which are recognised and established both in international and EU law and in our domestic law, are outlined. Particular attention is paid to the prohibition of refoulement, as it is determinative of the entire procedure for granting protection and determines the interpretation and application of many specific rules.

The powers of the Chairperson of the State Agency for Refugees are examined through the prism of the general theoretical framework for the exercise of the powers of administrative bodies in the conditions of operational autonomy and bound competence. Particular attention is focused on the power of the Chairperson of the State Agency for Refugees to grant international protection. It is submitted that the legislator has not clearly and unambiguously expressed its will, and that it is therefore interpreted. This, according to the author, is a prerequisite for the formation of contradictory case-law on the matter and justifies the view that the competent authority should issue its acts in the context of a bound competence.

The monograph also examines hypotheses in which the grounds for granting different types of protection overlap. The view is defended that such mixing is inadmissible and creates legal uncertainty as it may lead to confusion

as to the competent authority and the procedure to be followed. It is argued that the conflation of the terms "asylum" and "protection of foreigners", which are often accepted as synonyms, is reflected in other branches of law.

Particular attention is paid to the notions of "administrative authority", "public authority" and "executive authority". The author devotes special attention to the executive authorities 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 was made to amend the provision of Art. 19, par. 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 competent authority 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.

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. Reasoned *de lege ferenda* proposals have also been made in the Asylum and Refugee Act to clarify the grounds for the President to grant asylum, so that there is no confusion about the type of protection an alien may seek and the procedure in which it should be granted.

A merit of the monographic work is the analysis of temporary protection and asylum procedures. It examines the case-law in challenging the issued acts, highlighting the trends in it and discussing certain imperfections in the legislation.

Of particular relevance are the considerations concerning the particulars of the application which initiates the international protection procedure. The study found that the application for protection lacked any particulars, including an indication of the specific type of protection sought by the alien. The difficulties that arise in this respect, both for the asylum seeker himself and for the law enforcement and law enforcement authorities, are noted. The author has made specific proposals on the requisites to be contained in the application for protection. These are to be highly appreciated as they have important practical significance and do not impede persons who do not know Bulgarian, such as asylum seekers. Various problems have also been identified in relation to the formulation and setting of time limits in the proceedings. A proposal has also been made to introduce explicit grounds for extending the time-limit for proceedings where such an extension is permissible, and to provide for an obligation on the determining authority to notify the person concerned where an extension is granted.

Interesting is the analysis of the statutory possibility of tacit withdrawal of the application for international protection, in which the author takes into account the considerable uncertainty that this implicit act can create in the legal reality, affecting to a significant extent the rights and interests of the person concerned.

In the area of supervision of the acts rendered in relation to international protection, the author proposes significant changes: extension of the subsidiary application of the APC; possibility to exercise administrative control where appropriate; abolition of the ban on appeals against certain acts that adversely

affect the legal sphere of the asylum seeker; alignment of all time limits for challenges under the Asylum and Refugee Act, facilitating the right to a remedy.

The scientific works presented by Kapka Georgieva-Atanasova are distinguished by the following peculiarities: they refer to unexplored or poorly explored problems of law; they cover topics of important theoretical and practical significance; they are developed using knowledge from different legal fields.

The quality of the candidate's scientific work submitted to the competition fully meets the requirements of the law. They contain numerous scientific contributions. The publications have not only theoretical but also substantial practical significance. Kapka Georgieva-Atanasova demonstrates a high ability to formulate and argue her scientific theses.

In the presented scientific works there are individual inaccuracies, poorly argued theses, cases of self-serving criticism of the existing legal framework without pointing out proposals for its improvement. In some places there is also an unjustified refusal to engage in scientific polemics. These minor shortcomings are not of a nature to affect the numerous contributions and undoubted merits of the candidate's publications. The analysis of the scientific achievements of Kapka Georgieva - Atanasova categorically leads to the conclusion that they are a novelty in administrative law science and enrich the existing knowledge in this area of legal doctrine. In general, the scientific developments are distinguished by precision and thoroughness.

The review of the teaching and research activities of Kapka Georgieva - Atanasova shows that all legal requirements for holding the academic position of Associate Professor at the Faculty of Law of Sofia University "Kliment Ohridski" are in place. The presented monograph and the other scientific works

represent a significant contribution to the development of Bulgarian legal science and deserve a positive evaluation.

Considering the analysis and the conclusions in this opinion on the scientific works presented in the competition, I categorically stand by the opinion that the candidate Kapka Georgieva - Atanasova meets all the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria for holding the academic position of “Associate Professor”. Therefore, with firm conviction, I recommend the esteemed scientific jury to take a decision and to propose the election of PhD Kapka Georgieva - Atanasova to the academic position of Associate Professor in Administrative Law and Administrative Process - professional field 3.6. Law, field of higher education 3. Social, Economic and Legal Sciences.

Conclusion

In view of the contributions in the presented works, the overall scientific creativity and the long-standing teaching activity of the candidate, I recommend the distinguished members of the scientific jury to vote positively for the decision to propose to the Faculty Council of the Faculty of Law of Sofia University "Kliment Ohridski" to elect Kapka Svetoslavova Georgieva - Atanasova to the academic position "Associate Professor" in the scientific specialty Administrative Law and Administrative Process.

Sofia
12.03.2023

Prepared the opinion:
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