

REVIEW

by Prof. Emilia Parvanova Panayotova, PhD, Lecturer in Administrative Law and Administrative Procedure at the Faculty of Law of Sofia University "St. Kliment Ohridski"

on: dissertation for the award of scientific and educational PhD degree in the field of higher education 3. "Social, Economic and Legal Sciences", professional field 3.6. "Law" (Administrative Law and Administrative Procedure) to Lyubomir Lambov Kyuchukov, part-time PhD candidate at the Department of Administrative Law of the Faculty of Law of Sofia University "St. Kliment Ohridski", with topic of the dissertation work: "Resumption of the Procedure for Issuance of Individual Administrative Acts".

I. Concerning the Procedure for the Defence of the Scientific and Educational PhD Degree

I have been appointed as a member of the scientific jury in the procedure for the defence of a dissertation on the topic "Resumption of the Procedure for Issuance of Individual Administrative Acts" by Lyubomir Lambov Kyuchukov, part-time PhD candidate at the Department of Administrative Law of the Faculty of Law of Sofia University "St. Kliment Ohridski" by Order No. RD-38-62/31.01.2024 of the Rector of Sofia University "St. Kliment Ohridski". By decision of the scientific jury, adopted at its first meeting, I have been appointed as a reviewer for the procedure.

A dissertation of 248 pages has been submitted under the procedure, as well as three articles in specialized scientific journals related to the research topic of the dissertation, as follows:

1. 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. 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. Historical Development of the Resumption of the Administrative Proceedings and Future Prospects for this Legal Institution, ‘De Jure’ Legal Journal, Issue 2/2021.

The submitted dissertation and the publications in specialized scientific journals meet the formal requirements for conducting a dissertation defence procedure for the award of the educational and scientific PhD degree, according to the legal and regulatory framework in force with regard to the procedure, as well as the requirements of the Regulations for the Conditions and Procedure for the Acquisition of Scientific Degrees and Academic Positions at the Sofia University "St. Kliment Ohridski".

II. About the PhD Candidate Who Prepared the Dissertation

Lyubomir Lambov Kyuchukov graduated from the First English Language School – Sofia in 2014 and completed his higher education in Law at the Faculty of Law of Sofia University "St. Kliment Ohridski" in 2020. In 2021 he was accepted as a PhD candidate at the Department of Administrative Law of the Faculty of Law, and from 2022 and currently he is an Assistant Professor at the Department. Along with his professional involvement as a lecturer, he also practices as a lawyer.

III. On the Submitted Dissertation Work

1. The dissertation study submitted in the procedure for obtaining the scientific and educational PhD degree is devoted to a topical area of research – the control of the legality and correctness of individual and general administrative acts. The extraordinary administrative review procedure has been considered in the context of the administrative procedure in a broad sense in a number of scientific publications, but so far in the Bulgarian legal theory it has not been the subject of an independent comprehensive study, which also includes a comparative analysis

with the resumption under Article 70 et seq. of the Administrative Violations and Sanctions Act (AVSA) and other special laws, therefore the presented dissertation undoubtedly represents a scientific novelty.

2. On the basis of a thorough analysis of the legislation, the theory and the jurisprudence – Bulgarian and European, the study is aimed at answering the question of the nature and character of the resumption as a procedural legal institute, outlining its scope under the Administrative Procedural Code (APC), the AVSA and special laws through an analysis of the similarities and differences in the prerequisites and grounds for the initiation of the procedure, the subjects with the power to initiate it, the time limits and the legal consequences of its conduct. By addressing these tasks, the aim is to identify the main problems and contradictions in the legal framework and to propose answers to the controversial issues, including through legislative changes, thereby contributing to the development of the institute.

3. The study is based on a skilful use of the historical and comparative legal method

The historical method is used to trace the emergence and evolution of the legal figure of resumption within the stages of development of the Bulgarian administrative procedure from the Liberation to the present day. The comparative legal method allows to establish the similarities and differences between the legal frameworks of the resumption of procedures for the issuance of individual administrative acts in Bulgaria and these in the legal systems of Germany, Italy, Spain, Poland, Greece and Serbia, by pointing out some solutions adopted in the Bulgarian legislation.

4. The dissertation has a structure that contributes to achieving the research objectives.

It consists of an introduction, three chapters and a conclusion. A table of contents is included, together with a list of abbreviations, and a list of references used, containing 104 titles, 88 in Cyrillic and 16 in Latin. There are 338 footnotes.

Chapter One is devoted to the concept of resumption, the legal framework and the historical development of this institute. The first section analyses the scope of the concept and how and to what extent this legal figure ensures the application of the basic principles of administrative law and administrative procedure. The

second section examines the emergence of resumption and the development of its legal framework after the Liberation up to the present day within three periods – the times of the Bulgarian Kingdom, the People's Republic of Bulgaria and the Republic of Bulgaria after the adoption of the 1991 Constitution. The third section provides a comparative legal overview of the resumption in the legal systems of some EU Member States and some Balkan countries.

The second chapter focuses on the resumption of procedures for the issuance of individual and general administrative acts under the APC. The first section outlines the scope of application of the institute in the Code and specifies hypotheses of administrative acts, for the amendment or revocation of which special normative act provides rules different from the general ones. The second section deals with the resumption procedure – the subjects on whose initiative they may be initiated, the time limits in the procedures and the powers of the deciding authority. The third section is devoted to the grounds for resumption procedures, which are divided into three groups – substantive grounds, procedural grounds and grounds belonging to both groups.

Chapter Three is entitled "Resumption under the AVSA". Section one is devoted to the resumption of administrative penal proceedings after the changes in the AVSA, in force since 23.12.2021. The second section deals with the special procedure for resuming administrative penal proceedings in the event of liability of legal persons for enrichment from criminal activity. The third section analyses the procedure under Article 14, para. 7 of the Agricultural Land Ownership and Use Act (ALOUA) as an example of a special law regulating resumption of procedures for the issuance of an individual administrative act.

5. The dissertation is based on scientific sources in Bulgarian, English, Polish and Serbian. For the purposes of preparing his doctoral thesis, Lyubomir Kyuchukov has used relevant sources of legislation in the law of EU Member States and Serbia, as well as decisions of the Constitutional Court, administrative courts and the Supreme Cassation Court, case law of the CtJEU and the European Court of Human Rights.

6. In summary, the main contribution of the research can be defined as its concrete practical orientation to overcome the problems and uncertainties in the regulation of the institute of resumption. It is manifested in the following well-argued proposals:

= to clarify the scope of the resumption in Article 99 of the APC in view of the expanded definition of an individual administrative act in the APC, which has been in force since 2018;

= the need to amend the power to impose a financial correction, where in addition to increasing the amount of the financial correction, to be included the possibility of reducing the amount of the financial correction through the resumption under Article 74 of the Management of Resources from the European Funds under Shared Management Act;

= clarification of the provision of Article 101 of the APC, taking into account the difference between the legal effect and legal force of final individual and general administrative acts;

= elimination of an inaccuracy in the wording of the provision of Article 105 of the APC, regulating the rights of *bona fide* third parties acquired by virtue of the act, which cannot be applied in practice in all cases of amendment or revocation of a valid act;

= proposal to include in the hypothesis of Article 99, item 3 of the APC the witnesses and the experts to the scope of persons, perpetrators of a criminal deed committed by them as participants in the proceedings;

= the proposed deletion of the specification "which contradicts it" in the provision of Article 99, item 5 of the APC, because the simultaneous effect of two administrative acts in force, issued on the same matter by the same authority for the same persons, is inadmissible, whether the two acts contradict each other or not.

= Article 103, para. 5 of the APC to include as subject to annulment, in addition to the unlawful act, also the incorrect act, since the review of correctness is within the competence of the administrative deciding authority;

= the elimination of the prerequisite for the realization of the ground under Art. 70, para. 2, item 6 of the AVSA – "essential importance of the established

violation of the ECHR for the file or the case", due to the existence of already high requirements for the admissibility of an appeal before the Strasbourg Court – "exhaustion of all remedies at national level";

= to limit the possibility provided for in the AVSA for the review of the act by the owner of the confiscated property only to the part where his rights are affected. Otherwise – if the entire act is revoked at the request of the owner – the offender would be unduly favoured. Article 72, para. 2 of AVSA, declaring the necessity of a legal interest, to also be deleted;

= as a prerequisite for the realization of the liability of the legal entity under Art. 83a et seq. AVSA to be included the requirement for an unquestionable establishment by a final verdict of the crime committed by the natural person;

= to the scope of resumption in the hypothesis of Art. 83f, para. 1 of the AVSA to be added also the court rulings by which the motions for review under the extraordinary review are left without consideration or by which the procedures are terminated.

7. The three additional articles presented are devoted to different issues of resumption, and the analysis is incorporated into the content of the work. In all of them, the author presents his opinion on the discussed issues in a reasoned manner. The issues discussed are not only theoretical but also of practical importance, and the conclusions drawn can be used both to improve the legislation and to unify its interpretation and application.

IV. Conclusion

Considering the above, I express my positive evaluation of the dissertation submitted for defence. I consider that it meets the requirements of the Development of the Academic Staff in the Republic of Bulgaria Act (DASRBA) and the Regulations for the Application of the DASRBA for obtaining the educational and scientific PhD degree, as well as the relevant provisions of the Regulations for the Procedures and Conditions for the Acquisition of Scientific Degrees and the Occupation of Academic Positions at the Sofia University "St. Kliment Ohridski".

I propose to the members of the scientific jury that Lyubomir Kyuchukov be awarded the educational and scientific PhD degree in the field of higher education

3. "Social, Economic and Legal Sciences", professional field 3.6 "Law"
(Administrative Law and Administrative Procedure).

Sofia, March 2024

Signature:

Prof. Emilia Panayotova, PhD