

REVIEW

By Doctor of Law Sasho Georgiev Penov

Professor at the Faculty of Law of Sofia University "Sv. Kliment Ohridski"

on a dissertation for the award of a Doctor of Science degree

Area of higher education – 3. Social, economic and legal studies, professional direction 3.6. Law

Administrative law and Administrative Process

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Subject: Interpretation in Public Law

1. Subject of review

Pursuant to Order No RD – 21-1958 of 12.11. 2024, issued by the Rector of Plovdiv University 'Paisii Hilendarski' (hereinafter PU), I was appointed as a member of the scientific jury to provide a procedure for the defence of a dissertation entitled 'Interpretation in Public Law' to obtain the scientific degree 'Doctor of Science' of the PU in the Area of higher education 3. Social, economic and legal sciences, professional direction 3.6. Law (Administrative Law and Administrative Process). The author of the dissertation is Professor, Doctor of Law Darina Peeva Zinovieva, Public Law Department, Faculty of Law, Plovdiv University 'Paisii Hilendarski'.

The paper set of materials submitted by the candidate complies with Article 45(4) of the Rules for the Promotion of the Academic Staff of the University. It includes the following documents: a request to the Rector of the University for disclosure of procedure for the defence of the dissertation; a curriculum vitae in EU format; a copy of the diploma for the educational and scientific degree of Doctor; minutes of departmental councils related to the opening of the procedure and the preliminary discussion of the dissertation; dissertation; review (in Bulgarian and English); a list of scientific publications on the topic of the dissertation; copies of scientific publications; a declaration of originality and authenticity of the attached documents; a record of compliance with the minimum national requirements. The candidate has attached one monograph and 15 publications, of which 1 study and 14 articles.

From the attached documents it is established that the candidate holds the educational and scientific degree "Doctor" and meets the relevant minimum national requirements. Presented is a dissertation and abstract discussed in the Department. The procedures provided for in Promotion of the Academic Staff in Republic of Bulgaria Act, the Regulation on its implementation and the Rules for the Development of the Academic Staff of the PU for admission to public defence of the dissertation work in open session of the scientific jury were observed.

2. Short biographical data

Professor of Law Darina Zinovieva obtained higher education at the Faculty of Law of Sofia University "Sv. Kliment Ohridski" (1987). Her teaching career began as an assistant professor at the Faculty of Law at the University of Plovdiv "Paisii Hilendarski" (1994), as well as a part-time assistant professor at the New Bulgarian University (1994-1996) and at the Faculty of Law at the Sofia University "Sv. Kliment Ohridski" (1995-1996). On the basis of her academic and scientific results and following open competitions, she holds the academic positions of Associate Professor (2001) and currently Professor (2010 to date) at the Faculty of Law of the University of Plovdiv "Paisii Hilednarski", where she was also Dean in the period 2011-2015. After winning a competition, he joined and worked as a Research Fellow and Senior Research Fellow at the Institute of Legal Studies at the Bulgarian Academy of Sciences, Department of Public Law (1997-2007), and since 2011 he has been a Professor of this Institute. She is scientific supervisor of 14 successfully defended doctoral students. She specialised in two areas at the Catholic University of Leuven, Belgium: administrative law and administrative process and the introduction of a medical

law course (1996), at the British Academy of Sciences – Institute of Law on Medical Law (1997), at the University of California, San Bernardino, USA on Healthcare Administration (2001), at the Free University of Barcelona, Spain and the Transplantation Coordination Centre of Catalonia – Transplant Administration and Management; Legal aspects. She is a member of the editorial boards of the journals: *Norma*, *Law and Business* (Law Faculty of UNWE), *STUDIA IURIS* (online edition of the Law Faculty of Plovdiv University “Paisii Hilendarski”, indexed in CEEOL), *Medical Law and Healthcare* (UDMPZ). Since 2002 she has been an independent expert at the European Commission in Brussels. Darina Zinovieva's scientific work is well known to the Bulgarian legal community and is followed with interest by legal practitioners because her research is focused on current problems arising from the development of the legal framework and is practical.

3. Topical relevance and relevance of the objectives and targets set

The dissertation subject to review is undoubtedly up-to-date. It is a new study for the Bulgarian legal literature in the field of interpretative problems in public law. The author has clearly identified the questions subject of the scientific research. She justified that these issues arise on the basis of changes in social and economic conditions, the dynamics of the legal framework and the accumulated enforcement practice. This means that she systematically and continuously monitors the development of law-making and law enforcement, outlining problematic issues and subjecting them to scientific research. As rightly pointed out in the introduction to the dissertation, in the application of the legal norms, there is an intensity in the interpretative activity of various bodies, which is a normal occurrence in the implementation of a substantial reform of the legislation. However, this intensity has not been subject of a comprehensive scientific analysis in the existing Bulgarian legal literature. The study focuses on the important features in the interpretative activity in public law, as the importance is justified. It covers the sectors in which the method of legal regulation is the authoritative one and this criterion is fundamental to the substantive part of the work. The questions posed by the author and their analysis are fundamental to Bulgarian legal science and provoke scientific discussion. The analysis is also aimed at coming up with proposals for improving the legislation, as well as ideas for more effective enforcement. The author has skilfully identified the questions subject of the study, which is clearly apparent from the structure of the content of the dissertation and the introduction. The dissertation does not make a positive-law commentary on the issues discussed, but on the basis of the scientific methods used, theoretical conclusions that have significant theoretical and scientific applied significance are justified.

4. Knowledge of the problem

It is clear from the content of the dissertation that the author has drawn up the scientific tasks on the basis of her in-depth knowledge of the research in the Bulgarian legal science and the problems of Bulgarian law, EU law and international treaties, which are outlined in the practice on the application of the legal framework. The scientific conclusions are also supported by a critical analysis of foreign literary sources. Creatively, in view of the dynamics of modern social relations and their legal framework, the existing legal theory is summarized and upgraded.

5. Methodology of the study

The dissertation uses general logical methods of analysis and synthesis, induction and deduction. The comparative legal method is used, as well as historical method, methods of sociology of law are also used. The researched topic is characterized by the complex discussion of interpretative issues in public law and their manifest forms in its branches. The chosen research methodology, clearly expressed in the structuring of the content of the topic and in its presentation, has contributed to the achievement of the set scientific goal. Based on the methods of scientific research used, the author has thoroughly analysed the researched issues and has motivated her to reach a corresponding scientific task response. This answer is given in a discussion aspect, which makes it valuable as a basis for scientific discussion and further development of the conclusions drawn.

6. Characteristics and assessment of the dissertation

The dissertation is divided into an introduction, three parts and a conclusion. The work is characterized by a structure that is logically consistent with the tasks of the study. It is correctly

indicated in the bibliography used literature and jurisprudence. The conclusions of the author are based on a thorough scientific and critical analysis of the factual state of modern legislation and the practice of its implementation. The structure of the work is differentiated on the basis of the understandings of the Bulgarian authors in the doctrine of philosophy and theory of law that the main legal branches are divided into 'substantive' and 'procedural' law. Each part is divided into sections with subsections, with the sections bearing a title and the subsections detailing the topic from the dots section. Thus, the reader is provided with the opportunity to get acquainted with both general interpretative questions and specific issues, but at the same time provides a comprehensive view of the studied issues.

In the introduction to the work, the subject of the study is clearly defined, namely, these are the specifics presently manifested in the application of the substantive and procedural law of public law branches. The scientific objective is clearly expressed - to summarize the answers to the questions of interpretation that have arisen, or to open a discussion and express an opinion on the still problematic ones related to interpretation in public law. It is rightly emphasised that the unifying element of the branches of public law that are the subject of the scientific study is the authoritarian method of legal regulation, but it is also proved in the content that in all major sectors where the authoritarian method of regulating social relations is leading, there is also an intertwining of legal relationships that can sometimes be difficult to "allocate" in pure form to a specific sector. Thus, I think that the study may be characterized as a cross-branch one.

The first part of the paper examines issues of interpretative activity of material law on the basis of the study of the application of up-to-date institutes in administrative, constitutional, financial, respectively tax and criminal law, as well as in EU and international law. In the last section of this section, cross-branch specificities of interpretation are identified. At the same time, the author goes into depth into the issues of the distinction and the ratio of interpretative problems in the different legal branches, but at the same time makes generally valid theoretical conclusions. This scientific approach makes it possible, on the one hand, to cover the subject of the study as a whole and, on the other, to highlight the specificities of the institutes studied by means of the specifics. I share the author's reasoned conclusion that in the Bulgarian model of interaction of the three authorities, in combination with supranational European courts, the leading criterion of enforcement and interpretation is the principle imposed in the jurisprudence of the EU courts - in interpreting the legal rule to seek primarily the purpose of the legislator. The legislature's objective is an expression of the teleological interpretation, but it is that objective that is difficult to identify, and sometimes, with numerous amendments and additions to legislation, the original objective may in practice be abandoned or substantially modified. I also share the general conclusion regarding the substantive specificities of interpretation in public law, namely that there is interaction in different sectors and sub-sectors, which stems from the method of legal regulation of public relations – the government method. I appreciate the proven by the author cross-industry relationship as a significant scientific result.

The second part of the paper analyses the procedural specifics of interpretation in national, European and international justice. The correct conclusion is drawn that the current amendments to the legislation, and in particular to the Administrative Procedure Code, demonstrate the Europeanization of our national law. Despite this conclusion, the author captures and poses problematic and debatable questions. Special attention is paid to the specificities that are manifested in the interpretative activity of jurisdictions, both national and supranational. One of the main issues discussed in the law enforcement by the courts - should or can carry out an indirect review of the constitutionality of legal norms that are contrary to the Constitution of the Republic of Bulgaria. The specifics of the interpretation of the normative administrative act in the domestic legislation are analysed independently. The specificities of interpreting administrative acts on the basis of the increasingly widespread use of 'atypical administrative acts' and 'soft law' acts are outlined. Particularly significant is the examination of the specifics of the interpretation of the exclusion from contestation of an administrative act, which is regulated as admissible in Article 120(2) of the Constitution of Republic of Bulgaria. A separate section examines the interpretation of words and

concepts in the procedural part of public law, which is a matter directly related not only to the linguistic form of the law, but also to the possibility of its consistent application. Specificities in the interpretation of EU and international treaty norms with the Republic of Bulgaria and the relationship with national public law are also discussed in detail, as are the links between them. In a separate section of this part of the work, an analysis of effective access to justice is made, interpreting also the degree of effectiveness. An analysis has been made of the legal framework in Articles 203 et seq. of the Administrative Procedure Code concerning the obligation of the State and municipalities to compensate for the damage caused by unlawful actions of the administrative authorities, which is directly relevant to the requirement for legality in the actions of the administration. The section 'Interpretation in Community law and specificities in the administrative administration of justice' analyses the hierarchy of instances in the administration of justice, including national and supranational instances. The 'mediation' and the administrative arrangement are specifically analysed as a pre-requisite for referral to the European courts.

The third part of the work examines the development of interpretative activity in public law. Historically, this development is divided into two periods, up to and after the accession of the Republic of Bulgaria to the European Union, and a section discusses the challenges to the development of e-Justice and interpretative work. This gives a comprehensive picture of the specifics in certain periods of the socio-economic development of our country and, accordingly, of our legal system. The legal foresight doctrine is commented upon. An analysis is made of the most severe form of imperfection in the legal system - the gaps in the individual branches. Interpretative specificities of the EU jurisdictions are analysed, as well as critically discussed views from the doctrine of EU law. The term 'metalinguistics in law' is considered and problems in automation in law are analysed.

In the conclusion of the dissertation there are summarized conclusions from the scientific research. It is pointed out that specifics in the interpretation of the branches of public law are studied, united by three characteristics: timeliness, long-standing contradictions in their interpretation and essential for doctrine and practice in public law. The aim of the research is to create both an up-to-date and a panoramic view of the interpretative specifics in public law, manifested to date in the practice of the administrative courts, the constitutional court and the practice of the European and international courts.

7. Contributions and Importance of Development to Science and Practice

Pursuant to Article 12(4) of the Promotion of the Academic Staff in Republic of Bulgaria Act, the dissertation for obtaining the scientific degree of Doctor of Sciences must contain theoretical summaries and solutions to major scientific and applied problems that correspond to modern achievements and represent a significant and original contribution to science. I believe that the work presented meets these legal requirements. Theoretically, significant problems in the interpretative work on the application of existing national law, EU law and international treaties have been identified, clarified and summarised, and the relationship between them in the context of the principles of public law has been outlined. Solutions are proposed to improve regulatory activity. Argued scientific findings contribute to the development of law enforcement and provide legal certainty. The scientific analysis is in line with the modern achievements of national and European legal thought. The complexity and scale of his research give the character of a significant and original contribution to legal science.

These features of the dissertation are also shown by the proposals made *de lege ferenda* to improve the legislation. In so far as each of the issues critically discussed in the dissertation leads to conceivable changes in the legislative framework, I shall focus only on some of the explicitly formulated proposals.

In Part One, point 2.3 of the work, based on an analysis of the regulation of the interpretative activity of the Supreme Administrative Court, the proposal to regulate this activity in an 'extended' form was motivated, as it was 'derived from the organic law (Judiciary Act) and the legal framework in the special procedural law – the Administrative Procedure Code – was reinstated. I

find this proposal appropriate because it is aimed at ensuring a more effective and more efficient administration of justice.

I consider it particularly important and with a outlined practical purpose the proposal in Part One, point 2.4 of the work in the common Normative Acts Act and in the Administrative Procedure Code to provide for a form of interpretative act issued by an administrative authority when it is approached precisely for this purpose.

In Part One, point 2.6, the proposal for optimizing the regulation of coercive administrative measures in the Administrative Violations and Punishments Act in order to overcome the problems in law enforcement is worthy of support. This is due to the fact that such measures often disproportionately affect fundamental rights and freedoms when they are implemented, without taking into account the balance or 'proportionality' in the restriction of citizens' rights when several types of coercion against the same person occur.

Point 2.11 of Part One, in conjunction with the contradictory interpretation of both the legal literature and the case-law on the application of Article 5(1) of the Administrative Procedure Code, proposes that, where an act has been issued by administrative authorities which have applied a rule of a superior act, while ignoring the directly applicable rule, that act be declared null and void on the ground that the authority is not competent to interpret the rule 'instead of implementing the rule prescribed by Article 16(1) of the Normative Acts Act'. I find the author's thesis grounded and leading to an awareness of the need for the administrative authorities to strictly perform their duties described in Article 16(1) of the Normative Acts Act.

In Part One, point 3, 4, when discussing the provision of Article 54(1)(4) of the Administrative Procedure Code, it is argued *de lege ferenda* that it is appropriate to add an explicit provision to Article 99 of the Administrative Procedure Code as a basis for reopening proceedings for the issuance of administrative acts with content 'in the event of a breach of Article 54(1)(4) of the Administrative Procedure Code, where the annexed law has been repealed by a decision of the Constitutional Court.' I share the author's argument concerning the relationship between this proposal and Article 6(5) of the Administrative Procedure Code.

In Part One, point 7.2 it is proposed to discuss the introduction of additional control over the draft normative act to be carried out by a deliberately established organizational part of the administrative body or in the National Assembly (when passing a law). The author's thesis would contribute to the improvement of the law-making.

Part Two, when discussing the impact assessment, public consultations and practical problems in the case of acts with unclear regulatory status, reaches a general conclusion as regards the legal nature of acts which have a 'boundary' legal character. The explicit determination of whether they are normative administrative acts or 'soft law' acts is a matter which, according to the author, still requires criteria for their determination. Reasonably, it is proposed *de lege ferenda* to introduce indicative criteria to be applied in cumulation when determining their normative or non-normative nature. These criteria would help the administrative authorities, the courts and the legislator according to the author, but I would also add their addressees natural or legal persons.

In Part Two, point 6, when discussing the so-called public legal acts of the National Assembly with a 'political character' and the case-law of the Constitutional Court, arguments are developed for the creation of a procedural normative act that regulates the constitutional procedure in greater detail than the Rules of Procedure of the Constitutional Court, as a proposal *de lege ferenda*. I believe that it is enough to discuss changes in the Rules of Procedure of the Constitutional Court that to correspond to its current practice.

8. Assessment of the publications on the dissertation

The publications presented on the dissertation are 15 of which one study and 14 articles. All of them are independent scientific works of the author of the dissertation. Each of the publications deals with current problems of legal theory and at the same time has practical application. The

publications reflect the author's continued interest in the challenges of scientific clarification of problems arising in the creation and implementation of the legal framework.

9. Personal involvement of the author

The achieved scientific results are a personal contribution of the author of the dissertation. The research is based on the analysis of Bulgarian and foreign literary and normative sources, which are evaluated and discussed with a view to achieving the self-formulated and set by the author scientific goals. The outline of discussion issues and the suggestions made for improving the legislation are the result of the creative personal assessment of the author. In fact, it is established that the dissertation was made independently and does not repeat either literally the topic or a significant part of the content of the presented for acquiring educational and scientific degree "Doctor", which complies with the requirement of Article 37, paragraph 2 of the Regulation on Implementation of the Promotion of the Academic Staff in Republic of Bulgaria Act,.

10. Abstract

The presented abstract contains the main results and conclusions of the conducted scientific research, and it contains the scientific questions raised and answers given by the author. It is drawn up in accordance with the internal university rules of Plovdiv University 'Paisii Hilendarski'.

11. Critical remarks and recommendations

I consider that it is possible to supplement the work on the interpretation of the rules of tax law as part of financial law with the historically established understanding that those rules, which establish obligations, are not interpreted in favour of fiscal law, but are inherently strict, which corresponds to the generally accepted thesis on the exercise of the powers of the revenue authorities without discretion. One could also cite Interpretative Decision No 3 in Interpretative Case No 2 of 2008 of the Supreme Administrative Court, according to which tax laws cannot be interpreted, narrowly, broadly or applied by analogy. It is up to the author to decide whether to accept this recommendation, in view of her views on differences between the interpretation in administrative and financial law, respectively tax law, but I believe that this would highlight specifics aimed at ensuring the enforcement of this type of public receivables and at the same time ensuring the preservation of the rights and interests of the obliged persons.

12. Personal impressions

Working in the field of application and research of financial law and tax law as part of it, I am familiar with Prof. Darina Zinovieva's entire scientific work. I have quoted her in my works and I have recommended it as a researcher to doctoral students and legal practitioners. I am well aware of its authority as a thorough, precise and problems-researching scholar among lawyers. This authority of a legal artist in the analysis of legislation has been built and maintained over the years by all the scientific creativity and practical proposals of the candidate. Her scientific work contributes to the understanding of the categorical apparatus of Bulgarian administrative law, as her works further elaborate and clarify existing and newly introduced concepts relevant to legal institutes and analyse newly introduced institutes. Her published scientific works are used by the Bulgarian legal community in solving practical problems.

13. Recommendations for future use of the dissertation contributions and results.

I recommend the author, when publishing his dissertation, to enrich it and to make a scientific analysis of the latest practice of the Constitutional Court and, in particular, of the Resolution on admissibility of 19.12.2024 in Constitutional Case No 38 of 2024, the content of which indicates an evolution in the court's understanding of the legal effect of decisions where a majority has not been reached. In the dissertation, Decision No 13/2024 in Constitutional Case No 1/2024 was discussed, and that Resolution concerned requests for a new discussion of issues discussed therein.

CONCLUSION

I believe that the dissertation contains scientific, applied and applied results that represent an original contribution to science as provided for in Article 12(4) of the Promotion of the Academic Staff in Republic of Bulgaria Act and meets all other requirements of this Act, the Regulation for its implementation and the internal Rules of the University of Plovdiv "Paisii Hilendarski". The presented materials and dissertation results fully comply with the minimum national requirements.

Based on the content of the dissertation, I believe that Professor, Doctor of Law Darina Peeva Zinovieva has proven her in-depth theoretical knowledge and high professional skills in Administrative Law and Procedure and in the professional direction 3.6. Law. The entire scientific activity of the candidate is a manifestation and proof of her qualities and skills to conduct research with the result of obtaining original and significant scientific contributions with practical applicability.

As a result of the above, I am convinced to give my positive assessment of the research carried out, presented by the above-reviewed dissertation, abstract, results achieved and contributions, and I propose to that the members of the scientific jury to award the scientific degree of Doctor of Sciences to Darina Peeva Zinovieva in Area of higher education: 3. Social, Economic and Legal Sciences, professional direction 3.6 Law (Administrative Law and Administrative Procedure).

Reviewer:

Professor of Law Sasho Georgiev Penov

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Sofia