

## **REVIEW**

by Assoc. Prof. Konstantin Pehlivanov PhD, Law Faculty of Plovdiv University "Paisii Hilendarski", internal member of the scientific jury in the procedure for acquiring the educational and scientific degree "Doctor" by Vasil Mladenov Petrov, full-time doctoral student in the field of higher education 3. Social, economic and legal sciences, professional direction 3.6. Law, doctoral program: "Administrative Law and Administrative Procedure", with academic supervisor Assoc. Prof. Bogdan Dragnev Yordanov PhD and submitted dissertation entitled "Constitution, Internal Organization and Competence of the Municipal Council"

I present this review as an internal member of the scientific jury, appointed by Order No RD-21-1717/ 05.10.2023 of the Rector of Plovdiv University and after I was designated as a reviewer in the procedure by the decision of the scientific jury under Protocol No. 1/05.10.2023.

Concerning admissibility of the procedure: the candidate for the acquisition of doctoral degree was enrolled in regular doctoral studies by Order of the Rector of the Plovdiv University No. P33-537/02.03.2020 and was dismissed with the right of defense by Order No. RD-21-580/ 17.03.2023. For participation in the procedure for the acquisition of doctoral degree Vasil Mladenov Petrov has submitted a dissertation entitled "Constitution, Internal Organization and Competence of the Municipal Council", abstract in Bulgarian and English language, the required number of publications according to the minimum national requirements (three) and other documents. I find the submitted set of documents correctly completed, the abstract meets the requirements. Accordingly, the procedure is admissible for review on the merits before a scientific jury.

On the scientific value of the presented dissertation work: the dissertation work has a volume of 196 pages, including title page, table of contents and list of used literature. The actual volume of the analytical text is 181 pages. It is divided into an introduction, four chapters and a conclusion with a systematization of contributions.

The doctoral student works in the local self-government bodies (district administration in the city of Plovdiv) and his practical experience and an inside look at the procedures followed by the local bodies and the problems they face have helped him to write an interesting and practically useful scientific paper.

My conclusions after reviewing the work are as follows:

In Chapter One "Concept of local self-government. Development of local self-government in Bulgaria" the concept of local self-government as opposed to central government is analyzed.

A distinction is made between self-government and centralization. After that the focus was moved to an analysis of the concept of "local self-government" as a form of self-government, with an appropriate exposition of the theories that substantiate its essence - public and state ones. With skillful use of the comparative legal method, three of the main systems have been analyzed - English, French and mixed (Prussian). As a result of the analysis, it is emphasized that local self-government is a sign of democracy, in which the state allows a group of people living in a certain territory, independently and independently, but on their own responsibility, to manage an essential part of the public affairs granted to them as a competence from the state power, which can limit the self-governing bodies only when this is expressly provided for in the law and only according to legality.

The development of local self-government in Bulgaria has been traced in various stages, starting from the sources for the Slavic fellowship, passing through the specific role of the Bulgarian municipality during the Ottoman rule, and then the development of local self-government after the adoption of the Constitution of the Bulgarian Principality has been studied in detail (since 1911 Constitution of the Kingdom of Bulgaria), namely the Law on Urban Municipalities and the Law on Rural Municipalities adopted on its basis, as well as the ordinances adopted after the coup in 1934 and the emergency legislation imposed after it. The legislation adopted during the time of socialism, after the Constitution of the People's Republic of Bulgaria of 1947, has also been studied.

In Chapter One of the dissertation, the author shows the due scholar diligence in the study of the previous legal base, as far as there are available sources, and the changes that have occurred over the years, which I find a mandatory condition for a thorough scientific work. The theoretical distinction made between the concepts of "local self-government" and "deconcentration", "decentralization", "municipal self-government", "federation" and "administrative autonomy" speaks of the author's knowledge and his ability to handle legal theory, making precise theoretical distinctions between a concept of a mixed nature, which in some aspects overlap.

In Chapter Two "The place of the municipal council in the current legal system of local self-government in the Republic of Bulgaria" it is proceeded to an analysis of the current legislation based on the Law on Local Self-Government and Local Administration, adopted on the basis of the Constitution of the Republic of Bulgaria 1991. Testimony for the importance that the founding authority attached to this institute is the inclusion of local self-government as part of the basic principles (Article 2, Para 1). From this provision of the current constitution,

some conclusions may be drawn about the legal framework of local self-government. Paragraph 2 of Art. 2 of the CRC, emphasizes that the territorial integrity of the Republic of Bulgaria is inviolable. Therefore, the seat of local self-government is within the unitary state. The state has the obligation, through funds from the budget and in other ways, to support the normal activity of the municipalities (Article 20 and Article 141, Para 5). I find that more attention should have been paid to the underestimated and seemingly considered more of a declarative character norm of Art. 20 of the Constitution. Appropriate attention is paid to the European Charter of Local Self-Government as an act of the Council of Europe, which pursuant to Art. 5, para. 4 of the Constitution stands above our internal acts.

The author makes a relevant introduction to the concept of local self-government in the sense of the current law, analyzing it in detail before starting the actual scientific research, the subject of the dissertation - territory, name, etc., special and justified attention is paid to the quality that the municipality acquires under this Constitution – the quality of a legal entity, without which many of its manifestations and its practical activity are impossible.

Similarly, before the detailed analysis of the municipal bodies, a study and introduction was made regarding all the bodies, as defined by the Constitution and the law, taking into account the expediency and ideas that formed the legal framework. Practically valuable is the used classification of the municipality's bodies into primary (constitutionally established) and secondary, i.e. not established in the constitution. The mayor of the municipality, the mayors of regions and town halls, the deputy mayor, the chief architect of the municipality, the chief architect of the region and the specialized executive bodies of the municipality are presented with a general description. I can accept that the public mediator is not a state body in the legal sense of this concept, I cannot agree with this conclusion for the secretaries of municipalities and regions, who are charged with various functions by virtue of the Law on Local Self-Government and Local Administration, although they are appointed state servants.

The features that the municipal council possesses are also presented, with the author assuming that the subordination, submission and hierarchical dependence characteristic of the executive power are strongly narrowed in relation to the municipal council, as it embodies the independence of the territorial community within certain limits. It is pertinently emphasized that the municipal council does not have its own administration, and its activities are supported and ensured by the municipal administration. I can agree with the thesis writer's opinion that, considered as an executive body, the municipal council has its distinctive feature - namely, its priority task is the implementation of local self-government, which follows from the legal

framework, which defines it as a "local self-government body" in Art. 138 of the Constitution and Art. 18, para. 1 of the Law on Local Self-Government and Local Administration.

I find a strong contribution point in the analysis of the interaction between the mayor of the municipality and the municipal council with the four main types defined in the theory: "strong mayor - council", "weak mayor - council", "council - manager" and "commissions". The dissertation accepts that, according to the form of the ratio of powers between the municipal council and the mayor of the municipality under the current legislation, it is of the "weak mayor - council" type, but maintains that with the accumulated practice of applying the law and its amendments over the years, it rather points on a kind of *intermediate* model, based on the mayor's dependence on the majority in the municipal council, but also draws attention to the fact that he can blame the council on some issues.

Chapter three "Constitution of the municipal council. Internal organization" I find the strongest and most contributing to the topic of the dissertation work. The author thoroughly follows all the moments in the constitution of the municipal council since the elections. The in-depth analysis of the repealed versions of the law governing the oath and the consequences of not taking the oath deserves approval. I can agree with the opinion that it is necessary to introduce a deadline for the elected municipal councilors to take an oath, otherwise the next person on the relevant list should be declared elected or, in the absence of one, the seat should remain vacant. As can be seen from the practice, a moment by which a resignation may be submitted should also be established, since now the law does not formally prohibit the submission of resignation after the expiry of the mandate of the municipal council, until the constitution of the new one. Appropriate attention is paid to the role of the chairman of the municipal council and the municipal councilor, insofar as the council is a collective and collegial body.

A detailed and critical analysis was carried out regarding the regulation of the premature termination of the powers of municipal councilors. I also find the proposals made for amendments and additions to the substantive legal prerequisites for this, as well as for unifying the proceedings under Art. 30, para. 6 and under Art. 30, para. 7 of the Law on Local Self-Government and Local Administration. The analysis and proposals regarding Art. 397 of the Electoral Code may be supported too.

A strong point of contribution is the analysis of the rules of the municipal council as a special type of normative act in our law. 29a, para. 3 of the Law on Local Self-Government and Local Administration (a kind of administration of the municipal council, although not explicitly

named as such) and to the practice regarding the chairman's council, with the appropriate clarification that it can be an advisory and auxiliary body, insofar as the law does not allow it explicit authority.

Chapter Four "Competence of the municipal council" is also strong and contributing, as the working classification of the powers of the municipal council proposed for the purposes of the study may be supported: powers to exercise the functions of local self-government; structural (organizational) powers and others. The possibility of the municipal councils bringing before the SC disputes about competence between them and the central executive bodies has been analyzed.

A distinction was made between legal and non-legal acts of the council, an appropriate distinction between administrative and non-administrative acts of the legal category was made too. Methodologically correct, a distinction between administrative acts affecting private individuals and internal administrative acts was made, which is important in the practice of the courts when determining the legal interest and the admissibility of the appeal.

Practically valuable are the observations on the specifics of the requirements for the legality of administrative acts (the non-fulfillment of which under Art. 146 of the Administrative Procedure Code is grounds for appeal) in relation to acts of the municipal council (§ 6 of the chapter).

The research includes ways of controlling the activity of the municipal council, including by the mayor of the municipality, the regional governor, etc.

*A de lege ferenda* proposal was made for the public mediator under Art. 21a of the Law on Local Self-Government and Local Administration to create the possibility to challenge the by-laws of the municipal council, which violate the rights and freedoms of citizens, which I do not support due to my observations on the activities of the municipalities related to the public mediator, reflected in the negligibly small number of elected public mediators, but it is the author's right and my disagreement does not go beyond the scope of ordinary scientific dispute.

#### Critical Notes:

I think that more attention should have been paid to the powers of the municipal council in relation to the municipal budget, an innovation of the 1991 Constitution, which, however, in its first version did not give the municipal council the right to determine the amount of local taxes and fees (in this sense Decision of the Constitutional Court No. 9/2000, cited on another occasion) and the change, albeit somewhat half-hearted in terms of determining the amount of

local taxes and fees, which occurred after the admission of the Republic of Bulgaria to the European Union. This made the municipal council a body with financial legal personality (albeit limited) and increased its importance for individuals and legal entities established within the boundaries of the municipality and owing taxes and fees to it. The same result was achieved with the transfer of the patent tax from the state category to the local category in 2008, a kind of compensation for the abolition of the local road tax.

With regard to the sometimes controversial relationship between a local and state body, attention could be paid both to Decision No. 6 of 2009 of the Constitutional Court under Constitutional Case No. 7/2009, and to the somewhat contradictory Ruling No. 2/2011 under Case No. 20 /2010, which refused to initiate a case on the merits (the case was initiated at the request of the Municipal Council of the Municipality of Plovdiv). However, these notes reflect my subjective views, and the matter to be covered is large and it is right of the dissertationer to put his own emphasis. They should only be understood in the context of a future publication of the work in a book, which I recommend.

The volume of the studied literature is large, a special effort has been made to study the case law, its systematization and interpretation.

I have not encountered data on plagiarism and misuse of other`s scientific contributions.

In conclusion, on the basis of the above, I confidently give my positive assessment of the dissertation work of Vasil Mladenov Petrov and, due to its scientific and practical contribution, I propose to the honorable scientific jury to award him the educational and scientific degree "doctor" in the field of higher education 3. Social, economic and legal sciences, professional direction 3.6 Law, doctoral program "Administrative Law and Administrative Procedure".

Reviewer

(Assoc. Prof. Konstantin Pehlivanov PhD)

19.12.2023

Plovdiv