

OPINION

by Prof. Darina Zinovieva, Institute for the State and Law, BAS and Faculty of Law of PU "P. Hilendarski"

about a dissertation on:

LYUBOMIR LAMBOV KYUCHUKOV

RESUMEPTION OF PROCEEDINGS FOR ISSUING INDIVIDUAL ADMINISTRATIVE ACTS

for awarding an educational and scientific degree "doctor" in professional field 3.6 Law /administrative law and administrative process/,

with scientific supervisor Prof. Tsvetan Sivkov

Dear members of the scientific jury,

1. General notes

Lyubomir Kyuchukov presents the necessary documents related to the dissertation defense procedure. There are three publications related to the dissertation topic. The abstract reflects the contributions of the doctoral student and is prepared in accordance with the requirements. He is an assistant in administrative law and process. There is also practical experience in attorney at law companies.

2. Analysis and evaluation of the dissertation work

The structure of the dissertation is very good - it consists of an introduction, three chapters and a conclusion. The used bibliography of Bulgarian authors is in a volume showing extensive knowledge of our administrative-legal doctrine. The judicial practice related to the subject of research is skillfully selected and illustrates the author's theses very well. The dissertation work is distinguished by the fact that, to date, there

is no complete monographic study of the resumption of proceedings for the issuance of administrative acts under the APC and, at the same time, the resumption under Art. 70 et seq. of the Law on Administrative Violations and Penalties (ZANN).

A contribution to the doctrine is the comparative analysis of the proceedings for the resumption of the individual /general/ administrative acts and the resumption under the ZANN, with the author skillfully highlighting the similarities and differences in the two legal institutes.

Thus, already in the first chapter, Lyubomir Kyuchukov makes the main distinction between the type of act subject to renewal under the APC and ZANN, namely - administrative act and judicial act.

In the analysis of the resumption according to the APC, the author makes a correct proposal to differentiate the resumption as an extraordinary method of control, supervision and inspection. This conclusion should be evaluated positively, in view of clarity in practice.

The author analyzes in great detail each of the grounds for resumption and points out the weaknesses of the legislation. Accordingly, he also makes proposals to optimize the legislation. Of particular importance for the doctrine is the author's reasoned opinion that resumption can have a legal role of prevention as well. Lyubomir Kyuchukov further expands its application by qualifying the preventive legal nature of the renewal proceedings as a balancing factor between the "clash" of the principle of legal certainty and the principle of legality. The author's position is innovative and I believe it deserves to be supported.

In the analysis regarding the applicability of the principles in administrative punishment, a positive assessment should be given to the analysis of the non bis in idem principle in the proceedings for reopening under the ZANN. In view of the interpretative practice of the Supreme Court and the European jurisprudence, an analysis in the doctrine of administrative punishment exists, but here the author focuses it only in the recovery proceedings and formulates conclusions that deserve encouragement.

Of cognitive importance is the part of the dissertation in which the historical development of the legislation regulating resumption is considered.

Of particular importance are the author's conclusions regarding the rights of bona fide third parties, as well as his proposal to optimize Article 105 of the APC.

The good knowledge of the practice of the court in Strasbourg and the justification of a number of hypotheses with decisions of the court should be emphasized.

In the third chapter, with the subject of the resumption according to the ZANN, the author again comments on the differences between the concepts of "control", "supervision" and "inspection" as forms of control activity, and his proposal to amend Article 70, para .1 of the ZANN to introduce the term "revision", with a view to greater precision

In the analysis of each of the grounds for resumption under the ZANN, the author draws in-depth conclusions, comparing them with grounds from the APC, where he finds it necessary. The author's idea deserves high praise, as I indicated above, because it is innovative, leads to reflection on elements of the parallel proceedings and to valuable doctrinal conclusions.

The author correctly comments on the discrepancy between Art. 70 ZANN and Art. 84 ZANN, on the occasion of the name of the procedural action for initiating the renewal proceedings. We agree with the proposals to streamline the legislation in this part.

The completeness of the dissertation work was also achieved with the inclusion of the analysis of the part of the ZANN related to the scope of the resumption under Art. 83e ZANN. The author makes a number of conclusions and corresponding propositions *de lege ferenda*, which we support, such as the impossibility of reopening proceedings if the court of competent jurisdiction has issued a decree.

The analyzes of the special laws, compared to the general renewal proceedings under the APC, also contribute to the completeness of the researched topic. So e.g. the analysis of the application of ZUSEFSU and all the specifics that are present due to the imperfections in the law that the author has indicated is very strong.

In summary, the author Lyubomir Kyuchukov has developed a dissertation at a level far exceeding the requirements for a dissertation. He demonstrates a thorough knowledge of administrative law and process, as well as knowledge of our and foreign doctrine and jurisprudence. His ability to handle both positive administrative law and administrative-criminal law is impressive. Comparative legal analyzes of elements of both types of recovery proceedings show skills for

comprehensive deployment in administrative law and process. The dissertation contains valuable conclusions, proposals for the optimization of legal norms, criticism of legal imperfections and difficulties in law enforcement

3. Critical notes:

I recommend that the work be published in a book. There are imperfections in the work, which the author should overcome during possible subsequent editing. Thus, on page 79, the concluded public procurement contract is defined as an "administrative contract", without mentioning the amendment in art. 19a, paragraph 1 of the APC from 2018, which requires the special law to explicitly provide for its type. Regarding the author's idea to exercise the rights of the affected persons mediated through the ombudsman, it is good to continue the analysis, with the hypothesis of the ombudsman's refusal to refer the competent authority to resume the proceedings.

These remarks do not detract from the merits of the work and any positive results achieved for doctrine and legislation. The title should be amended to include the analysis according to ZANN.

CONCLUSION:

In view of the above and the observed requirements of the law, I consider that the dissertation meets the requirements. It represents scientific and applied research, at a high doctrinal level, with useful results.

I give my positive assessment and propose to the scientific jury to award the educational and scientific degree "doctor" to LYUBOMIR LAMBOV KYUCHUKOV in professional area 3.6 Law /administrative law and administrative process /, in the Faculty of Law of SU "St. Kl. Ohridski".

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/prof. Darina Zinovieva/