

# REVIEW

By

**Prof. Dr. Ivan Todorov Todorov**

of a dissertation for awarding of the scientific degree **Doctor of Sciences**

in: field of higher education 3. Social, Economic and Legal Sciences, professional field 3.6. Law (Administrative Law and Administrative Process)

**Author:** Prof. Dr. Darina Peeva Zinovieva – Plovdiv University Paisiy Hilendarski.

**Topic:** Interpretation in Public Law

## **1. Subject of review**

By Order No. PD-21-1958/12.11.2024 of the Rector of Plovdiv University Paisiy Hilendarski (PU), I have been appointed as a member of the Scientific Jury for ensuring a procedure for the defense of a dissertation on the topic “Interpretation in Public Law” for the acquisition of the scientific degree Doctor of Sciences of PU in the field of higher education 3. Social, Economic and Legal Sciences, professional field 3.6. Law (Administrative Law and Administrative Process).

The author of the dissertation is Prof. Dr. Darina Peeva Zinovieva, Department of Public Law Sciences at the Faculty of Law of Plovdiv University Paisiy Hilendarski.

The presented set of materials on paper is in accordance with Art. 45 (4) of the Regulations for the Development of the Academic Staff of the University of Plovdiv and includes the following documents:

- application to the Rector of PU to open the procedure for the defense of a dissertation;
- CV in European format;
- copy of the diploma for the educational and scientific degree Doctor;
- minutes of departmental councils related to the opening of the procedure and the preliminary discussion of the dissertation;
- dissertation;
- author's summary of the dissertation;
- list of scientific publications on the topic of the dissertation;

- copies of scientific publications;
- declaration of originality and authenticity of the attached documents;
- certificate of compliance with the minimum national requirements;
- diploma for the educational and scientific degree DOCTOR No. 25131/06.04.1998 of the Higher Attestation Commission.

The candidate has attached 15 articles.

## **2. Brief biographical data**

Prof. Darina Zinovieva is a prominent representative of legal science. Prof. Zinovieva has developed as a prominent scholar based on the combination of extensive practical knowledge, extremely in-depth scientific works and dedication to teaching.

## **3. Relevance of the topic and appropriateness of the set goals and objectives**

Interpretation in law is precisely this activity that most clearly distinguishes lawyers from other specialists who know a given legal regulation. For there to be law enforcement, the exact meaning of the law must be clear. And this is impossible without interpretation. That is why accurate law enforcement is precisely a function of correct interpretation. Interpretation in Public Law is generally an undeveloped subject in Bulgarian law. This determines the exceptional relevance of the dissertation work.

The author rightly notes that the adoption of the 1991 Constitution, the establishment of the Supreme Administrative Court, the Constitutional Court, Bulgaria's accession to the EU and the application of European Law gave rise to numerous contradictory interpretations of the provisions of Public Law.

## **4. Knowledge of the problem**

The author has cited an impressive amount of Bulgarian and foreign literature, as well as numerous case law of the Constitutional Court, the Supreme Administrative Court, administrative courts, the Court of Justice of the EU, the European Court of Human Rights, and other foreign judicial institutions. Prof. Zinovieva has extremely accurately selected the scientific research and case law that are relevant to the topic of the dissertation and has subjected them to a detailed and

complex creative analysis. In this way, the author demonstrates a clearly profound view of the topic of the dissertation.

## **5. Research methodology**

The author has made an impressive complex analysis of the regulatory framework, scientific works and judicial practice at the same time. Each analysis is systematically followed by a synthesis, with the corresponding generalizations and conclusions being made. The author widely uses the comparative law method. The main problems are successfully subjected to historical analysis and generalization. Methods from other social sciences are also used.

## **6. Characteristics and evaluation of the dissertation**

The dissertation consists of an introduction, three parts and a conclusion. The three parts contain a total of 32 points.

The first part is INTERPRETATION OF SUBSTANTIVE NORMS IN PUBLIC LAW. It examines the use of general principles and the principles of individual legal institutions in interpretation. A significant place is devoted to the ways of searching for the legislator's goal in Public Law and its importance in interpretation. It analyzes how the specificity of Administrative Law affects interpretation given that a much larger number of normative acts are applied, with different legal force. The specifics of interpretation in Administrative, Criminal Law and other legal branches of Public Law are studied. The aspects of interpretation in the application of European Law are examined.

The second part is entitled PROCEDURAL SPECIFICITIES OF INTERPRETATION IN NATIONAL, EUROPEAN AND INTERNATIONAL JUDICIAL LAW. And accordingly, the specific ways of interpretation in procedural law are studied. A special place is devoted to the relationships in the interpretative activity carried out by the judicial authorities in Bulgaria and the relevant judicial authorities outside the country.

The third part is entitled DEVELOPMENT OF INTERPRETATIONAL ACTIVITY IN PUBLIC LAW. The author has made a thorough historical review and analysis, giving the trends in the development of interpretative activity.

## **7. Contributions and significance of the dissertation for science and practice**

The dissertation contains significant scientific contributions. I will only mention some of them.

First of all, the author establishes which are the most essential interpretative methods in Public Law and through their systematic application creates models of interpretation of important legal institutions. The dissertationist makes the extremely important conclusion that when applying multiple normative acts in Administrative Law, the legislator's goal in the specific case should first be established, through a simultaneous analysis of several normative acts.

Prof. Zinovieva makes a thorough analysis of interpretation in different branches of Public Law. In the interpretation in Administrative Law, the same administrative body can issue and apply the act. Which makes it possible to combine authentic interpretation with interpretation in law enforcement. This creates different possibilities for interpretation compared to other legal branches, which possibilities are studied in detail and then applied. The author, through careful analysis, essentially comes to the conclusion that the combination of many different in degree normative acts implies, first of all, to interpret the concepts in accordance with the higher in degree normative acts. Interpretation in administrative law is also complicated by the possibility in administrative law of combining bound competence with operational autonomy. Which requires that interpretative activity should first and foremost be directed towards their precise distinction.

The author specifically draws attention to the fact that in Administrative Law and Process there are elements of equality – administrative contracts, agreements, etc. Which also implies the application of methods of interpretation specific to Civil Law.

The author finds that the biggest problems in interpretation occur when establishing substantive legality.

A significant scientific contribution is contained in the analysis of the authentic interpretative activity of administrative bodies. A significant volume of judicial practice is examined. The author reasonably establishes a gap in the law and makes a proposal *De lege ferenda* in the APC to regulate the form of the interpretative act issued by the administrative body.

A scientific contribution is the system of interpretation proposed by the author in the simultaneous operation of Constitutional principles and principles of the APC, and in the simultaneous operation of several legal acts - an administrative act, a civil contract, a by-law administrative act, in which there are changes at different times. The author creates not only a

theoretically significant, but also a practically significant model of interpretation based on a combination of legal principles of different orders, methods of interpretation from several legal branches and historical interpretation.

An important scientific contribution is the author's conclusions in the analysis of Art. 169 of the Code of Administrative Procedure on “balancing disproportionality” in the exercise of operational autonomy. This is an important mechanism against the abuse of operational autonomy by administrative bodies. The conclusions are based on a thorough analysis of foreign authors and the cases of the European Court of Human Rights and the Chevron case in the USA.

The author pays special attention to clarifying the concept of “undefined legal term”. Prof. Zinovieva provides an accurate and consistent model of interpretation in these cases - generally accepted definitions, construction of the norm, legal purpose, historical interpretation, linguistic interpretation, comparative analysis.

The scientific contribution is the conclusions drawn from the comparison of interpretative activity in constitutional and administrative law. In particular, the contribution is the establishment of unwritten requisites and their consistency in the interpretative acts of the Constitutional Court. It is essential for interpretation in Constitutional Law that it should first be established whether the relevant constitutional norm has direct effect or is only a principle and has the relevant indicative content.

A significant contribution is made by the proposals for optimizing the regulatory framework of the APC. Such, for example, is the proposal for a change in Art. 99 of the APC.

A scientific contribution is the interpretative filling of a gap in the law on the issue of whether the prosecutor's office can provide an interpretation of a legal provision concerning its activities, with the author justifying a thesis on how this should be done.

A useful point is the clarification of the concept of "Constitutional Identity". On this issue, the author makes a thorough analysis of Bulgarian and foreign doctrine and judicial practice, a decision of the Constitutional Court of Poland, a Resolution of the European Parliament.

A significant scientific contribution is the proposal de lege ferenda in the Normative Acts Law to provide for the introduction of a “terminology review” in the procedure for issuing a normative act.

Extremely interesting and useful are the author's conclusions regarding “non-typical administrative acts” and the so-called “soft law” - instructions, methodologies, recommendations,

ethical codes, etc. The author builds an excellently substantiated and practically much more useful criterion system for their legal qualification and, accordingly, for the applicable procedure for their issuance.

Of extreme importance are the author's conclusions about the role of social influences in current interpretation in Criminal Law and especially the impact on the internal conviction of the reprehensibility of the act.

### **8. Assessment of dissertation publications**

The 15 articles related to the dissertation, published in the period 2012 - 2024, present the author's most important analyses and conclusions on the topic. The most current and practically important issues are reflected. The topics are examined in depth and accurately with clear and practically useful conclusions.

### **9. Personal contribution of the author**

The personal participation of the dissertationist in the research is undoubtedly evident. The author's scientific contributions are entirely her personal merit, based on a serious scientific apparatus selected by her.

### **10. Author's summary of the dissertation**

The author's summary of the dissertation provides the author's main theses and contributions in a very precise manner. From the summary, one can also gain an accurate idea of the practical benefits of the scientific work.

### **11. Critical remarks and recommendations.**

**I could not point out any significant critical remarks.** I would like to express some of my views, explicitly stating that Prof. Zinovieva's theses are excellently justified.

The author points out that the right to ignore a legal norm with lesser legal force, contradicting a higher norm, is granted as a competence only to the judicial authorities. The

dissertationist cites opinions that Art. 5 of the APC is incompatible with Art. 15, para. 3 of the Normative Acts Law. And accordingly, the administrative authority should not seize the competence of the judicial authorities by making its own interpretation of the applicable norm. Yes, indeed - according to Art. 15, para. 3 of the Normative Acts Law, “If a decree, regulation, ordinance or instruction contradicts a higher-level normative act, the judicial authorities shall apply the higher-level act.” But in addition to this provision, Art. 5, para. 1 of the APC provides that “When a decree, regulation, ordinance, instruction or other subordinate normative act contradicts a higher-level normative act, the higher-level act shall be applied.” Art. 5, para. 1 of the APC does not contradict Art. 15, para. 3 of the Normative Acts Law, because the two provisions regulate the powers of different bodies that do not contradict each other. That is why every administrative authority should apply Art. 5, para. 1 of the APC. The author quite correctly cites the Court of Justice of the EU (Case 103/88 Fratelli Costanzo v Comune di Milano), which obliges administrative authorities not to apply national legislation when it contradicts EU law, but to directly apply EU law. Thus, Article 5 of the APC is also confirmed by EU law.

Due to the above, it could also be possible to reconsider the proposal *de lege ferenda* to consider the administrative act issued as null and void in cases where the administrative authority has accepted that a given norm contradicts a norm with higher legal force, instead of merely notifying the authority that issued the unlawful norm under Art. 16, para. 1 of the Normative Acts Law.

## **12. Personal impressions**

I have known Prof. Zinovieva for many years and I can categorically state that she is an extremely serious scientist and teacher, and in addition, it should be noted that she also possesses impressive practical knowledge.

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

The work is of utmost importance for both academics and practicing lawyers, because interpretation is intrinsic to the administration of justice. And this is the first comprehensive study of interpretation in public law.

## CONCLUSION

**The dissertation represents a fundamental scientific study that contains numerous and impressive scientific contributions of exceptional importance for both theory and practice.**

Due to the above, I give a categorical positive assessment of the conducted research and propose to the Scientific Jury to award the scientific degree “Doctor of Sciences” to Prof. Dr. Darina Peeva Zinovieva - Plovdiv University Paisiy Hilendarski in the field of higher education 3. Social, Economic and Legal Sciences, professional field 3.6. Law (Administrative Law and Administrative Process).

16<sup>th</sup> January 2025

Reviewer: .....

(Prof. Dr. Ivan Todorov Todorov)