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RESUMPTION OF THE PROCEDURE FOR ISSUANCE OF INDIVIDUAL ADMINISTRATIVE ACTS

ABSTRACT

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The materials for the defense are published on the website of the Sofia University ‘St. Kliment Ohridski’ and are available to third interested parties at the Law Faculty Library.

I. GENERAL CHARACTERISTICS OF THE DISSERTATION

1. Relevance of the Topic

The public relations that arise when individual administrative acts (IAA) and general administrative acts (GAA) are issued and enter into force are key to administrative material and procedural law. The legality of these acts is the basis of the administrative activity of the public authorities, and the stable administrative acts create rights and obligations for legal subjects. This legality is presumed, since the executive activity is secondary, i.e. it is carried out on the basis of, in implementation of and within the framework of the law.

The presumption of legality of administrative acts (AA) is, however, rebuttable and this presumption has two general directions of understanding. Firstly, it is a guarantee of the protection of the rights and legitimate interests of the addressees of the acts, who are not holders of state power. Furthermore, it is also a means of ensuring that there is no contradiction between subordinate and statutory provisions and, consequently, that the rule of law functions properly through the state authorities. Therefore, the control of legality, both before and after the entry into force of administrative acts, is important for both typical parties of the administrative legal relationship – citizens and their organisations, on the one hand, and the state, on the other.

The reopening under Art. 99 et seq. of the Administrative Procedure Code (APC) is a legal figure for extraordinary review of IAA and GAA which have entered into force. So far it has not been the subject of an independent detailed scientific study in Bulgarian legal theory. However, it has been considered as a separate procedural figure in the context of administrative procedure in a broad sense – as one of the procedures regulated by the APC.

Despite the amendments to the Code, in force since 2019, the resumption procedure was not fully clarified. A number of issues remained open for theoretical discussion, including the prerequisites and grounds for initiating this extraordinary procedure, the persons, entities and state authorities with the power to initiate it, the time limits and the legal consequences of its conducting. The present dissertation aims to answer some of these questions and to make proposals for their clarification through legislative amendments.

The study of the subject of the reopening of the proceedings for the issuance of the IAA (and the GAA) would remain incomplete without a comparative examination of the reopening under Art. 70 et seq. of the Administrative Violations and Sanctions Act (AVSA). The similarities and the differences between the two types of reopening, their common genesis in the Bulgarian legal system and the scope of their application will also be analyzed in detail in the study. In order for it to be fully relevant, the work will also refer to the case law, which is also not unambiguous on the interpretation of some of the abovementioned issues.

All of the above provoked our scientific interest to study the legislation, theory and court practice at national and European level related to resumption, not only in general, but also in its special hypotheses, with the intention to contribute to the development of this legal figure.

2. Object and Subject of the Study

The dissertation is a comprehensive monographic study. **The objects of** the scientific analysis are the administrative legal relations that arise in the resumption of the proceedings for the issuance of the IAA (and the GAA) as a means of extraordinary judicial control. As an

additional object of study, for the purposes of tracing the historical development of the institute and of the comparative analysis, the dissertation also focuses on the legal relations in the field of administrative activity related to the reopening under the AVSA and other special laws.

The subject of the study are the provisions of the APC, the AVSA and the special laws that regulate the resumption, the exhaustively listed grounds for initiating the proceedings, the time limits for revoking an IAA or GAA entered into force, the subjects in the procedure, their rights and obligations, and the legal consequences of their conduct. The study also focuses on the status of the final administrative acts and the significance of their formal legal force according to theory and practice. In a comparative legal aspect, the subject of this scientific work also includes legal norms concerning the resumption of administrative proceedings in foreign legal systems, some of which are adopted in the Bulgarian modern legislation.

3. Aim and Objectives of the Study

The dissertation **aims** to examine the nature and character of the resumption as a procedural law institute, as well as its interaction with the principles of administrative material law and administrative procedure. Emphasis is placed both on the general proceedings of reopening and on its special hypotheses.

The objective is thus achieved through the following **tasks**:

- analysis of the concept of individual and general administrative acts, the legal force and legal effect of the enacted IAA and GAA;
- determining the scope of the reopening under the APC;
- analysis of the grounds for reopening administrative proceedings under the APC;
- systematizing the grounds into three groups – material, procedural and those belonging to both of the previous categories;
- outlining the similarities and differences in the grounds under the APC and the AVSA, as well as the impact of other procedural regulations on the reopening – for example, the ones envisioned in the Code of Tax and Social Security Procedure (CTSSP);
- study of the main problems and controversies in the regulation of the resumption;
- suggesting interpretations and possible solutions to overcome specific problems;
- making *de lege ferenda* proposals for amendments and improvements to legislation.

4. Research Methodology

In order to achieve the scientific goal and the tasks set in the dissertation, the following general scientific methods were used: observation, description, comparison, method of scientific analysis and synthesis, inductive and deductive methods.

The methods of historical and comparative legal analysis are also used to trace the development of the regulation of public relations in the field of resumption, as well as the similarities and differences in the way it is regulated in Bulgaria and in other Balkan and European countries.

5. Practical Significance

This dissertation is an attempt at a detailed and complete scientific study of different types of resumption. The benefits for the legal practice can be summarized as follows:

- the national legal framework governing the reopening procedure is examined;
- the practice of the Supreme Administrative Court (SAC), the administrative courts, as well as the acts of some special jurisdictions, such as the Commission for Protection of Competition (CPC) are studied;
- some inaccuracies in the legal framework concerning the resumption are highlighted;
- *de lege ferenda* proposals are made for amendments to the current legislation;
- proposals are made to unify the conflicting case law;

6. Scope and Structure of the Study

The dissertation is 257 printed pages long, as calculated by the standard formula: 'total amount of signs/1800'. The work 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 and 338 footnotes have been made.

The dissertation consists of an introduction, three chapters and a conclusion. Each of the chapters 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.

II. CONTENT OF THE DISSERTATION

Introduction

The introduction outlines the topic of the paper and justifies its importance. It lays the foundations of the study, which are built on fundamental principles and concepts of administrative law and administrative procedure and their interpretation in the case law of national courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR). The scientific approach used to construct the exposition is presented, namely the simultaneous use of inductive (from the specific conclusions to the general ones) and deductive (from the general conclusions to the specific ones) methods to cover all aspects of the topic. The structure of the work is presented and the subject scope of each chapter is clarified. The author's aim for the study is outlined.

Chapter One
Concept of the Resumtion. Regulatory Framework. Historical Development

Section I. Concept of Resumption

In the first paragraph of Section I, Chapter I of this dissertation, the concept of reopening of the proceedings for the issuance of IAA and OAA is discussed. As there is no legal definition of reopening, such is proposed, namely that it is a legal institute in the administrative procedure, by means of which a factual or legal situation, already decided by an administrative act which has entered into force, is brought up for reconsideration. Each of the components of this indicative definition is examined.

First of all, a distinction is made between the notion of 'resumption' as a separate type of proceedings and as a stage of other administrative proceedings, on the one hand, and between

reopening in the administrative procedure and in other branches of procedural law – for example, in the field of criminal procedure, where this notion is also present.

In order to avoid defining one unknown concept with another, the concept of administrative procedure, which is accepted in theory, is examined in broad and in strict sense. An analysis is made of the ways in which the administrative procedure in the broad sense can lead to the fact of the entry into force of the administrative act – through proceedings developing both entirely within the sphere of executive power (uncontested proceedings and administrative challenges to the AA) and outside of it (judicial challenges to the AA).

With regard to the type of the final act, the first parallel between the reopening under the APC and the AVSA is established – in the first case it is an activity for the application of law, and in the second – a form of enforcement. Therefore, in the case of reopening under the APC, the transfer of the dispute outside the sphere of the executive power is excluded (except in the case of a challenge to the refusal to initiate reopening proceedings, which is discussed in Chapter 2 of the thesis), while under the AVSA resumption in the general hypothesis is subject to the jurisdiction of the administrative courts. The extension of the scope of the institute beyond the APC and the AVSA to special laws is positively assessed, with the clarification that this trend should not lead to the abolition of the extraordinary nature of the reopening procedure.

The second paragraph of Section One, Chapter One, aims to get to the essence of the concept of resumption by examining its interaction with the principles of administrative law and administrative procedure, the governing legal framework and the legal consequences of the resumption proceedings.

The prevailing view in the Bulgarian legal theory on resumption as an extraordinary means of judicial control is analyzed. A conclusion is made on the necessity of specifying the hypotheses and grounds under which a material legal issue, decided by a final act, may be raised for review. Particular attention is paid in this sense to the importance of the formal legal force of administrative acts and the res judicata effect of judicial acts as concepts thoroughly studied in legal theory.

Next, also based on the theoretical achievements of legal science, the work examines in detail the concept of judicial administrative control and its types. This is important because the competent authority in the resumtion, depending on the type of resumption, may be either within or outside the system of executive power. A suggestion is made to distinguish between reopening as an extraordinary means of control, of supervision and of review.

Review is available where, in the absence of a superior administrative authority, the authority which issued the act is competent to consider the request for resumption. Supervision, according to the present thesis, is concerned when the supervisory authority, as part of the judiciary system, examines a final judicial act of an executive authority. Control in strict sense occurs when the deciding authority in the resumption procedure is the superior authority situated hierarchically and immediately above, but within the same system as, the authority that issued the act – i.e. the superior administrative authority. For the sake of clarity, examples are given for each case.

At the end of the paragraph, on the basis of the preceding reflections on the interaction between the executive and the judiciary systems in the exercise of judicial control, a conclusion is drawn on resumption as a means not only for overcoming the stability of the AA, but also for their further strengthening. This conclusion is based on the consideration of the grounds for reopening as additional criteria of legality known in advance to the authorities or as a form of preventive control. The understanding of reopening as a means of prevention in addition to the

traditional view for the resumption as a means of consecutive control is new to the legal theory and jurisprudence and could be regarded as a theoretical contribution of the thesis.

In the third paragraph of Section One, Chapter One, the notions of legal principles in general and of the principles of administrative material law and administrative procedure in particular are discussed. A comparison is made between the principles in Art. 2 of the Administration Act and in Art. 4-14 of the APC. Insofar as reopening is a procedural institute, the principles laid down in Chapter 2 of the APC are chosen as a foundation.

A detailed analysis is made on the seeming opposition in which the reopening proceedings place the principles of legality and truthfulness, on the one hand, and the principle of legal certainty, on the other. This opposition is justified by the fact that the resumption constitutes a means of overcoming the formal legal force of administrative acts. However, it thus undermines the certainty which the addressees of the AA have in its legal effect and in the stability of its legal consequences. A conclusion is drawn that the principle of legality, as an objective principle important for the functioning of the rule of law and the separation of powers, prevails over the principle of legal certainty, which is more subjective and is based on the uniform application of operational autonomy in similar cases.

However, another perspective is also presented, in the context of resumption as a form of prevention. Regarded this way, the institute can also be seen as a means of ensuring legal certainty, insofar as the additional requirements for administrative authorities in the exercise of their powers may help to ensure uniform application of the law in similar situations under conditions of operational autonomy. This perspective is proposed as an opportunity to overcome the apparent conflict that has emerged, without one principle overriding another. A final conclusion is drawn of complementarity, as opposed to contradiction, between the abovementioned principles.

Other principles, different from the foundational ones, but characteristic for the resumption proceedings, are also presented – proportionality, procedural equality, the ex officio principle, etc. Attention is paid to some of the principles specific to administrative criminal proceedings – legality of offences and penalties, *'non bis in idem'*, *'reformatio in pejus'* - and their implementation in the resumption under the AVSA.

Section II. Historical Development

The first paragraph of Section II, Chapter One, begins the historical overview of the legal framework of the resumption. The initial stage of the development of the Bulgarian administrative procedure in general is considered to be the adoption of the first Administrative Justice Act (AJA) of 1912. The establishment of the Supreme Administrative Court (SAC) with its seat in Sofia by the AJA is highlighted as an important fact in the history of Bulgarian administrative justice. The Act regulated the jurisdiction of the SAC in administrative disputes. It is concluded that there can still be no implementation of a procedure for reopening administrative proceedings, since the Act itself defines the procedure for revoking final decisions of special jurisdictions as a cassation procedure.

Next, the Administrative Justice Ordinance (AJO) adopted in 1934 is examined. The appearance of two-tier administrative procedure is noted.

In the second paragraph of Section II, Chapter I of the dissertation the socio-political changes in the Bulgarian state after 1944 are indicated as the beginning of the second stage in the historical development of the administrative process. Attention is paid to the theory of unity of

power established in this period, where power was divided into three functions – legislative, executive and judicial.

As a step forward in the historical development of Bulgarian administrative law and procedure is taken into account the adoption of the Code of Civil Procedure (CCP) of 1952 (revoked), where for the first time the institute of 'supervisory review' is regulated – the possibility of extraordinary review of acts that have entered into force.

Emphasis is placed on the justified criticism in the Bulgarian legal theory of the fragmentary regulation of the administrative process, thanks to which the idea of its codification emerged. The adoption of the Administrative Procedure Act (APA) of 1970 is identified as a next positive step. The work criticizes the reference of the 1970 APA (revoked), and later the 1979 APA (revoked), to the grounds for 'supervisory review' in the CCP. The furhter distinction of the resumption as an independent legal figure for the first time in the Administrative Violations and Sanctionss Act (AVSA) of 1969 and its significance for the development of the institute in the administrative process is noted.

The last paragraph of the second section of Chapter One summarizes the contemporary stage of the historical development of the resumption – from 10.11.1989 to the present day, in the context of the establishment of a democratic form of government by the Constitution of the Republic of Bulgaria of 1991 and the return to the principle of separation of powers as fundamental for modern European rule of law. A positive assessment is given to the codification of the Bulgarian administrative procedure with the adoption in 2006 of the APC and the regulation of the resumption as a separate legal figure in the Code.

Section III. Resumption in Other Legal Systems

The first paragraph of the third section of Chapter One is focused on the comparative legal analysis of the reopening of administrative proceedings in the legal systems of EU Member States in Western and Central Europe. In particular, attention is paid to the legal framework in Germany, Italy, Spain and Poland. The similarities and differences between the resumption in Bulgaria and in the mentioned countries are examined, taking into account some legislative solutions that have been adopted from these legal systems.

In the second paragraph of Section III, Chapter One, we focus our attention on the resumption in the legal systems of some Balkan countries, with Serbia and Greece taken as examples. The particularities of the scope of the proceedings, the grounds and the authorities competent to review the final administrative acts in the two countries are noted. The benefit of this comparative legal analysis is that it becomes the basis for making particular legislative proposals to the Bulgarian legislator in Chapter 2 of the thesis.

Chapter Two
Resumption Under the APC

Section I. Scope

In the first paragraph of Section I of Chapter Two the legal framework of the proceedings for resumption of the issuance of the IAA and the GAA is outlined. The main focus of the study are Art. 99 et seq. APC. A distinction is made between the absence of a judicial challenge to the final act, as a negative procedural prerequisite for the initiation of the proceedings, and the

grounds for resumption, as applicable only in the presence of this prerequisite.

The lack of a unified definition of the term 'administrative act' on the one hand, and the failure of the legislator to update the legal framework of the resumption after the extensive changes in the APC of 2018, effective from 2019, on the other hand, are subject to criticism. The possibility of persons performing public functions and organizations providing public services to issue AA, but also their actual inability to be decisive authorities in the proceedings for the resumption, is analyzed in detail. The reason is that these issuers of AA are not holders of administrative power in strict sense, but only of certain expressly provided public powers which are transferred to them for a specific statutory purpose. Hence, they cannot exercise the form of judicial activity, typical for the competent authority in the resumption proceedings. Examples of such hypotheses are provided for the sake of clarity. Outside the scope of resumption, according to the thesis, remain the administrative acts which issuance lacks the initiation and development of procedure. Such are, for example, verbal and conclusory AA.

In the light of the analysis carried out on the scope of application, *de lege ferenda* proposals are made for refining the legal texts establishing the resumption so that they reflect the current understanding of the concept of 'administrative act'. As a basis is proposed the construction of Art. 70 of the AVSA – a provision reflecting the up-to-date legislative technique.

For the sake of completeness, the procedure for issuing general administrative acts is also examined. It is concluded that the provisions of Art. 99 et seq. APC do not apply to the GAA, issued in verbal or conclusory form as well.

The second paragraph of Section One, Chapter II focuses on those AA that are not subject to review under Chapter Seven of the APC after they become effective. As an example of such AA are indicated licencing AA and revision AA regulated by special laws and subject to amendment and/or revocation after their entry into force on the grounds regulated by these laws.

The third paragraph focuses on a specific category of AA – the decisions for imposing financial corrections under Art. 74 of the Management of Resources from the European Funds under Shared Management Act (MREFSMA). Although their legal framework is established as a *lex specialis* outside the APC, regarding the resumption under Art. 74 of the MREFSMA reference is made to the regulations of resumption grounds and procedure provided for in the Code. The decision of the legislator to evisage only the increasing of the financial correction via resumption is subject to criticism. This legislative decision is contrary to the possibilities provided for in the APC for the decision-making authority to uphold, amend or annul the act as a result of the reopening. A proposal is made to clarify this contradiction, either by making a full reference to the APC or by creating a completely separate procedure for amending this category of acts in the *lex specialis*, without any connection with the Code.

Section II. Resumption Procedure Under Chapter Seven of the APC

The first paragraph of Section II, Chapter Two of the dissertation introduces the resumption procedure under Chapter Seven of the APC. The subjects who may initiate an extraordinary review of an administrative act that has entered into force are defined in Art. 100 APC. Emphasis is placed on the amendments to the Constitution of the Republic of Bulgaria, in force since 22.12.2023, in particular on the powers of the prosecutor in the reopening proceedings. The possibility for the ombudsman to submit a proposal for reopening and for the administrative body itself to initiate the proceedings, by virtue of the ex officio principle, are also examined. The differentiation between the bodies that may initiate the procedure is discussed, in

view of the grounds under Art. 99, i. 1-7 APC, namely that under items 2-7 the addressees may also initiate the procedure. To the circle of subjects with active standing, third parties to whom the act has effect but who were not parties to the proceedings are also considered. A proposal *de lege ferenda* is made to refine the current provision of Art. 101 APC, drawing attention to the difference between legal effect and legal force of an AA.

The second paragraph of Section II, Chapter Two concerns the time limits for initiating the procedure. They are favourably evaluated with a view to preserving the extraordinary nature of the procedure. The question why the maximum period of one year for the annulment of a final act does not affect the rights of the persons concerned and does not constitute a legislative omission is answered.

The third paragraph of the Section discusses the powers of the adjudicating authority in the proceedings. The provision of Art. 103, para. 3 APC, which equates the refusal to reopen not to an administrative act, but to a refusal to initiate proceedings to issue an act, is analyzed. By citing case-law and drawing conclusions, the merits of this legislative decision are argued. As an example of the implementation of the principle of *ex officio* commencement of the procedure, the power of the determining authority to constitute the parties to the proceedings is highlighted. The provision of Art. 105 APC concerning the rights of third parties in good faith acquired by virtue of the act is criticized. The inaccuracy of the current wording of the provision, which cannot be applied in practice in all cases of amendment or revocation of the final act, is justified. The claim is supported by examples. Finally, the powers of the decision-making authority at the conclusion of the proceedings are set out – to issue a new act or to refuse to issue it.

Section III. Grounds for Resumption

Section III of Chapter Two of the dissertation discusses in detail the grounds for resumption under Art. 99, items 1-7 APC. They are divided into three groups – material, procedural and grounds having both material and procedural aspects. This division is new for the Bulgarian legal theory, therefore it could be considered a scientific contribution of the dissertation.

The first paragraph of Section III, Chapter Two is devoted to the material grounds. These are those defects in the AA which render it materially unlawful. Insofar as the concept of 'material illegality' has been examined in detail in the legal literature and in case-law, a brief overview is given of the various theories concerning the concept used as a basis for the proposed differentiation. Due to the explicit reference of Art. 99, para. 1 APC to Art. 146, i. 1-5 APC, the grouping of grounds also includes those for challenging the AA in the regular review phase. However, they have been examined through the prism of resumption – namely, the existence of which of the hypotheses under Art. 146 i. 1-5 of the APC may be grounds for annulment or amendment of an act which has already entered into force despite its material unlawfulness.

The condition under Art. 99, i. 2 of the APC also belongs to the group of material conditions. The notion of 'novelty' of the facts and circumstances which must have occurred for the hypothesis to be realised is clarified by interpreting the practice of the SAC. A comparative legal analysis of the ground with its establishment in other legal systems – German, Polish and Serbian – is made.

The last ground, analysed in the first paragraph of Section III, is that under Art. 99, i. 4 APC. It consists of three hypotheses in two propositions. Each of the three hypotheses is examined separately.

The second paragraph of Section III, Chapter Two focuses on procedural grounds – these are such defects of the enactment which have arisen as a result of irregularities in the procedure for its issuance. A differentiation is made between a substantial and a non-substantial procedural irregularity, in the context of Art. 146, i. 3 APC, again based on the interpretations of the case-law. Certain understandings adopted in decisions of the SAC regarding the lack of proper notification of the addressees as a procedural infringement and its materiality are subject to critical analysis here.

The next ground for resumption, adopted in the thesis as procedural, is that under Art. 99, i.3 APC. Due to its mixed nature, consisting in the presence of both criminal and administrative elements, these two aspects are analysed separately. The notion of 'in due process of law', which refers to the establishment of the criminal act, is clarified. A proposal *de lege ferenda* is made to include in the circle of persons who committed a crime in the hypothesis of the provision two categories of procedural participants – the witnesses and the experts whose testimony, respectively, conclusions, may also influence the ruling of the administrative authority. The proposal is supported by an example for such grounds in other legal systems.

The last procedural hypothesis in which a reopening proceeding may be initiated is that under Art. 99, i.6 of the APC. A distinction is made between subjective and objective obstacles which prevented the party from participating in the procedure. The dissertation defines as 'subjective' those procedural obstacles that arose due to the exercise of power by the administrative authority. It is expressed in the active or passive conduct of the decision-making authority, expressed by action or inaction, contrary to mandatory procedural norms. Only the administrative authority, as the entity on which the initiation, conduct and conclusion of the proceedings depend, can be the cause of such obstruction, if it is not caused by the conduct of the party. In other words, the cause of action arises not from a party's disinterest or lack of desire to participate in the proceedings, but from the existence of a subjective obstacle placed in front of them.

As 'objective' are defined those circumstances or conditions which are not dependent on the conduct of any party to the proceeding but which the party could not have eliminated. It is considered whether the insurpassable obstacle must have concerned only the particular party to the particular proceedings, or whether it affected an indefinite range of subjects – for example, where there was an inability to participate in the proceedings because of an epidemic emergency situation. The existence of efforts on the part of the person involved in the procedure to overcome the relevant obstacle, where possible, and whether those efforts are capable of proof in the reopening proceedings, are also highlighted as elements of the factual composition of the ground.

In the third paragraph of Section III of Chapter Two of the dissertation, the grounds for resumption, which fall into both groups, are the subject of study, as they have both material and procedural aspects. According to the classification adopted in the study, these are the grounds under Art. 99, i.1 in conjunction with Art. 146, i.1 APC, Art. 99, i.5 APC and Art. 99, i.7 APC.

The first ground in this group is lack of competence. The place of this condition for the lawfulness of the AA is here because of the meaning of competence as a material and procedural legal category accepted in theory. According to the authors who share this view, also adopted in the thesis, in the first case the lack of competence affects the material legality of the act. The latter is the case in proceedings in which the adoption of the act is the result of a coordination of competence between two or more authorities. The exercise of the powers of some of the authorities in those proceedings has only procedural consequences. The lack of competence in

these two main situations and its impact on the material and procedural legal effects of the acts in force are analysed futher.

Particular attention is paid to the institutes of delegation and substitution and how their unlawful application could affect the act in force. A distinction is made between the cases in which the defect in the competence leads to rendering the act null-and-void and thus to the lack of grounds for reopening, because the act has not acquired any formal legal force at all, and the hypotheses in which the defect is not so significant and would render the AA voidable and, after its entry into force, a suitable subject for review in proceedings under Art. 99 et seq. APC. The final jurisdictional complication discussed in the paragraph is concurrent competence, breach of which renders the act null-and-void and the resumption procedure inapplicable.

The next ground, which belongs to both the material and the procedural grounds, is the existence of another valid AA between the same parties and with the same subject matter, which contradicts the reviewed act. The procedural aspect of that ground is the absence of any examination of the admissibility of the request to initiate the proceedings for the issuance of the act, which the administrative authority is obliged to carry out *ex officio* before initiating the procedure. The material aspect consists in the existence of more than one decision resolving the same material issue. The paragraph supports the view that the two acts need not to conflict each other in order to annul the unlawful one, and detailed arguments are put forward in the justification of that proposition. With regard to the ground under Art. 99, i.5 APC, two proposals *de lege ferenda* are made – on the one hand, the specification 'which contradicts' should be deleted from the cited provision and, on the other, in addition to the unlawful act, Art. 103, i.5 APC should also include the incorrect act as subject to annulment, insofar as the review of its appropriateness falls within the competence of the deciding authority.

The last ground considered in this paragraph is that under Art. 99, i.7 APC. This ground is characteristic not only for the administrative procedure but for the Bulgarian legal system in general. It is also present in the criminal and civil procedure when it comes to reviewing acts which have entered into force. A positive assessment is made of its presence among the hypotheses for resumption in administrative law.

This condition has both a material and a procedural aspect, since the violation of the European Convention of Human Rights may relate both to the content of the act and to the failure of the administrative authority to fulfil its procedural obligation in the proceedings for its adoption. The case-law of the European Court of Human Rights in Strasbourg is analysed towards the end of the paragraph.

Chapter Three
Resumption Under the AVSA. Other Resumption Proceedings

Section I. Resumption Under Art. 70 et seq. AVSA

Paragraph one of Section I, Chapter Three of the dissertation discusses the scope of the resumption under the AVSA. It falls within the scope of the present study, on the one hand, due to the necessity of completeness of the comparative analysis between the resumption under the APC and that under the AVSA, and on the other hand – due to the substantial amendmentss in the AVSA, in force since 21.12.2021, which significantly expanded the scope of the resumption

procedure.

A distinction is made between the previous versions of the AVSA, in which only the proceedings for the issuance of penal decrees, as well as the court decisions in the cases, initiated in connection with their appeal, were subject to resumption, and the current AVSA, which envisages extraordinary revision of more categories of acts. The prevailing view in legal theory is that those acts are judicial in nature. For each of them, a separate analysis is made as to whether the proceedings for the adoption of the act may be reopened.

An inaccuracy is argued in the legislative wording concerning the tickets and electronic tickets which are subject to review under the AVSA. According to the thesis, the issuance of these two types of acts is not preceded by proceedings that can be reopened. The lack of precision in the text of Art. 70 para. 1 AVSA, in particular in the term 'review'. The inaccuracy is noted in view of the distinction between the concepts of 'control', 'supervision' and 'inspection' as forms of control activity in the context of the resumption, as analysed in Chapter one. A *de lege ferenda* proposal is made to replace this word by the word 'review' with 'revisiting', while retaining the exhaustive list of acts, subject to revisiting in para. 1-7.

In the context of the analysis of warnings as acts subject to review, it is pointed out that the use of the word 'written' is redundant, insofar as the possibility of verbal warnings to the offender in a minor case of administrative offence has been abolished in the new wording of the AVSA. Also positively assessed in this paragraph are: the exclusion from the scope of the resumption under the APC of resolutions with a devolutionary effect; the possibility of resumption of the procedure for conclusion of settlements; the extension of the scope of the institute to final court decisions imposing a penalty of community service. A distinction is made between final court decisions under the AVSA and those under the APC, justifying why the former are subject to resumption and the latter – to annulment.

The second paragraph of Section I, Chapter Three of the dissertation focuses on the grounds for resumption under Art. 70, para. 2 AVSA. In order to preserve the main thematic line of the study, parallels are drawn between the grounds under the APC and those under the AVSA, indicating their main similarities and differences. For example, the conditions for reopening under Art. 70, para. 2, i. 1 AVSA and Art. 99, i. 4 APC are comparatively presented. In their context, the issue of evidence in administrative penal proceedings is analysed. A conclusion is drawn that there are no special rules on evidence and means of proof in the AVSA, so Art. 84 AVSA, which refers to the Code of Criminal Procedure for matters not regulated by law, should be applied. A *de lege ferenda* proposal is made, substantiated by the case-law of the Supreme Administrative Court, to supplement the text of Art. 84 AVSA with the legal figures of evidence and the requests for evidence to the legal figures in respect of which there may be a reference to the CCP. The reason is the exhaustive nature of the enumeration in the current text of the provision in question.

The next comparison made in the paragraph is between Art. 70, i. 2 of the AVSA and Art. 99, i. 3 of the APC. Differences are found in the persons whose criminal conduct may become a ground for resumption proceedings. Emphasis has been placed on the absence of the need for the act to have had an impact on the proceedings under the AVSA. Another parallel presented here is between Art. 70, para. 2, i. 3 of the AVSA and Art. 99, para. 2 of the APC. The characteristic of 'novelty' of the circumstances and the evidence is examined in detail, both in comparison with the resumption of the procedure for the issuance of IAA and GAA and in the context of the case-law.

The following two grounds – under Art. 70, para. 2, items 4 and 5 of the AVSA – are

analyzed together due to their similar nature. The implementation of the *'non bis in idem'* principle in both hypotheses is thoroughly examined, using as a basis the theoretical achievements of the Bulgarian legal literature, the case-law of the national courts and of the ECHR. The cases before the ECHR and the interpretative decisions of the SAC that led to the current version of the two cited provisions are traced. A positive assessment is made of the evolution of Bulgarian law enforcement in upholding the principle of *'non bis in idem'* and its compliance with contemporary European requirements for the protection of human rights.

Regarding the ground under Art. 70, para. 2, i. 6 of the AVSA, a proposal is made to the legislator to eliminate the requirement of 'essential importance' of the established violation of the ECHR for the ground to be valid. This prerequisite for the realization of the condition is considered too restrictive due to the high requirements for admissibility of an appeal before the Strasbourg Court – exhaustion of all legal means of defense at the national level. Although the applicant has succeeded in proving their appeal in the complex proceedings before the Court of Human Rights, they are also burdened with the necessity to prove the element of 'materiality' in the plea under Art. 70, para.2, i. 6 of the AVSA, which, according to the thesis, is unnecessarily complex.

The condition for resumption under Art. 70, para.2, i. 7 AVSA is compared with that under Art. 99, i. 6 of the APC. An example from the case-law on its implementation is given.

The last hypothesis of resumption under Art. 70 AVSA is the one under para. 2, i. 8. The understanding of vagueness in the wording of the cited legal norm shared in Bulgarian legal theory is presented and supproted. An interpretation of the concepts of 'findings' and 'administrative act' is proposed, giving examples of both normative and non-normative AA on the basis of which the reviewed act could have been issued. The consequences of the nullity or voidability of the AA are studied in detail. The text of the provision is criticized, as it fails to clarify these conclusions without substantial interpretation. Two options for overcoming these ambiguities are proposed – either by adopting a legal definition of 'administrative act', also mentioned in Chapter 2 of the thesis, or by amending Art. 70, para. 2, i. 8 of the AVSA in the manner proposed in the dissertation.

The third paragraph discusses the initiative and the time limits for resumption, as well as the powers of the deciding authority.

There is a discrepancy between the wording of Art. 70 AVSA, according to which the legal and technical means for initiating the procedure is a 'motion', and Art. 84 of the Criminal Procedure Code, where it is a 'proposal' for reopening. The need to eliminate this inconsistency in future versions of the Act is noted.

Regarding the figures of the prosecutor and the supervising prosecutor as subjects who are granted the authority to initiate the proceedings, it has been clarified that at the date of writing of the thesis and in view of the amendments to the Constitution by its Amendment Act of 22.12.2023, it is not yet fully clear whether and to what extent the prosecutor will retain these powers in the resumption. This dissertation however focuses on the legislation effective as of 31.12.2023. Therefore, the powers of the prosecutor and the supervising prosecutor under Art. 72 para. 1, i. 1 of the AVSA are presented in the light of the respective wording of the law.

The existence of active procedural standing of those subjects whose legal sphere suffers a negative impact as a result of the judicial act has been positively assessed. These are, on the one hand, the person in respect of whom the act under Art. 70 AVSA has been issued, and, on the other – the owner of the property, which was disposed of or confiscated in favour of the state, when he is not the offender. It has been proposed *de lege ferenda* to limit the possibility of

revision of the act by the owner of the confiscated property only to the part in which his rights are affected. Otherwise – if the entire act were annulled at the motion of the owner – the offender would be unduly favoured. It is also proposed to remove para. 2 of Art. 72 AVSA, discussing the necessity of the existence of a legal interest, as superfluous.

Regarding the sanctioning authority as the subject empowered to initiate the resumption, the clarification has been made that its initiative is limited only to the cases when the act under Art. 70, para. 1 AVSA, which it issued, has been revoked or amended by the court. This would make it clear, without the need for further interpretation, which proceedings may be reopened by the sanctioning authority and exactly how its legal interest in exercising its initiative is justified.

The third paragraph of Section I of Chapter Three also deals with the time limits for the initiation of proceedings, which are divided into three groups: six-month – for the grounds under Art. 70, para. 2, items 1, 2, 4 and 8 AVSA; one-month - for the grounds under Art. 70, par. 1, items 3 and 6 and three-month – for the grounds under Art. 70, para. 2, i. 7 of the AVSA. With a view to duly notifying the persons, a proposal is made to increase the time limits of the second group, which should also become six months.

Finally, the powers of the deciding court in the proceedings are presented. Following the classification adopted in the study, the type of extraordinary judicial control exercised by the court is specified for each hypothesis.

Section II. Resumption Under Art. 83f AVSA

The subject of the study in the first paragraph of Section II of Chapter Three of the thesis is the scope of the resumption under Art. 83f AVSA. As a necessary introduction, the provisions of Art. 83a et seq. AVSA are analyzed. The nature of the specific liability of legal persons enriched by criminal activity is outlined. The regular proceedings for the realization of this liability are briefly presented. The understanding, which has been upheld in case-law, that it is not required to have a final judgment by which the relevant representative of the legal entity has been found guilty and convicted of one of the offences referred to in Art. 83a, para. 1 AVSA is criticized.

According to the thesis, this cannot justify the parallel development of criminal proceedings against the natural person and such for the imposition of a pecuniary sanction on the legal person. The reason stated in the thesis is that without establishing beyond doubt (by a final verdict) that a crime has been committed by the natural person, a significant element of the factual composition of the liability of the legal person under Art. 83a AVSA is not proven. The argument is supported by the cited case-law of the ECJ on a preliminary reference of the Burgas District Court. A legislative proposal has been made to reinstate the requirement for an unquestionable establishment by a final judgment of the crime committed by the natural person as a prerequisite for the realisation of the liability of the legal person under Art. 83a et seq. AVSA.

In the analysis of Art. 83f, para. 1 AVSA, it is concluded *per argumentum a contrario* that if the final decisions of the District Court and the Appelate Court are subject to review under the extraordinary resumption procedure, the orders dismissing the motions or terminating the proceedings could not be revised by reopening the proceedings. This legislative decision has been criticized because, according to the opinion expressed in the dissertation, the current wording of Art. 83f, para. 1 AVSA creates an opportunity for the implementation of hypotheses in which an unlawful (for example, due to a bribe accepted by a judge or a prosecutor) judicial

act for termination of the proceedings for the imposition of a pecuniary sanction may enter into force. A proposal is made to add these acts to the scope of the resumption procedure.

The second paragraph focuses on the grounds for reopening under Art. 83f, para. 1 AVSA. Some of the grounds – those under Art. 83f, para. 1, i. 1, 2, 4 and 5 AVSA are not discussed in detail, due to their analogy with the already analyzed grounds under Art. 70, para. 2, items 1, 2, 3 and 6 of the Act. As more specific are highlighted the grounds under Art. 83f, para. 1 AVSA, items 3 and 6 of the AVSA.

The third paragraph of Section II, Chapter Three of the dissertation deals with the initiative and time limits for this particular case of resumption, as well as the powers of the deciding authority in the proceedings under Art. 83f AVSA. At the end of the paragraph, the introduction of this proceeding in the AVSA in 2015 is assessed positively, as it affirms the principle of legality, while it also provides the possibility to review unlawful judicial decisions in special hypotheses.

Section III. Resumption Under Art. 14, para. 7 of the Agricultural Land Ownership and Use Act

The last section of Chapter Three of the dissertation studies the reopening proceedings under Art. 14, para. 7 of the Agricultural Land Ownership and Use Act (ALOUA). This section introduces the subject and scope of the Act and introduces the main purpose of its adoption – the restoration or recognition of ownership of land owned by citizens before the formation of labour cooperative agricultural holdings or state agricultural holdings – the so-called restitution of alienated land. The clarification is necessary in order to outline the scope of the proceedings under Art. 14 para. 7 ALOUA, namely for the resumption of such types of restitution proceedings.

The two main types of IAA that recognize or restore property are outlined – constitutive and declarative. It is these IAA that are subject to review after their entry into force in the reopening under the ALOUA. The grounds for resumption are presented – violation of the ALOUA or the Rules on its implementation and discovery of new facts or new documentary evidence material to the decision. For the sake of completeness, it is stated that on the second ground a resumption procedure may also be initiated under Art. 45c, par. 9 of the Rules on the Implementation of the ALOUA. To the end of the Section, the subjects having the initiative to start the proceedings, the time limits for reopening, the competent authority and its powers are analysed.

Conclusion

In the final part of the dissertation the general findings of the whole research are formulated in a summarized form. The *de lege ferenda* proposals made in the thesis in relation to the problems that need legislative solution are summarized. Some of them are related to minor gaps or contradictions, the correction of which would clarify the will of the legislator and would contribute to the more straightforward application of the administrative legislation. Another part of the problems identified raises issues of principle, the resolution of which is linked to important legal implications that go beyond the scope of the matter under examination.

Among the more significant amendments that should take place in the legislation and in the practice of its application are the following.

It is proposed that a new para. 1 and 2 be created in Art. 99 APC. The first paragraph shall clarify the scope of the resumption, leaving only individual and general administrative acts in written form, issued by executive or equivalent bodies, which are issued as a result of a procedure. These amendments are necessary in view of the extension of the definition of IAA in the APC in force since 2019. In the second paragraph, according to the thesis of the dissertation, the grounds for review of the resumption procedure shall be exhaustively listed, as they are now.

An amendment is also necessary in Art. 101 APC. Its current wording does not take into account the difference between the legal force and legal effect of an enacted IAA or GAA. According to the opinion upheld in the work, the final IAA and GAA have legal effect for all persons, which is not relative. Irrespective of the circle of addressees of the act, it acquires the qualities characteristic of its entry into legal force with respect to all legal subjects. Its legal effect however is a category which may be different for the addressees and affected third parties, on the one hand, and for other subjects, on the other. It is therefore appropriate to undertake a refinement of the text of Art. 101 APC to that effect.

The text of Art. 103, para. 2 APC should be supplemented with the proposal of the prosecutor (who, according to the current wording of the provision at the time of the writing of the thesis, may still submit such a proposal) or the ombudsman as a legal-technical means of initiating the resumption procedure. This is an omission made by the legislator in the wording of the provision, which, however, should be noted for the sake of completeness and precision of the norm.

The next suggestion for amending the legislation made in this study is to add witnesses and experts to the subjects referred to in Art. 99, para. 3 APC. The analysis takes into account the importance of their participation in the administrative procedure, especially when the question raised concerns an area requiring specific knowledge that is not available to the administrative authority. Therefore, any criminal act committed by them as participants in the proceedings should be included among the grounds for resumption. The argument is also supported by a comparative legal analysis.

The legislator is also subject to criticism regarding the ground under Art. 99, para. 5 APC. The simultaneous effect of two administrative acts which have entered into force and which have been issued on the same subject-matter by the same authority for the same persons is inadmissible, whether or not the two acts contradict each other. The current wording of the provision creates conditions for circumventing the law by extending statutory time limits and achieving unlawful results in derogation from mandatory administrative law rules. The dissertation proposes to remove the requirement of a material contradiction between the two AA and to add as a result of the implementation of the ground not only the annulment of the unlawful act but also of the incorrect one.

De lege ferenda proposals have also been made with regard to other Acts, envisioning resumption procedures. The most significant of them are for the elimination of the necessity of the essential importance of the violation of the ECHR for the case in the grounds under Art. 70, para. 2, i. 6 AVSA; for returning of the requirement for the unquestionable establishment by a final verdict of the crime committed by the natural person as a prerequisite for the realization of the liability of the legal person under Art. 83a et seq. AVSA; the provision of the possibility to reduce the financial correction through the resumption under Art. 74 MREFSMA, etc.

In future amendments to the legislation, in addition to addressing the deficiencies in the

current framework, consideration should be given to preserving the extraordinary nature of the resumption and serving its primary purpose – upholding the principle of legality in executive activity. The extension of the scope of this legal institute to other laws must be precisely justified and allowed only in certain circumstances. A shortcoming of the current legal framework on resumption, especially in the area of administrative penalty procedure, is the adoption of conditions, grounds and time limits for reopening from other branches of law, without taking into account the specificity of the administrative activity in all of its forms. It is recommended that this trend be avoided in the future, while at the same time the consequences of its establishment which have already arisen be overcome.

III. REFERENCE OF THE MORE SIGNIFICANT CONTRIBUTIONS IN THE DISSERTATION WORK

1. The institute of the resumption of the procedure for issuance of individual (and general) administrative acts, its origin and historical development are studied in their entirety;

2. The grounds for resumption are analysed in detail, proposing a new theoretical classification of these grounds, in material and procedural law;

3. Certain inaccuracies in the wording of the regulations currently in force are identified and amendments of the relevant provisions are proposed;

4. The contradictions and problems that arise in the case-law in the interpretation and application of the resumption as a form of extraordinary control activity are identified;

5. On the basis of the detailed analysis of the resumption procedure in the APC, the provisions establishing the resumption under the AVSA and in other normative acts are examined comparatively, taking into account the advantages and disadvantages of each of the proceedings.

6. Particular proposals *de lege ferenda* are made to amend the legal framework in relation to the identified issues and proposed solutions.

IV. SCIENTIFIC PUBLICATIONS RELATED TO THE TOPIC OF THE DISSERTATION WORK

The author of the dissertation has published several articles related to the dissertation topic:

1. Resumption of the Administrative Penal Proceedings after the amendments in the Administrative Violations and Sanctions Act from 2020, 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 Prospects for This Legal Figure, 'De Jure' Legal Journal, Issue 2/2021.